UTAH STATE BULLETIN

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

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Inquiries concerning administrative rules or other contents of the *Bulletin* may be addressed to the responsible agency or to: Division of Administrative Rules, PO Box 141007, Salt Lake City, Utah 84114-1007, telephone (801) 538-3218, FAX (801) 538-1773. To view rules information, and on-line versions of the division's publications, visit: http://www.rules.utah.gov/

The information in this *Bulletin* is summarized in the *Utah State Digest (Digest)*. The *Digest* is available by E-mail or over the Internet. Visit http://www.rules.utah.gov/publicat/digest.htm for additional information.

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EDITOR'S NOTES

NOTICE OF PUBLICATION ERROR IN THE JANUARY 1, 2003, ISSUE OF THE UTAH STATE BULLETIN

In the January 1, 2003, issue of the *Utah State Bulletin* (2003-1), all of the five-year reviews that were published had an effective date of December 26, 2002. Due to an error in our publishing system, the date the Bulletin was created became the effective date. *The effective date for a five-year review is the filed date.* Therefore, as an example: R13-3 was filed on 12/11/2002 and that is the effective date (2003-1, pg. 51). The division regrets this inconvenience.

If you have any questions regarding this correction, please contact Nancy Lancaster, Publications Editor, Division of Administrative Rules, PO Box 141007, Salt Lake City, UT 84114-1007, phone: (801) 538-3218, FAX: (801) 538-1773, or Internet E-mail: nllancaster@utah.gov.

End of the Editor's Notes Section

SPECIAL NOTICES

GOVERNOR'S SUPPLEMENTAL PROCLAMATION: CHANGING THE EFFECTIVE DATE STATED IN THE PROCLAMATION OF SEPTEMBER 10, 2002, REGARDING THE ANNEXATION INTO EMERY COUNTY OF THE PORTION OF THE CITY OF GREEN RIVER NOW IN GRAND COUNTY

WHEREAS, on September 10, 2002, I issued a proclamation stating the outcome of a vote to annex into Emery County the portion of the City of Green River now in Grand County and stating the effective date of the annexation;

WHEREAS, all the requirements of the annexation have occurred, and the annexation awaits only the passage of time before it takes effect;

WHEREAS, at the time of the September 10 proclamation, Section 17-2-9 of the Utah Code required that the annexation take effect "on the first Monday in January following," and the proclamation declared that date as being January 6, 2003;

WHEREAS, the Legislature enacted amendments changing the effective date of county annexations during the 2002 Sixth Special Session by the passage of House Bill 6007, COUNTY ANNEXATION AMENDMENTS;

WHEREAS, the new law has today taken effect upon my signature;

WHEREAS, the effective date of the annexation, as stated in the September 10 proclamation, does not agree with the newly amended law, which now requires that the effective date of annexations occur on January 1 of the year following the governor's proclamation;

NOW, THEREFORE, I, Michael O. Leavitt, Governor of the State of Utah, pursuant to the requirements of Title 17, Chapter 2 of the Utah Code, ANNEXATION TO COUNTY, as amended in the 2002 Sixth Special Session, proclaim as follows:

The proclamation of September 10, 2002, remains in effect, except that the annexation shall take effect January 1, 2003.

IN WITNESS WHEREOF, I have here unto set my hand and cause to be affixed the Great Seal of the State of Utah. Done at the State Capitol in Salt Lake City, Utah, this 20th day of December, 2002

(STATE SEAL)

MICHAEL O. LEAVITT
Governor

OLENE S. WALKER
Lieutenant Governor

(**DAR NOTES:** The proclamation of September 10, 2002, was published in the October 1, 2002, Utah State Bulletin. H.B. 6007 is found at UT L 2002, 6th Spec Sess Ch 3, and was effective December 20, 2002.)

HEALTH
ADMINISTRATION

PUBLIC NOTICE - MEDICAID PROGRAM REIMBURSEMENT, SERVICE, AND CO-PAY REDUCTIONS

Reductions in Reimbursement for Pharmacy Services - On January 1, 2003, reimbursement for pharmacy services will change from the average wholesale price (AWP) minus 12% to AWP minus 15%. All Medicaid clients are subject to this change.

Reductions in Reimbursement for Hospital Services - On January 3, 2003, reimbursement for hospital outlier payments will be reduced by approximately one-third.

Reductions in Services - On January 15, 2003, the following programs and services will no longer be covered for non-pregnant adults on Traditional Medicaid. The reductions do not apply to Medicaid clients who are pregnant or under age 21. Vision Care services. This includes examinations and eyeglasses. Physical Therapy and Occupational Therapy. Targeted Case Management Services for: Homeless, HIV/AIDS, and Tuberculosis. This reduction affects adult clients on Traditional Medicaid only. The changes apply to Medicaid clients enrolled in HMOs as well. Clients on Non-Traditional Medicaid are not affected.

Increase in Medicaid Co-payment - On February 1, 2003, pharmacy and physician co-pays increase for Traditional Medicaid clients required to make a co-payment. Pharmacy co-payments increase from $1 per prescription to $3 per prescription. The maximum out-of-pocket is increased to $15 per month. Physician visit co-payments increase from $2 per visit to $3 per visit. Physician services include osteopath, podiatrist and services in Federally Qualified Health Centers and rural health centers. This reduction affects adult clients on Traditional Medicaid only. The changes apply to Medicaid clients enrolled in HMOs as well. Clients on Non-Traditional Medicaid are not affected.

Although these program reductions are unfortunate, they are due to budget shortfalls resulting from greater Medicaid enrollment growth. This information was previously mailed to all Medicaid recipients and providers.

Public comment on these proposed changes is invited. Comments may be directed to: Director, Division of Health Care Financing, Utah Department of Health, P.O. Box 143101, Salt Lake City, Utah 84114-3101

(**DAR NOTE:** The proposed changes to the Medicaid Program rules are found under R414-63, Emergency Rule, DAR No. 25888; R414-63, Amendment, DAR No. 25898; R414-5, Emergency Rule, DAR No. 25889; R414-5, New Rule, DAR No. 25899; and R414-304, Amendment, DAR No. 25895 in this Bulletin.)

End of the Special Notices Section

NOTICES OF
PROPOSED RULES

A state agency may file a PROPOSED RULE when it determines the need for a new rule, a substantive change to an existing rule, or a repeal of an existing rule. Filings received between December 17, 2002, 12:00 a.m., and December 31, 2002, 11:59 p.m. are included in this, the January 15, 2003, 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 (e.g., example). Deletions made to existing rules are struck out with brackets surrounding them (e.g., [~~example~~]). Rules being repealed are completely struck out. A row of dots in the text (· · · · · ·) indicates that unaffected text was removed to conserve space. If a PROPOSED RULE is too long to print, the Division of Administrative Rules will 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 February 14, 2003. The agency may accept comment beyond this date and will list 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 to hold a hearing on a specific PROPOSED RULE. Section 63-46a-5 (1987) requires that a hearing request be received "in writing not more than 15 days after the publication date of the PROPOSED RULE."

From the end of the public comment period through May 15, 2003, 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 31 days 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 or a CHANGE IN PROPOSED RULE, the PROPOSED RULE filing lapses and the agency must start the process over.

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 *Utah Code* Section 63-46a-4 (2001); and *Utah Administrative Code* Rule R15-2, and Sections R15-4-3, R15-4-4, R15-4-5, R15-4-9, and R15-4-10.

The Proposed Rules Begin on the Following Page.

Administrative Services, Fleet Operations
R27-3
Vehicle Use Standards

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 25879
FILED: 12/23/2002, 11:05

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This amendment identifies and adopts the Division of Risk Management's recommendation as to the maximum number of occupants allowed in a 15-passenger van to insure safe operation of the vehicle.

SUMMARY OF THE RULE OR CHANGE: This amendment removes text in Subsection R27-3-11(2)(c) stating that the Division advises each agency not to exceed the maximum number of occupants and replacing it with not to exceed nine individuals.

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

ANTICIPATED COST OR SAVINGS TO:
❖ THE STATE BUDGET: There will be no cost to or savings in the state budget due to this rule change. Changes in the text will affect the number of passengers allowed in 15-passenger vans.
❖ LOCAL GOVERNMENTS: The division does not lease vehicles to local governments. Therefore, there would be no effect on their budget.
❖ OTHER PERSONS: The division does not lease vehicles to persons other than state employees, agencies, and institutions of higher education. Therefore, there would be no effect on them.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There will be no compliance costs associated with the change.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The rule governs the use of a special class of vehicles in the Daily Motor Pool. Therefore, there will be no fiscal impact on area businesses.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
ADMINISTRATIVE SERVICES
FLEET OPERATIONS
Room 4120 STATE OFFICE BLDG
450 N MAIN ST
SALT LAKE CITY UT 84114-1201, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Sal Petilos at the above address, by phone at 801-538-3091, by FAX at 801-538-3844, or by Internet E-mail at spetilos@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 02/14/2003.

THIS RULE MAY BECOME EFFECTIVE ON: 02/15/2003

AUTHORIZED BY: Steve Saltzgiver, Director

R27. Administrative Services, Fleet Operations.
R27-3. Vehicle Use Standards.
R27-3-11. Daily Motor Pool Sedans, Four Wheel Drive Sport Utility Vehicle (4x4 SUV), Cargo Van, Multi-Passenger Van and Alternative Fuel Vehicle Lease Criteria.

(1) The standard state vehicle is a compact sedan, and shall be the vehicle type most commonly used when conducting state business.

(2) Requests for vehicles other than a compact sedan may be honored in instances where the agency and/or driver is able to identify a specific need.

(a) Requests for a four wheel drive sport utility vehicle (4x4 SUV) may be granted with written approval from an employee's supervisor.

(b) Requests for a seven passenger van may be granted in the event that the driver is going to be transporting more than three authorized passengers.

(c) Requests for a fifteen (15) passenger van may be granted in the event that the driver is going to be transporting more than six authorized passengers. [~~The Division advises each agency not to exceed the maximum number of occupants~~]Under no circumstances shall the total number of occupants exceed nine (9) individuals, the maximum number recommended by the Division of Risk Management.

(3) Cargo vans shall be used to transport cargo only. Passengers shall not be transported in cargo area of said vehicles.

(4) Non-traditional (alternative) fuel shall be the primary fuel used when driving a bi-fuel or dual-fuel state vehicle. Drivers shall, when practicable, use an alternative fuel when driving a bi-fuel or dual-fuel state vehicle.

KEY: state vehicle use
[~~2002~~]2003
53-13-102
63A-9-401(1)(c)(viii)

▼ ▼

Alcoholic Beverage Control, Administration
R81-1-17
Advertising

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 25886
FILED: 12/31/2002, 09:39

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This section is being amended to comply with an earlier Tenth Circuit Court of Appeals ruling (Utah Licensed Beverage Association v. Michael Leavitt, 256 F.3d 1061 (10th Cir. 2001)) that found many of Utah's advertising laws and rules to be in violation of First Amendment rights.

SUMMARY OF THE RULE OR CHANGE: This amendment allows private clubs to solicit memberships through advertising.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 32A-5-107(23)

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: None--This proposed rule amendment will not involve costs to the state budget since it only affects advertising in private clubs.

❖ LOCAL GOVERNMENTS: None--Local governments will not be directly affected by advertising in private clubs.

❖ OTHER PERSONS: None--Private clubs are not required to advertise. This proposed amendment merely gives them more latitude in advertising if they choose to do so.

COMPLIANCE COSTS FOR AFFECTED PERSONS: None--There is no legal requirement for private clubs to advertise the availability of memberships. This proposed amendment merely gives them the option to do so.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The proposed amendment allows private clubs to advertise the availabilty of memberships, which may or may not increase their revenue.

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:
Sharon Mackay at the above address, by phone at 801-977-6800, by FAX at 801-977-6889, or by Internet E-mail at smackay@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 02/14/2003.

THIS RULE MAY BECOME EFFECTIVE ON: 02/15/2003

AUTHORIZED BY: Kenneth F. Wynn, Director

R81. Alcoholic Beverage Control, Administration.
R81-1. Scope of Definitions, and General Provision.
R81-1-17. Advertising.

(1) Purpose.

(a) Recognizing the rulings of the United States Supreme Court in 44 Liquormart, Inc. v. Rhode Island, 517 U.S. 484 (1996), and Lorillard Tobacco Co. v. Reilly, 121 S. Ct. 2404 (2001), and the Tenth Circuit Court of Appeals in Utah Licensed Beverage Association v. Leavitt, 256 F3d 1061 (10th Cir. 2001), this rule interprets Utah statutes and rules relating to the advertising of alcoholic beverages in a manner to preserve their constitutionality.

(b) No provision of this rule shall be construed as a concession that any current law or rule is unconstitutional. All statutes shall remain in full force and effect unless, consistent with the rulings cited above, enforcement of the statute would raise constitutional concerns. Also, the statutes should be interpreted in accordance with this rule.

(2) Definitions.

(a) For purposes of this rule, "advertisement" or "advertising" includes any written or verbal statement, illustration, or depiction which is calculated to induce alcoholic beverage sales, whether it appears in a newspaper, magazine, trade booklet, menu, wine card, leaflet, circular, mailer, book insert, catalog, promotional material, sales pamphlet, or any written, printed, graphic, or other matter accompanying the container, representations made on cases, billboard, sign, or other public display, public transit card, other periodical literature, publication or in a radio or television broadcast, or in any other media; except that such term shall not include:

(i) labels on products; or

(ii) any editorial or other reading material (i.e., news release) in any periodical or publication or newspaper for the publication of which no money or valuable consideration is paid or promised, directly or indirectly, by any alcoholic beverage industry member or retailer, and which is not written by or at the direction of the industry member or retailer.

(b) For purposes of this rule, "minor" or "minors" shall mean persons under the age of 21 years.

(3) Authority. This rule is enacted under the authority of Sections 63-46a-3, 32A-1-107, and 32A-12-401(2)(f) and (5).

(4) Application.

(a) This rule shall govern the regulation of advertising of alcoholic beverages sold within the state, except where the regulation of interstate electronic media advertising is preempted by federal law. This rule incorporates by reference the Federal Alcohol Administration Act, 27 U.S.C. 205(f), and Subchapter A, Parts 4, 5, 6 and 7 of the regulations of the Bureau of Alcohol, Tobacco and Firearms, United States Department of the Treasury in 27 CFR 4, 5, 6 and 7 (1993 Edition). These provisions shall regulate the labeling and advertising of alcoholic beverages sold within this state, except where federal statutes and regulations are found to be contrary to or inconsistent with the provisions of the statutes and rules of this state.

(b) 27 CFR Section 7.50 provides that federal laws apply only to the extent that the laws of a state impose similar requirements with respect to advertisements of malt beverages manufactured and sold or otherwise disposed of in the state. This rule, therefore, adopts and incorporates by reference federal laws, previously referenced in subparagraph (a), relating to the advertising of malt beverage products.

(5) Current statutes and rules restricting the advertising, display, or display of price lists of liquor products, as defined in 32A-1-105(23), by the department, state stores, or type 1, 2 or 3 package agencies as defined in R81-3-1, are applicable and enforceable.

(6) By this rule, the statutory provisions of Sections 32A-4-106(5)(d), 32A 4 106(21)(a) and (b), 32A-4-206(5)(c), 32A-6-

105(7), 32A 7 106(2)(m), 32A 12 401(2)(a) through (e), (3) and (4), to the extent they restrict the advertising of liquor, as defined in 32A-1-105(23), and beer, as defined in 32A 1 105(4), by manufacturers, wholesalers, permittees, licensed retailers of such products, and type 4 and 5 package agencies as defined in R81-3-1, will not be enforced. Instead, all advertising of liquor and beer by these entities shall comply with the advertising requirements listed in Section (10) of this rule.

(7) [~~Current statutes and rules restricting private club public solicitation or public advertising calculated to increase club membership are applicable and enforceable~~]By this rule, the statutory provisions of Section 32A-5-107(23) that restrict private club public solicitation or public advertising calculated to increase club membership will not be enforced. However, any such solicitation or advertising by a private club, its employees or agents, or by any person under an entertainment contract or agreement with the club shall clearly identify the establishment as being "a private club for members", and shall comply with the advertising requirements listed in Section (10) of this rule.

(8) All trade practice restrictions provided by Section 32A 12 603 regulating things of value that liquor and beer industry members, as defined in 32A 12 601, may provide to liquor and beer retailers are applicable and enforceable with the following modifications in enforcement:

(a) any on premise beer retailer may be provided, receive and use things of value from beer industry members to the same extent authorized for any tavern licensee;

(b) a restaurant liquor licensee may be provided, receive and use things of value from beer industry members to the same extent authorized for any beer licensee or permittee; and

(c) product displays, inside signs, and consumer and retailer advertising specialties relating to liquor and beer products may be provided and displayed in compliance with the advertising guidelines of Section (10) to the extent authorized by this rule and federal law (see 27 CFR 6.84), to include being visible on and off the retailer's premise.

(9) Sections 32A 12 606(1), (2), and (3) relating to unlawful acts involving consumers are applicable and enforceable. Section 32A-12-606(4) which establishes guidelines for alcoholic beverage industry members or retailers to sponsor or underwrite athletic, theatrical, scholastic, artistic, or scientific events is applicable and enforceable with the following modifications in enforcement:

(a) the guidelines for any alcoholic beverage advertising associated with the event are those listed in Section (10) of this rule;

(b) industry members or retailers are not precluded from sponsoring a theatrical, artistic, or scientific event that involves the display of drinking scenes; and

(c) industry members or retailers may not sponsor an event that takes place on the premises of a school, college, university, or other educational institution.

(10) Advertising Requirements. Any advertising or advertisement authorized by this rule:

(a) May not violate any federal laws referenced in Subparagraph (4);

(b) May not contain any statement, design, device, or representation that is false or misleading;

(c) May not contain any statement, design, device, or representation that is obscene or indecent;

(d) May not refer to, portray or imply illegal conduct, illegal activity, abusive or violent relationships or situations, or anti-social behavior, except in the context of public service advertisements or announcements to educate and inform people of the dangers, hazards and risks associated with irresponsible drinking or drinking by persons under the age of 21 years;

(e) May not encourage over-consumption or intoxication, promote the intoxicating effects of alcohol consumption, or overtly promote increased consumption of alcoholic products;

(f) May not advertise any promotional scheme such as "happy hour" or "all you can drink for $...".

(g) May not encourage or condone drunk driving;

(h) May not depict the act of drinking;

(i) May not promote or encourage the sale to or use of alcohol by minors;

(j) May not be directed or appeal primarily to minors by:

(i) using any symbol, language, music, gesture, cartoon character, or childhood figure such as Santa Claus that primarily appeals to minors;

(ii) employing any entertainment figure or group that appeals primarily to minors;

(iii) placing advertising in magazines, newspapers, television programs, radio programs, or other media where most of the audience is reasonably expected to be minors, or placing advertising on the comic pages of magazines, newspapers, or other publications;

(iv) placing advertising in any school, college or university magazine, newspaper, program, television program, radio program, or other media, or sponsoring any school, college or university activity;

(v) using models or actors in the advertising that are or reasonably appear to be minors;

(vi) advertising at an event where most of the audience is reasonably expected to be minors; or

(vii) using alcoholic beverage identification, including logos, trademarks, or names on clothing, toys, games or game equipment, or other materials intended for use primarily by minors.

(k) May not portray use of alcohol by a person while that person is engaged in, or is immediately about to engage in, any activity that requires a high degree of alertness or physical coordination;

(l) May not contain claims or representations that individuals can obtain social, professional, educational, athletic, or financial success or status as a result of alcoholic beverage consumption, or claim or represent that individuals can solve social, personal, or physical problems as a result of such consumption;

(m) May not offer alcoholic beverages to the general public without charge;

(n) May not require the purchase, sale, or consumption of an alcoholic beverage in order to participate in any promotion, program, or other activity; and

(o) May provide information regarding product availability and price, and factual information regarding product qualities, but may not imply by use of appealing characters or life-enhancing images that consumption of the product will benefit the consumer's health, physical prowess, sexual prowess, athletic ability, social welfare, or capacity to enjoy life's activities.

(11) Violations. Any violation of this rule may result in the imposition of any administrative penalties authorized by 32A-1-119(5), (6) and (7), and may result in the imposition of the criminal penalty of a class B misdemeanor pursuant to 32A-12-104.

KEY: alcoholic beverages
[~~July 1, 2002~~]2003
Notice of Continuation December 26, 2001

32A-1-107
32A-1-119(5)(c)
32A-3-103(1)(a)
32A-4-103(1)(a)
32A-4-203(1)(a)
32A-5-103(3)(c)
32A-6-103(2)(a)
32A-7-103(2)(a)
32A-8-103(1)(a)
32A-9-103(1)(a)
32A-10-203(1)(a)
32A-11-103(1)(a)

Alcoholic Beverage Control, Administration

R81-5-5

Advertising

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 25887
FILED: 12/31/2002, 10:12

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This section is being amended to comply with an earlier Tenth Circuit Court of Appeals ruling (Utah Licensed Beverage Association v. Michael Leavitt, 256 F.3d 1061 (10th Cir. 2001)) that found many of Utah's advertising laws to be in violation of First Amendment rights.

SUMMARY OF THE RULE OR CHANGE: This proposed amendment eliminates nearly all private club advertising restrictions.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 32A-12-401, and Subsection 32A-5-107(23)

ANTICIPATED COST OR SAVINGS TO:
❖ THE STATE BUDGET: None--This proposed amendment involves advertising in private clubs and does not affect Utah's state budget.
❖ LOCAL GOVERNMENTS: None--This proposed amendment involves advertising in private clubs and does not affect local governments.
❖ OTHER PERSONS: None--Private clubs are not required to advertise. This proposed amendment, however, eliminates most advertising restrictions if a private club chooses to advertise.

COMPLIANCE COSTS FOR AFFECTED PERSONS: None--Private clubs are not required to advertise. This proposed amendment merely eliminates most of the advertising restrictions should they choose to advertise.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This proposed amendment eliminates most private club advertising restrictions, which may or may not affect expenses and revenues.

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:
Sharon Mackay at the above address, by phone at 801-977-6800, by FAX at 801-977-6889, or by Internet E-mail at smackay@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 02/14/2003.

THIS RULE MAY BECOME EFFECTIVE ON: 02/15/2003

AUTHORIZED BY: Kenneth F. Wynn, Director

R81. Alcoholic Beverage Control, Administration.
R81-5. Private Clubs.
R81-5-5. Advertising.

(1) [~~Pursuant to Subsection 32A-5-107(23), a private club shall not engage in any public solicitation or public advertising calculated to increase its membership. However, advertising shall be deemed not to include listings of facilities, which for informational purposes states that a facility is a private club. Additionally, the use of television, radio or print media may be utilized to provide information to members relative to food and beverage items, entertainment, and club events subject to the following guidelines:~~

~~(a) The television, radio or print media information must have a reference that the information is provided exclusively for members of that private club.~~

~~(b) The information may contain the address, hours of operation and telephone number of the private club.~~

~~(c) Information regarding happy hours, free food or beverages is prohibited.~~

~~(d) Any club that chooses to advertise in this manner must clearly identify the establishment as "a private club" and state that the information in the advertisement is "for our members", "for the members", or "for the members of , a private club".~~]Any public solicitation or public advertising by a private club, its employees or agents, or by any person under an entertainment contract or agreement with the club shall clearly identify the club as being "a private club for members". In print media, this club identification information must be no smaller than 10 point bold type.[~~This subsection does not allow for the use of the words "guests" and/or "visitors".~~

~~(2) Club advertising on highway billboards is considered public solicitation or advertising calculated to increase club membership and is not allowed. Clubs may use signs at the site of the club to provide information to members relative to address, hours of operation, telephone number of the club, food and beverage items, entertainment, and club events. As used in this subsection,~~

~~"site of the club" means any building or resort facility where the club is located.~~]

KEY: alcoholic beverages
[~~April 29, 2002~~|2003
Notice of Continuation December 18, 2001
32A-1-107
32A-5-107(23)

Corrections, Administration
R251-304
Contract Procedures

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 25885
FILED: 12/31/2002, 08:52

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Minor grammar changes were included for consistency. Deleted redundant statements. Some problems have occurred when contractors' officers, employees, subcontractors, agents, or volunteers have not received training before they begin the contract implementation.

SUMMARY OF THE RULE OR CHANGE: Included capitalization for consistency. The Department of Corrections now requires a training session for contractors' officers, employees, subcontractors, agents, or volunteers prior to contract implementation. Terms 'noncompliance' and 'lack of funds' are already understood in the term 'with or without cause'. There is no need to itemize examples.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 64-13-25

ANTICIPATED COST OR SAVINGS TO:
❖ THE STATE BUDGET: No impact--This rule change does not add any additional requirements.
❖ LOCAL GOVERNMENTS: No impact--This rule change does not add any additional requirements.
❖ OTHER PERSONS: No impact--This rule change does not add any additional requirements.

COMPLIANCE COSTS FOR AFFECTED PERSONS: No impact--This rule change does not add any additional requirements. There should be no additional compliance costs due to this rule change.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: No impact--No new requirements were added.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
CORRECTIONS
ADMINISTRATION
14717 S MINUTEMAN DR
DRAPER UT 84020-9549, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Ginny L Duncan at the above address, by phone at 801-545-5722, by FAX at 801-545-5523, or by Internet E-mail at gduncan@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 02/14/2003.

THIS RULE MAY BECOME EFFECTIVE ON: 02/15/2003

AUTHORIZED BY: Michael P. Chabries, Executive Director

R251. Corrections, Administration.
R251-304. Contract Procedures.
R251-304-1. Authority and Purpose.
(1) This rule is authorized by Section 64-13-25.
(2) The purpose of this rule is to establish minimum standards for the organization and operation of correctional contracting, to promote accountability, and to ensure a safe and professional operation of correctional programs.

R251-304-2. Definitions.
(1) "Contract" means any state agreement for the procurement or disposal of supplies, services, or construction.
(2) "Contractor" means any person or organization contracting with the Department to provide goods or services.
(3) "Department" means the Utah State Department of Corrections (UDC).
(4) "Executive [~~d~~]Director" means the executive director of the Department of Corrections.
(5) "Monitor" means to scrutinize or check systematically on a periodic or ongoing basis.
(6) "Review" means the process, culminating in a written report, of inspecting and examining contract performance at least annually.

R251-304-3. Policy.
It is the policy of the Department that:
(1) contractors shall provide all services due under a contract as an independent contractor;
(2) contractors shall have no actual or implied authority to bind the State of Utah, any of its political subdivisions, or the Department of Corrections to any agreement, settlement, or understanding whatsoever;
(3) no provision of a contract shall be construed to bring contractors or their officers, agents, employees, volunteers, or subcontractors (if any) within the coverage of the Utah Governmental Immunity Act, Title 63, Section 30;
(4) all contractors' officers, employees, subcontractors, agents, or volunteers providing services shall be appropriately licensed and shall successfully complete a training session offered by UDC [~~within three months of~~]prior to contract implementation;

(5) contractors shall allow authorized UDC personnel full access to contract-related records with or without notice during contractors' regular business hours;

(6) contractors shall indemnify, hold harmless, and release the State of Utah and its officers, agents, and employees from and against all losses, damages, injuries, lawsuits and other proceedings arising out of the breach of, or performance under, the contract by contractors and their officers, agents, employees, subcontractors, and volunteers;

(7) all contracts shall be monitored throughout the contract period and reviewed at least annually;

(8) contracts may be terminated by the Department or the contractor with or without cause[~~, for noncompliance, or for lack of funds~~];

(9) contractors shall comply with all state and local regulatory requirements, including the following:

(a) zoning ordinances,

(b) building codes,

(c) applicable health codes,

(d) life and safety codes,

(e) professional licenses,

(f) business licenses, or

(g) other applicable federal, state, and local laws;

(10) UDC shall have the right to deny contractors, their agents, employees, and volunteers, or the agents, employees, and volunteers of their subcontractors, if any, access to premises controlled, held, leased, or occupied by UDC, if, in the sole judgment of UDC, such personnel pose a threat to UDC's legitimate security interests;

(11) prior to signing the contract, contractors shall disclose to UDC the names and state job titles of any of their agents, officers, partners, volunteers, or employees who are also employees of the State of Utah;

(12) UDC reserves the right to reject contractors' use of any person who, in the opinion of the Department, represents a threat to legitimate departmental interests;

(13) at the time the contract is awarded, contractors shall provide to UDC for a criminal records check the names, birth dates and social security numbers of all contractors' officers, employees, agents, and volunteers who will be providing services under contracts; and, during the contract period, contractors shall provide the same information to UDC on their new officers, employees, agents, and volunteers;

(14) contractors and UDC shall allow members of the general public to inspect Department contracts during regular business hours;

(15) public inquiries to contractors regarding specific offenders shall be referred to UDC; and

(16) decisions to terminate contracts may be appealed by contractors to the [~~e~~]Executive [~~d~~]Director of the Department of Corrections; the Director of Purchasing; or the [~~d~~]District [~~e~~]Court of the State of Utah.

KEY: corrections, contracts
[~~June 15, 1998~~]2003
Notice of Continuation March 6, 1998
64-13-25

▼ ▼

Environmental Quality, Drinking Water
R309-710
Drinking Water Source Protection Funding

NOTICE OF PROPOSED RULE
(Repeal)
DAR FILE NO.: 25863
FILED: 12/19/2002, 10:33

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this rule was to pass through federal funds to small public water systems to assist them in developing Drinking Water Source Protection Plans. The deadline for applying for these funds has passed and the federal funds have been expended.

SUMMARY OF THE RULE OR CHANGE: Funds that were being disbursed to eligible public water systems have been expended so the rule is repealed in its entirety.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 19-4-104(1)(a)(iv)

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: There is no cost or savings to the state budget because funds used to administer this program were federal funds.

❖ LOCAL GOVERNMENTS: There is no cost or savings to local government because monies used to administer and fund this program were federal funds.

❖ OTHER PERSONS: There is no cost or savings to other persons because monies used to administer and fund this program were federal funds.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for affected persons because there were no requirements to comply with this rule. Its purpose was to establish criterion to pass through federal funds to small public water systems.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The repeal of this Rule will have no fiscal impact on businesses.

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

ENVIRONMENTAL QUALITY
DRINKING WATER
150 N 1950 W
SALT LAKE CITY UT 84116-3085, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Bob Lowe at the above address, by phone at 801-536-4194, by FAX at 801-536-4211, or by Internet E-mail at blowe@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 02/14/2003.

THIS RULE MAY BECOME EFFECTIVE ON: 02/28/2003

AUTHORIZED BY: Kevin Brown, Director

R309. Environmental Quality, Drinking Water.
[~~R309-710. Drinking Water Source Protection Funding.~~
~~R309-710-1. Authority and Purpose.~~

~~(1) Under authority granted in Subsection 19-4-104(1)(a)(iv), the Drinking Water Board adopts this rule which governs the pass through of federal funds to small public water systems to assist them in developing source protection plans required by R309-600.~~

~~(2) The Federal Safe Drinking Water Act Amendments of 1996 make certain federal funds available to states to assist them in completing source water assessments required by the Act. It is the intent of the Drinking Water Board to pass most of these funds through to small public water systems to assist them by covering part of the costs they incur in preparing Drinking Water Source Protection Plans ("DWSP Plans") required by R309-600.~~

~~(3) This rule sets forth the guidelines and requirements that the Drinking Water Board and staff will adhere to in determining the eligibility for and amounts of federal funding that small public water systems shall be granted.~~

~~R309-710-2. Definitions.~~

~~(1) "Small public water system" means a public water system serving less than 3,300 persons.~~

~~(2) "DDW" means the Department of Environmental Quality, Division of Drinking Water.~~

~~R309-710-3. Funds Availability - Time Period.~~

~~(1) Federal funds shall be available to be granted to small public water systems as soon as this rule becomes effective and federal funds are made available to the State of Utah. Subject to their availability, funds shall be dispersed until all small public water systems meeting the eligibility requirements of this rule have received funds, or until the total amount of funds passed through to water systems equals $1,000,000, whichever occurs first. In any case, DWSP Plans submitted to DDW after December 31, 1999, shall not receive funding.~~

~~(2) Any federal funds set aside for the purposes described in this rule and not used for the same shall be used for other source water assessment or protection purposes or revert to the federal Drinking Water State Revolving Loan Fund as provided for by federal Safe Drinking Water Act.~~

~~R309-710-4. Funding Amounts.~~

~~(1) Small public water systems shall be eligible for 50%, not to exceed $2,500, of the actual costs for each ground water source of drinking water for which they prepare and submit to DDW a complete DWSP Plan. Funds shall not be granted until DDW determines that the Plan is complete, i.e., meets all the requirements of R309-600.~~

~~(2) Systems located in the same geographic areas are encouraged to have their source protection plans prepared together, as a group, by a single consultant or vendor. This should help to reduce costs and increase the effectiveness of plans.~~

~~R309-710-5. Eligibility Criteria and Application for Funds.~~

~~(1) In order to be eligible for these funds, a small public water system must:~~

~~(a) Have been in existence as of the initial effective date of R309-600 (July 26, 1993);~~

~~(b) have more than 50% of the dwelling units served by the system occupied by permanent, year-round residents;~~

~~(c) have a median adjusted gross income that is less than the state-wide median adjusted gross income for Utah; however, if a group of small public water systems located in the same geographic area selects a single consultant who prepares and submits all their source protection plans together, and at least 50% of the systems in the group meet this income level criterion, then all systems in the group, or the group as a whole, shall be deemed to meet this criterion;~~

~~(d) be a community water system, or a non-transient, non-community water system that is not associated with or owned by a for-profit entity, and is not owned/operated by a federal or state government agency; and~~

~~(e) submit complete DWSP Plans to DDW by the due dates indicated in R309-600-3. No DWSP Plans submitted to DDW after December 31, 1999 shall be eligible for these funds.~~

~~(2) In addition, only DWSP Plans prepared for drinking water sources that were existing (approved by DDW) as of July 26, 1993 shall be eligible for these funds.~~

~~(3) Application for Funds - In order to apply for and receive funds, small public water systems must submit an application form which has been obtained from DDW and completed in accordance with its instructions or a letter of application, with the complete DWSP Plan, to DDW. The completed application form or letter of application must be accompanied by documentation of actual costs incurred in preparing the DWSP Plan(s), and certify that these costs are actual and correct. The letter must also certify that the water system meets the eligibility criteria stated above, and be signed by the water system manager or designated person (R309-113-5). All completed applications or letters of application must be received by DDW no later than December 29, 2000. There shall be no exceptions to this deadline.~~

~~R309-710-6. Order of Dispersal of Funds.~~

~~(1) Funds shall be granted to small public water systems by DDW in the order in which complete DWSP Plans along with a letter of application for funds are received by DDW.~~

~~(2) Funds shall be dispersed until the total amount granted reaches $1,000,000, or until all DWSP Plans submitted by December 31, 1999, and determined to be eligible for funding have been funded, whichever occurs first.~~

~~KEY: drinking water, environmental health~~
~~June 12, 2000~~
~~19-4-104(1)(a)(iv)~~]

Health, Health Care Financing, Coverage and Reimbursement Policy
R414-5
Reduction in Outlier Reimbursements

NOTICE OF PROPOSED RULE
(New Rule)
DAR FILE NO.: 25899
FILED: 12/31/2002, 14:57

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This proposed new rule, along with other proposed changes to the Medicaid program, is needed to keep expenditures within appropriations authorized by the 2002 Legislature. Utilization and enrollment have increased above projected levels and expenditures must be reduced accordingly. (DAR NOTE: The proposed changes to the Medicaid Program are found under R414-63, Emergency Rule, DAR No. 25888; R414-63, Amendment, DAR No. 25898; R414-5, Emergency Rule, DAR No. 25889; R414-5, New Rule, DAR No. 25899; and R414-304, Amendment, DAR No. 25895 in this Bulletin.)

SUMMARY OF THE RULE OR CHANGE: This new rule describes how hospital services are reimbursed. The department enhances reimbursements when illnesses are especially severe and calls those payments outliers. Effective January 3, 2003, payments will be reduced by 33%, based on a simultaneous emergency rule filing. (DAR NOTE: A corresponding 120-day (emergency) rule that is effective as of January 3, 2003, is found under DAR No. 25889 in this Bulletin.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 26-18-7

ANTICIPATED COST OR SAVINGS TO:
❖ THE STATE BUDGET: Annually, the state will save $3,198,500 in General Fund and will lose $7,804,400 in federal matching funds.
❖ LOCAL GOVERNMENTS: No local governments receive outlier reimbursements because they do not operate hospitals that receive such reimbursements.
❖ OTHER PERSONS: Hospitals will lose a total of $11,002,900 in outlier reimbursements.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Some adjustments in hospital computer systems to allow reconciliation of medical billings with medical payments received may be required. Estimates put the cost at less than $1,000 per hospital.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule filing will have a negative impact on hospitals, but is an appropriate measure to control program expenditures and will support economy and efficiency in the Medicaid program. Rod L. Betit

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
HEALTH
HEALTH CARE FINANCING,
COVERAGE AND REIMBURSEMENT POLICY
CANNON HEALTH BLDG
288 N 1460 W
SALT LAKE CITY UT 84116-3231, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Ross Martin at the above address, by phone at 801-538-6592, by FAX at 801-538-6099, or by Internet E-mail at rmartin@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 02/14/2003

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE: 2/05/2003 at 6:00 PM, Cannon Health Building, 288 North 1460 West, Room 125, Salt Lake City, UT.

THIS RULE MAY BECOME EFFECTIVE ON: 02/15/2003

AUTHORIZED BY: Rod L. Betit, Executive Director

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.
R414-5. Reduction in Outlier Reimbursements.
R414-5-1. Introduction and Authority.
This rule describes the Utah Medicaid Program's reduction in outlier reimbursements to hospitals. This rule is authorized by Title 26, Chapter 18, Section 7, UCA.

R414-5-2. Hospital Reimbursements by DRG.
The Utah Medicaid Program reimburses hospital services based upon a prospective payment amount depending upon diagnosis. This method of reimbursement is by diagnosis related groups (DRG).

R414-5-3. Outlier Reimbursements.
The department pays an increased amount to hospitals if a patient's severity of illness causes additional expenses not covered in the DRG. These payment enhancements are called outlier reimbursements.

R414-5-4. Outlier Reimbursements Reduced.
Reimbursement for outlier claims, as set by Section 100, subpart 121 of Attachment 4.19-A of the state Medicaid plan, is hereby reduced by 33%.
(1) This reduction shall apply to all services provided after January 3, 2003.
(2) This reduction shall also apply to all claims submitted for payment after January 3, 2003.

KEY: Medicaid, hospital
2003
26-18

▼ ▼

Health, Health Care Financing, Coverage and Reimbursement Policy
R414-63
Medicaid Policy for Pharmacy Reimbursement

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 25898
FILED: 12/31/2002, 14:43

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule, along with other proposed changes to the Medicaid program, is needed to keep expenditures within appropriations authorized by the 2002 Legislature. Utilization and enrollment have increased above projected levels and expenditures must be reduced accordingly. (DAR NOTE: The proposed changes to the Medicaid Program are found under R414-63, Emergency Rule, DAR No. 25888; R414-63, Amendment, DAR No. 25898; R414-5, Emergency Rule, DAR No. 25889; R414-5, New Rule, DAR No. 25899; and R414-304, Amendment, DAR No. 25895 in this Bulletin.)

SUMMARY OF THE RULE OR CHANGE: This rulemaking increases the Medicaid discount taken from the average wholesale price of drugs. (DAR NOTE: A corresponding 120-day (emergency) rule that is effective as of January 1, 2003, is found under DAR No. 25888 in this Bulletin.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Title 26, Chapter 18

ANTICIPATED COST OR SAVINGS TO:
❖ THE STATE BUDGET: This will save the General Fund $490,600 and will lose $1,197,000 in federal matching funds.
❖ LOCAL GOVERNMENTS: There are no local government costs involved in this rulemaking because they are not involved in dispensing drugs.
❖ OTHER PERSONS: Retail pharmacists will lose $1,687,600 in reimbursements.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There may be some minimal modifications to provider data systems in order to incorporate the lower rate of reimbursement. There are no anticipated compliance costs for clients.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Studies by Division of Health Care Financing staff verify that pharmacies are receiving discounts on the wholesale price of drugs that are equal to or greater than the change proposed by this rule. This change will have a negative impact on pharmacies, but is an appropriate measure to control program expenditures and will support economy and efficiency in the Medicaid program. Rod L. Betit

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
HEALTH
HEALTH CARE FINANCING,
COVERAGE AND REIMBURSEMENT POLICY
CANNON HEALTH BLDG
288 N 1460 W
SALT LAKE CITY UT 84116-3231, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Ross Martin at the above address, by phone at 801-538-6592, by FAX at 801-538-6099, or by Internet E-mail at rmartin@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 02/14/2003

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE: 2/05/2003 at 6:00 PM, Cannon Health Building, 288 North 1460 West, Room 125, Salt Lake City, UT.

THIS RULE MAY BECOME EFFECTIVE ON: 02/15/2003

AUTHORIZED BY: Rod L. Betit, Executive Director

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.
R414-63. Medicaid Policy for Pharmacy Reimbursement.
R414-63-1. Introduction and Authority.

(1) The Medicaid Policy for reimbursement of dispensing fees for pharmacy providers was achieved through negotiations with representatives of the pharmacy industry.

(2) This rule is authorized under Chapter 26-18.

R414-63-2. Pharmacy Reimbursement.

(1) For each prescription filled for a Medicaid recipient the Department may reimburse the pharmacy provider for up to seven (7) non-exempt prescriptions in any calendar month. The limit on prescriptions will not take effect until the assessment required in section (4) of this rule is completed. A single prescription that is filled multiple times in the month is one prescription. The pharmacy provider shall be reimbursed:

(a) the average wholesale price for the medication minus [~~12~~]15%; and

(b) a dispensing fee in the amount of $3.90 for urban providers and $4.40 for rural providers.

(2) The limitation on the number of prescriptions does not apply to pregnant women or children under age 21.

(3) The following drug classes are exempt from the seven prescription limit in (1):

(a) A4A, hypotensive - vasodilator, example: minoxidil (Loniten);

(b) A4B, hypotensive - sympatholytic, example: guanethidine (Ismelin);

(c) A4C, hypotensives - ganglionic blockers, example: trimethaphan (Arfonad);

(d) A4D, hypotensives - ACE blocking type, example: captopril (Capoten);

(e) A4E, hypotensives - veratrum alkaloids, example: cryptenamine;

(f) A4F, hypotensives - angiotensin receptor antagonist, example: losartan (Cozaar);

(g) A4Y, hypotensives - miscellaneous, example: nitroprusside sodium (Nitropress);

(h) A9A, calcium channel blocking agents, example: nifedipine (Procardia);

(i) C4G, insulins;
(j) C4K, hypoglycemics - insulin-release stimulant type, example: tolbutamide (Orinase);
(k) C4L, hypoglycemics - biguanide type (non-sulfonylureas), example: metformin (Glucophage);
(l) C4M, hypoglycemics - alpha-glucosidase inhib. Type (N-S), example: miglitol (Glyset);
(m) M0E, antihemophilic factor VIII;
(n) M0F, antihemophilic factor IX;
(o) M4E, lipotropics (cholesterol lowering agents), example: pravastatin (Pravachol);
(p) R1M, loop diuretics, example: furosemide (Lasix);
(q) V1A, alkylating agents, example: chlorambucil (Leukeran);
(r) V1B, antimetabolites, example: methotrexate;
(s) V1C, vinca alkaloids, example: vinblastine (Velban);
(t) V1D, antibiotic antineoplastics, example: mitomycin (Mithracin);
(u) V1E, steroid antineoplastics, example: megestrol (Megace);
(v) V1F, antineoplastics, miscellaneous, example: tamoxifen (Nolvadex);
(w) W5B, HIV-specific, example: didanosine (Videx);
(x) W5C, HIV-specific - protease inhibitor; example: indinavir (Crixivan);
(y) Z2E, organ transplant immunosupressive agents, example: cyclosporine (Sandimmune);
(z) W1A, penicillins;
(aa) W1B, cephalosporins;
(bb) W1C, tetracyclines;
(cc) W1D, macrolides;
(dd) W1E, chloramphenicol and derivaties;
(ee) W1F, aminoglycosides;
(ff) W1G, antitubercular antibiotics;
(gg) W1J, vancomycin and derivaties;
(hh) W1K, lincosamides;
(ii) W1M, streptogramins;
(jj) W1N, polymyxin and derivatives;
(kk) W1O, oxazolidinones;
(ll) W1P, antileprotics;
(mm) W1Q, quinolones;
(nn) W1S, thienamycins;
(oo) W1W, cephalosporins - 1st generation;
(pp) W1X, cephalosporins - 2nd generation;
(qq) W1Y, cephalosproins - 3rd generation;
(rr) W2A, absorbable sulfonamides;
(ss) W2E, anti-mycobaterium agents;
(tt) W2F, nitrofuran derivatives; and
(uu) W2G, chemotherapeutics, antibacterial, misc.

(4) The Department may grant a medical exemption to the seven (7) prescription limit in (1), by:

(a) Conducting an assessment for the medical exemption with input from the recipient's prescribing physicians;

(b) Reimbursing for all medically necessary prescriptions pending agency action on the assessment;

(c) Granting the medical exemption if a preponderance of the evidence establishes that the recipient's medical needs cannot reasonably be met unless the Department agrees to pay for more than seven (7) prescriptions in any calendar month;

(d) Deferring to the decision of the prescribing physician, in the event of a disagreement between the Department and the prescribing physician on which prescriptions are medically necessary; and

(e) Setting reasonable conditions on the grant of a medical exemption to assure the most cost-effective method of meeting the medical need, such as the use of generics and other factors.

KEY: Medicaid, prescriptions
[~~April 30, 2002~~|2003
26-18

Health, Health Care Financing, Coverage and Reimbursement Policy
R414-304
Income and Budgeting

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 25895
FILED: 12/31/2002, 13:46

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rulemaking is necessary in order to stay within the Department of Health's appropriated FY 2003 budget. The reduction is due to a higher than expected growth in the number of program enrollees. Specifically, this rulemaking changes the income limit for the Aged and Disabled poverty-related Medicaid program. The income limit is reduced from 100% of the federal poverty guideline (FPL) to 75% of the FPL. It also changes the percentage of the FPL at which a Medicaid Work Incentive recipient is required to pay a buy-in premium so that premiums will be charged when the income of the individual and the individual's spouse exceeds 75% of the FPL. In addition, this rulemaking makes a clarification to the rule concerning premiums charged to people participating in the Medicaid Work Incentive Program. The change brings the wording in line with that used in the State Plan Amendment. Finally, this rulemaking removes language about the Qualifying Individuals Group 2 Program that ended December 31, 2002. (DAR NOTE: The proposed changes to the Medicaid Program are found under R414-63, Emergency Rule, DAR No. 25888; R414-63, Amendment, DAR No. 25898; R414-5, Emergency Rule, DAR No. 25889; R414-5, New Rule, DAR No. 25899; and R414-304, Amendment, DAR No. 25895 in this Bulletin.)

SUMMARY OF THE RULE OR CHANGE: Subsection R414-304-2(10) is removed because it refers to the Qualifying Individuals Group 2 program that ended on December 31, 2002. In Sections R414-304-2, R414-304-7, R414-304-11, and R414-304-12, each instance of 100% FPL in reference to the Aged and Disabled Medicaid Program has been changed to 75% FPL. In Section R414-304-11, the percentage at which a premium will be charged for a person eligible for the Medicaid Work Incentive Program is being changed from 100% to 75%. The technical change made in this same section to the Medicaid Work Incentive Program is to clarify how premiums

are calculated. A premium is calculated only after the income of the individual and spouse exceeds the 75% FPL test used in the Aged and Disabled Poverty-Related Medicaid Program.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Title 26, Chapter 18

ANTICIPATED COST OR SAVINGS TO:
❖ THE STATE BUDGET: Annualized savings to the General Fund is $4,651,700. A total of $11,350,100 in federal matching funds will be lost to the state.
❖ LOCAL GOVERNMENTS: To the extent that local governments are impacted by this rulemaking, hospitals operated by local governments could incur uncompensated care up to $216,000 in state and federal dollars. However, half of the individuals served by these hospitals are already eligible for Medicare and an unknown number of the rest of these individuals will choose to spenddown and become eligible for other programs. While the local mental health authorities will lose premium payments for those who choose not to access Medicaid through the spenddown program and will have a higher utilization rate for those who do, the premium payment for those who spenddown is substantially higher and should compensate for the loss of lower premiums for those who did not previously use mental health services.
❖ OTHER PERSONS: Approximately 82% of the expenditures are for care related to inpatient hospitalization, mental health and pharmacy. Generally, pharmacy products will not be dispensed without payment and we assume inpatient expenses will still be paid through the spenddown program. Some outpatient cost of care and other provider care will likely go uncompensated. The maximum anticipated loss is $2.9 million. However, we believe many will pay for their services and some may forgo receiving the services if they are unable to pay, which will reduce the amount lost by providers.

COMPLIANCE COSTS FOR AFFECTED PERSONS: No person should incur costs in order to comply with this rule change other than minimal data system changes that should not exceed $500 per hospital and less for individual providers. Medicaid recipients that lose coverage will either be required to pay for care, pay for care until they have spent enough to qualify in a given month (spenddown), ask providers to provide charity care or go without medical care that Medicaid had previously provided. The impact on each individual is too variable to estimate beyond the aggregates described under "anticipated cost or savings" above.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Although these program reductions are unfortunate, they are unavoidable due to budget shortfalls resulting from greater Medicaid enrollment growth. When the Utah economy struggles Utahns look to public health for health care in larger numbers. Some of these individuals may qualify for other programs. Uncompensated care will result for some hospitals and other local providers as detailed in the cost information above. Rod L. Betit

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
HEALTH
HEALTH CARE FINANCING,
COVERAGE AND REIMBURSEMENT POLICY
CANNON HEALTH BLDG
288 N 1460 W
SALT LAKE CITY UT 84116-3231, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Ross Martin at the above address, by phone at 801-538-6592, by FAX at 801-538-6099, or by Internet E-mail at rmartin@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 02/14/2003

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE: 2/05/2002 at 6:00 PM, Cannon Health Building, 288 North 1460 West, Room 125, Salt Lake City, UT.

THIS RULE MAY BECOME EFFECTIVE ON: 02/15/2003

AUTHORIZED BY: Rod L. Betit, Executive Director

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.
R414-304. Income and Budgeting.
R414-304-2. A, B and D Medicaid and A, B and D Institutional Medicaid Unearned Income Provisions.

(1) The Department adopts 42 CFR 435.725 through 435.832, 2000 ed., and 20 CFR 416.1102, 416.1103, 416.1120 through 416.1148, 416.1150, 416.1151, 416.1163 through 416.1166, and Appendix to Subpart K of 416, 2000 ed., which are incorporated by reference. The Department adopts Subsection 404(h)(4) and 1612(b)(22) of the Compilation of the Social Security Laws in effect January 1, 1999, which are incorporated by reference. The Department shall not count as income any payments that are prohibited under other federal laws from being counted as income to determine eligibility for federally-funded medical assistance programs.

(2) The following definitions apply to this section:

(a) "Deeming" or "deemed" means a process of counting income from a spouse of an aged, blind, or disabled person or from a parent of a blind or disabled child to decide what amount of income after certain allowable deductions, if any, must be considered income to an aged, blind, or disabled person or child.

(b) "Eligible spouse" means the member of a married couple who is either aged, blind, or disabled.

(c) "In-kind support donor" means an individual who provides food or shelter without receiving full market value compensation in return.

(d) "Presumed maximum value" means the allowed maximum amount an individual is charged for the receipt of food and shelter.

This amount shall not exceed 1/3 of the SSI federal benefit rate plus $20.

(3) Only the portion of a VA check to which the client is legally entitled is countable income. VA payments for aid and attendance do not count as income. The portion of a VA payment which is made because of unusual medical expenses is not countable income. Other VA income based on need is countable income, but is not subject to the $20 general income disregard.

(4) The value of special circumstance items is not countable income if the items are paid for by donors.

(5) For A, B and D Medicaid two-thirds of current child support received in a month for the disabled child is countable unearned income. It does not matter if the payments are voluntary or court-ordered. It does not matter if the child support is received in cash or in-kind. Child support payments which are payments owed for past months or years are countable income to the parent receiving the payments.

(6) For A, B and D Institutional Medicaid court-ordered child support payments must be paid to the Office of Recovery Services (ORS) when the child resides out-of-home in a Medicaid 24-hour care facility. If the child has no income or insufficient income to provide for a personal needs allowance, ORS will allow the parent to retain up to the amount of the personal needs allowance to send to the child for personal needs. All other current child support payments received by the child or guardian that are not subject to collection by ORS shall count as unearned income to the child.

(7) The interest earned from a sales contract on either or both the lump sum and installment payments is countable unearned income when it is received or made available to the client.

(8) If the client, or the client and spouse do not live with an in-kind support donor, in-kind support and maintenance is the lesser of the value or the presumed maximum value of food or shelter received. If the client, or the client and spouse live with an in-kind support donor and do not pay a prorated share of household operating expenses, in-kind support and maintenance is the difference between the prorated share of household operating expenses and the amount the client, or the client and spouse actually pay, or the presumed maximum value, whichever is less.

(9) SSA reimbursements of Medicare premiums are not countable income.[

~~(10) Reimbursements of a portion of Medicare premiums made by the state Medicaid agency to an individual eligible for QI Group 2 coverage are not countable income.~~]

([~~11~~]10) Payments under a contract, retroactive payments from SSI and SSA reimbursements of Medicare premiums are not considered lump sum payments.

([~~12~~]11) Educational loans, grants, and scholarships guaranteed by the U.S. Department of Education are not countable income if the recipient is an undergraduate. Income from service learning programs is not countable income if the recipient is an undergraduate. Deductions are allowed from countable educational income if receipt of the income depends on school attendance and if the client pays the expense. Allowable deductions include:

(a) tuition;

(b) fees;

(c) books;

(d) equipment;

(e) special clothing needed for classes;

(f) travel to and from school at a rate of 21 cents a mile, unless the grant identifies a larger amount;

(g) child care necessary for school attendance.

([~~13~~]12) Except for an individual eligible for the Medicaid Work Incentive Program, the following provisions apply to non-institutional medical assistance:

(a) For A, B, or D Medicaid, the income of a spouse or a parent shall not be considered in determining Medicaid eligibility of a person who receives SSI or meets 1619(b) criteria. SSI recipients and 1619(b) status individuals who meet all other Medicaid eligibility factors shall be eligible for Medicaid without spending down.

(b) If an ineligible spouse of an aged, blind, or disabled person has more income after deductions than the allocation for a spouse, that income shall be deemed to be income to the aged, blind, or disabled spouse to determine eligibility.

(c) The Department shall determine household size and whose income counts for A or D Medicaid as described below.

(i) If only one spouse is aged or disabled:

(A) income of the ineligible spouse shall be deemed to be income to the eligible spouse when it exceeds the allocation for a spouse. The combined income shall then be compared to [~~100~~]75% of the federal poverty guideline for a two-person household. If the combined income exceeds that amount, it shall be compared, after allowable deductions, to the BMS for two to calculate the spenddown.

(B) If the ineligible spouse's income does not exceed the allocation for a spouse, the ineligible spouse's income shall not be counted and the ineligible spouse shall not be included in the household size or the BMS. Only the eligible spouse's income shall be compared to [~~100~~]75% of the federal poverty guideline for one. If the income exceeds that amount, it shall be compared, after allowable deductions, to the BMS for one to calculate the spenddown.

(ii) If both spouses are either aged or disabled, the income of both spouses is combined and compared to [~~100~~]75% of the federal poverty guideline for a two-person household. SSI income is not counted.

(A) If the combined income exceeds that amount, and one spouse receives SSI, only the income of the non-SSI spouse, after allowable deductions, shall be compared to the BMS for a one-person household to calculate the spenddown.

(B) If neither spouse receives SSI and their combined income exceeds [~~100~~]75% of the federal poverty guideline, then the income of both spouses, after allowable deductions, shall be compared to the BMS for a two-person household to calculate the spenddown.

(C) If neither spouse receives SSI and only one spouse will be covered under the applicable program, income of the non-covered spouse shall be deemed to the covered spouse when it exceeds the spousal allocation. If the non-covered spouse's income does not exceed the spousal allocation, then only the covered spouse's income shall be counted. In both cases, the countable income shall be compared to [~~100~~]75% of the two-person poverty guideline. If it exceeds the limit, then income shall be compared to the BMS.

(I) If the non-covered spouse has deemable income, the countable income shall be compared to a two-person BMS to calculate a spenddown.

(II) If the non-covered spouse does not have deemable income, then only the covered spouse's income shall be compared to a one-person BMS to calculate the spenddown.

(iii) If an aged or disabled person has a spouse who is blind, then income of the blind spouse shall be deemed to the aged or disabled person when this income exceeds the allocation for a spouse to determine eligibility for the [~~100~~]75% poverty-related Aged or Disabled Medicaid programs. If the deemed income of the blind spouse does not exceed the allocation for a spouse, none of the blind spouse's income shall be counted. In either case, countable income shall be compared to [~~100~~]75% of the poverty guideline for a two-

person household to determine eligibility for the aged or disabled spouse.

(A) If the countable income does not exceed [~~100~~]75% of the two-person poverty guideline, then the aged or disabled spouse shall be eligible under the [~~100~~]75% poverty-related Aged or Disabled Medicaid program.

(B) If the countable income exceeds [~~100~~]75% of the two-person poverty guideline, then eligibility under the spenddown program shall be determined as described in (ii)(A) if the blind spouse receives SSI or as in (ii)(B) or (ii)(C)(I) or (II) if the blind spouse does not receive SSI.

(d) The Department shall determine household size and whose income counts for B Medicaid as described below.

(i) If the spouse of a blind client is aged, blind, or disabled and does not receive SSI, income of both spouses shall be combined and, after allowable deductions, compared to the BMS for a two-person household to calculate the spenddown.

(A) If only one spouse will be covered, or the aged or disabled spouse is eligible under the A or D [~~100~~]75% poverty-related program, income of the non-covered spouse shall be deemed when it exceeds the allocation for a spouse. The total countable income shall then be compared to the BMS for a two-person household to calculate the spenddown.

(B) If the non-covered spouse's income does not exceed the allocation for a spouse, then only the covered spouse's income shall be counted and compared to the BMS for a one-person household.

(C) If the spouse of a blind client receives SSI, then only the income of the blind spouse shall be compared to the BMS for one.

(ii) If the spouse is not aged, blind, or disabled, income shall be deemed to the blind spouse when it exceeds the allocation for a spouse, and, after allowable deductions, the combined income shall be compared to the BMS for two. If the ineligible spouse's income does not exceed the allocation for a spouse, only the blind spouse's income, after allowable deductions, shall be compared to the BMS for one person to calculate the spenddown.

(e) Except when determining countable income for the [~~100~~]75% poverty-related Aged and Disabled Medicaid programs, income will not be deemed from a spouse who meets 1619(b) protected group criteria.

(f) The Department shall determine household size and whose income counts for QMB, SLMB, and QI assistance as described below.

(i) If both spouses receive Part A Medicare and both want coverage, income shall be combined and compared to the applicable percentage of the poverty guideline for a two-person household.

(ii) If one spouse receives Part A Medicare, and the other spouse is aged, blind, or disabled and that spouse either does not receive Part A Medicare or does not want coverage, then income of the ineligible spouse shall be deemed to the eligible spouse when it exceeds the allocation for a spouse. If the income of the ineligible spouse does not exceed the allocation for a spouse, then only the income of the eligible spouse shall be counted. In both cases, the countable income shall be compared to the applicable percentage of the federal poverty guideline for a two-person household.

(iii) If one spouse receives Part A Medicare and the other spouse is not aged, blind or disabled, income of the ineligible spouse shall be deemed to the eligible spouse when it exceeds the allocation for a spouse. The combined countable income shall be compared to the applicable percentage of the federal poverty guideline for a two-person household. If the ineligible spouse's deemable income does not exceed the allocation for a spouse, only the eligible spouse's income shall be counted, and compared to the applicable percentage of the poverty guideline for a one-person household.

(iv) SSI income will not be counted to determine eligibility for QMB, SLMB or QI assistance.

(g) If any parent in the home receives SSI or is eligible for 1619(b) protected group coverage, the income of neither parent shall be considered to determine a child's eligibility for B or D Medicaid.

(h) Payments for providing foster care to a child are countable income. The portion of the payment that represents a reimbursement for the expenses related to providing foster care is not countable income.

([~~14~~]13) For institutional Medicaid, the Department shall only count the client in the household size and only count the client's income to determine contribution to cost of care.

([~~15~~]14) Interest accrued on an Individual Development Account as defined in Sections 404-416 of Pub. L. No. 105-285 effective October 27, 1998, shall not count as income.

([~~16~~]15) Income, unearned and earned, shall be deemed from an alien's sponsor, and the sponsor's spouse, if any, when the sponsor has signed an Affidavit of Support pursuant to Section 213A of the Immigration and Nationality Act on or after December 19, 1997.

([~~17~~]16) Sponsor deeming will end when the alien becomes a naturalized U.S. citizen, or has worked 40 qualifying quarters as defined under Title II of the Social Security Act or can be credited with 40 qualifying work quarters. Beginning after December 31, 1996, a creditable qualifying work quarter is one during which the alien did not receive any federal means-tested public benefit.

([~~18~~]17) Sponsor deeming does not apply to applicants who are eligible for Medicaid for emergency services only.

R414-304-3. Medicaid Work Incentive Program Unearned Income Provisions.

(1) The Department adopts 20 CFR 416.1102, 416.1103, 416.1120 through 416.1148, 416.1150, 416.1151, and Appendix to Subpart K of 416, 2000 ed., which are incorporated by reference. The Department adopts Subsection 404(h)(4) and 1612(b)(22) of the Compilation of the Social Security Laws in effect January 1, 1999. The Department shall not count as income any payments which are prohibited under other federal laws from being counted as income to determine eligibility for federally-funded medical assistance programs.

(2) The Department shall allow the provisions found in R414-304-2 (3) through ([~~12~~]11), and ([~~15~~]14) through (17).

(3) The income from an ineligible spouse or parent shall be determined by the total of the earned and unearned income using the appropriate exclusions in 416.1161, except that court ordered support payments would not be allowed as a deduction.

(4) For the Medicaid Work Incentive Program, the income of a spouse or parent shall not be considered in determining eligibility of a person who receives SSI. SSI recipients who meet all other Medicaid Work Incentive Program eligibility factors shall be eligible without paying a Medicaid buy-in premium.

(5) The Department shall determine household size and whose income counts for the Medicaid Work Incentive Program as described below:

(a) If the Medicaid Work Incentive Program individual is an adult and is not living with a spouse, count only the income of the individual. Include in the household size, any dependent children under age 18. Also include in the household size any children who are 18, 19, or 20 and are full-time students. After allowable deductions, the net income shall be compared to 250% of the federal poverty guideline for the household size involved.

(b) If the Medicaid Work Incentive Program individual is living with a spouse, combine their income before allowing any deductions.

Include in the household size the spouse and any children under age 18. Also include in the household size any children who are 18, 19, or 20 and are full-time students. Compare the net income of the Medicaid Work Incentive Program individual and spouse to 250% of the federal poverty guideline for the household size involved.

(c) If the Medicaid Work Incentive Program individual is a child living with a parent, combine the income of the Medicaid Work Incentive Program individual and the parents before allowing any deductions. Include in the household size the parents, any minor siblings, and siblings who are age 18, 19, or 20 and are full-time students. Compare the net income of the Medicaid Work Incentive Program individual and the individual's parents to 250% of the federal poverty guideline for the household size involved.

R414-304-7. A, B and D Medicaid and Family Medicaid Income Deductions.

(1) The Department adopts 42 CFR 435.831, 2000 ed., which is incorporated by reference.

(2) The Department shall allow health insurance premiums providing coverage for anyone in the family or the BMS as deductions in the month of payment.

(a) The entire payment shall be allowed as a deduction in the month it is due and will not be prorated.

(b) The Department shall not allow health insurance premiums as a deduction for determining eligibility for the poverty-related medical assistance programs or 1931 Family Medicaid.

(c) Health insurance premiums paid in the application month or during the three month retroactive period which are not fully used as a deduction in the month paid may be allowed as a deduction only through the month of application.

(3) Medicare premiums shall not be allowed as deductions if the state will pay the premium or will reimburse the client.

(4) Medical expenses shall be allowed as deductions only if the expenses meet all of the following conditions:

(a) The medical service was received by the client, client's spouse, parent of an unemancipated client or unemancipated sibling of an unemancipated client, a deceased spouse or a deceased dependent child.

(b) The medical bill shall not be paid by Medicaid or a third party.

(c) The medical bill remains unpaid, or the medical service was received and paid during the month of application or during the three month time period immediately preceding the date of application. The date the medical service was provided on an unpaid expense does not matter. Bills for services received and paid during the application month or the three month time period preceding the date of application can be used as deductions only through the month of application.

(5) A medical expense shall not be allowed as a deduction more than once.

(6) A medical expense allowed as a deduction must be for a medically necessary service. The Department shall be responsible for deciding if services are not medically necessary.

(7) The Department shall not allow as a medical expense, co-payments or co-insurance amounts required under the State Medicaid Plan that are owed or paid by the client to receive Medicaid-covered services.

(8) To determine countable income for the [~~100~~]75% poverty-related Aged and Disabled Medicaid programs, the Department shall deduct $8 from the individual's income, or from the combined income of the individual and the individual's spouse before making other allowable deductions.

(9) For poverty-related medical assistance, an individual or household shall be ineligible if countable income exceeds the applicable income limit. Medical costs are not allowable deductions for determining eligibility for poverty-related medical assistance programs. No spenddown shall be allowed to meet the income limit for poverty-related medical assistance programs.

(10) As a condition of eligibility, clients must certify on Form 1049B that medical expenses in the benefit month are expected to exceed the spenddown amount. The client must do this when spenddown starts and at each review when the client continues to be eligible under the spenddown program. If medical expenses are less than or equal to the spenddown, the client shall not be eligible for that month. The client may elect to use allowable medical expenses the client still owes from previous months to reduce the spenddown so that expected medical expenses for the benefit month exceed the remaining spenddown owed.

(11) Pre-paid medical expenses shall not be allowed as deductions.

(12) The Department elects not to set limits on the amount of medical expenses that can be deducted.

(13) Clients may choose to meet their spenddown obligation by incurring medical expenses or by paying a corresponding amount to the Department.

(14) For A, B and D Medicaid, institutional costs shall be allowed as deductions if the services are medically necessary. The Department shall be responsible for deciding if services for institutional care are not medically necessary.

(15) No one shall be required to pay a spenddown of less than $1.

(16) Medicaid covered medical costs incurred in a current benefit month cannot be used to meet spenddown when the client is enrolled in an HMO. Bills for mental health services incurred in a benefit month cannot be used to meet spenddown if the client will be eligible for Medicaid and lives in a county which has a single mental health provider under contract with Medicaid to provide services to all Medicaid clients who live in that county. Bills for mental health services received in a retroactive or application month that the client has fully-paid during that time can be used to meet spenddown as long as the services were not provided by the mental health provider in the client's county of residence which is under contract with Medicaid to provide services to all Medicaid clients.

R414-304-9. A, B, and D Institutional Medicaid and Family Institutional Medicaid Income Deductions.

(1) The Department adopts 42 CFR 435.725, 435.726, and 435.832, 2000 ed., which are incorporated by reference. The Department adopts Subsection 1902(r)(1) and 1924 of the Compilation of the Social Security Laws, in effect January 1, 1999, which are incorporated by reference.

(2) The following definitions apply to this section:

(a) "Family member" means a son, daughter, parent, or sibling of the client or the client's spouse who lives with the spouse.

(b) "Dependent" means earning less than $2,000 a year, not being claimed as a dependent by any other individual, and receiving more than half of one's annual support from the client or the client's spouse.

(3) Health insurance premiums:

(a) For institutionalized and waiver eligible clients, the Department shall allow health insurance premiums only for the institutionalized or waiver eligible client and only if paid with the institutionalized or waiver eligible client's funds. Health insurance premiums shall be allowed as a deduction in the month due. The payment shall not be pro[-]rated.

(b) The Department shall allow the portion of a combined premium, attributable to the institutionalized or waiver-eligible client, as a deduction if the combined premium includes a spouse or dependent family member and is paid from the funds of the institutionalized or waiver eligible client.

(4) Medicare premiums shall not be allowed as deductions if the state pays the premium or reimburses the client.

(5) Medical expenses shall be allowed as deductions only if the expenses meet all of the following conditions:

(a) the medical service was received by the client;

(b) the unpaid medical bill shall not be paid by Medicaid or a third party;

(c) the paid medical bill can be allowed only in the month paid. No portion of any paid bill can be allowed after the month of payment.

(6) A medical expense shall not be allowed as a deduction more than once.

(7) A medical expense allowed as a deduction must be for a medically necessary service. The Department of Health shall be responsible for deciding if services are not medically necessary.

(8) Pre-paid medical expenses shall not be allowed as deductions.

(9) The Department shall not allow as a medical expense, co-payments or co-insurance amounts required under the State Medicaid Plan that are owed or paid by a client to receive Medicaid-covered services.

(10) The Department elects not to set limits on the amount of medical expenses that can be deducted.

(11) Institutionalized clients are to contribute all countable income remaining after allowable deductions to the institution as their contribution to the cost of their care.

(12) The personal needs allowance shall be equal to $45.

(13) Except for an individual eligible for the Personal Assistance Waiver, an individual receiving assistance under the terms of a Home and Community-Based Services Waiver shall be eligible to receive a deduction for a non-institutionalized, non-waiver-eligible spouse and dependent family member as if that individual were institutionalized.

(14) Income received by the spouse or dependent family member shall be counted in calculating the deduction if that type of income is countable to determine Medicaid eligibility. No income disregards shall be allowed. Certain needs-based income and state supplemental payments shall not be counted in calculating the deduction. Tribal income shall be counted.

(15) If the income of a spouse or dependent family member is not reported, no deduction shall be allowed for the spouse or dependent family member.

(16) A client shall not be eligible for Medicaid coverage if medical costs are not at least equal to the contribution required towards the cost of care.

(17) To determine a deduction for a community spouse, the standard utility allowance for households with heating costs shall be equal to the standard utility allowance used by the federal food stamp program. For households without heating costs, actual utility costs shall be used. The maximum allowance for a telephone bill is $20. Clients shall not be required to verify utility costs more than once in a certification period.

(18) Medicaid covered medical costs incurred in a current benefit month cannot be used to meet spenddown when the client is enrolled in an HMO. Bills for mental health services incurred in a benefit month cannot be used to meet spenddown if the client will be eligible for Medicaid and lives in a county which has a single mental health provider under contract with Medicaid to provide services to all Medicaid clients who live in that county. Bills for mental health services received in a retroactive or application month that the client has fully-paid during that time can be used to meet spenddown as long as the services were not provided by the mental health provider in the client's county of residence which is under contract with Medicaid to provide services to all Medicaid clients.

R414-304-10. Budgeting.

(1) The Department adopts 42 CFR 435.601 and 435.640, 2000 ed., which are incorporated by reference. The Department adopts 45 CFR 233.20(a)(3)(iii), 233.31, and 233.33, 2001 ed., which are incorporated by reference.

(2) The following definitions apply to this section:

(a) "Best estimate" means that income is calculated for the upcoming certification period based on current information about income being received, expected income deductions, and household size.

(b) "Prospective eligibility" means that eligibility is determined each month for the immediately following month based on a best estimate of income.

(c) "Prospective budgeting" is the process of calculating income and determining eligibility and spenddown for future months based on the best estimate of income, deductions, and household size.

(d) "Income averaging" means using a history of past income and expected changes, and averaging it over a determined period of time that is representative of future monthly income.

(e) "Income anticipating" means using current facts regarding rate of pay and number of working hours to anticipate future monthly income.

(f) "Income annualizing" means using total income earned during one or more past years, or a shorter applicable time period, and anticipating any future changes, to estimate the average annual income. That estimated annual income is then divided by 12 to determine the household's average monthly income.

(g) "Factoring" means that a monthly amount shall be determined to take into account the months of pay where an individual receives a fifth paycheck when paid weekly or a third paycheck when paid every other week. Weekly income shall be factored by multiplying the weekly amount by 4.3 to obtain a monthly amount. Income paid every other week shall be factored by 2.15 to obtain a monthly amount.

(h) "Reportable income changes" are those that cause income to change by more than $25. All income changes must be reported for an institutionalized individual.

(3) The Department shall do prospective budgeting on a monthly basis.

(4) A best estimate of income based on the best available information shall be an accurate reflection of client income in that month.

(5) The Department shall use the best estimate of income to be received or made available to the client in a month to determine eligibility and spenddown.

(6) Methods of determining the best estimate are income averaging, income anticipating, and income annualizing.

(7) The Department shall count income in the following manner:

(a) For QMB, SLMB, QI, Medicaid Work Incentive Program, and A, B, D, and Institutional Medicaid income shall be counted as it is received. Income that is received weekly or every other week shall not be factored.

(b) For Family Medicaid programs, income that is received weekly or every other week shall be factored.

(8) Lump sums are income in the month received. Any amount of a lump sum remaining after the end of the month of receipt is a resource. Lump sum payments can be earned or unearned income.

(9) Income paid out under a contract shall be prorated to determine the countable income for each month. Only the prorated amount shall be used to determine spenddown or eligibility for a month. If the income will be received in fewer months than the contract covers, the income shall be prorated over the period of the contract. If received in more months than the contract covers, the income shall be prorated over the period of time in which the money will be received.

(10) To determine the average monthly income for farm and self-employment income, the Department shall determine the annual income earned during one or more past years, or other applicable time period, and factor in any current changes in expected income for future months. Less than one year's worth of income may be used if this income has recently begun, or a change occurs making past information unrepresentative of future income. The monthly average income shall be adjusted during the year when information about changes or expected changes is received by the Department.

(11) Student income received other than monthly shall be prorated to determine the monthly countable income. This is done by dividing the total amount by the number of calendar months that classes are in session.

(12) Income from Indian trust accounts not exempt by federal law shall be prorated to determine the monthly countable income when the income varies from month to month, or it is received less often than monthly. This is done by dividing the total amount by the number of months it covers.

(13) Eligibility for retroactive assistance shall be based on the income received in the month for which retroactive coverage is sought. When income is being prorated or annualized, then the monthly countable income determined using this method shall be used for the months in the retroactive period, except when the income was not being received during, and was not intended to cover, those specific months in the retroactive period.

R414-304-11. Income Standards.

(1) The Department adopts Sections 1902(a)(10)(E), 1902(l), 1902(m), 1903(f) and 1905(p) of the Compilation of the Social Security Laws, in effect January 1, 1999, which are incorporated by reference.

(2) The Aged and Disabled poverty-related Medicaid income standard shall be calculated as [~~100~~]75% of the federal non-farm poverty guideline. If an Aged or Disabled person's income exceeds this amount, the current Medicaid Income Standards (BMS) shall apply unless the disabled individual or a disabled aged individual has earned income. In this case, follow the income standards for the Medicaid Work Incentive Program.

(3) The income standard for the Medicaid Work Incentive Program shall be equal to 250% of the federal poverty guideline for a family of the size involved. If income exceeds this amount the current Medicaid Income Standards (BMS) shall apply. The Department shall charge a buy-in premium for individuals who qualify for the Medicaid Work Incentive Program when the countable income of the Medicaid Work Incentive Program eligible individual, or the eligible individual and eligible spouse, exceeds [~~100~~]75% of the federal poverty guideline for the number of eligible individuals. When the eligible individual is a minor child, the Department shall charge a buy-in premium when the child's countable income, including income deemed from parents, exceeds [~~100~~]75% of the federal poverty guideline for a one person household. The premium will be calculated as a percentage of the eligible individual's, or eligible couple's, countable income. The percentage to be used to calculate the premium is based on the FPL for a one- or two-person household, between which the countable income of the eligible individual and spouse, if applicable, falls as follows:

TABLE

Income over	But Not More Than	Premium equals
[~~10~~]0% FPL	125% FPL	30%
125% FPL	150% FPL	35%
150% FPL	175% FPL	40%
175% FPL	200% FPL	45%
200% FPL	225% FPL	50%
225% FPL	250% FPL	55%

(4) The income limit for pregnant women[,] and children under one year of age, shall be equal to 133% of the federal poverty guideline for a family of the size involved. If income exceeds this amount, the current Medicaid Income Standards (BMS) shall apply.

(5) The current Medicaid [~~i~~]Income [~~s~~]Standards (BMS) are as follows:

TABLE

Household Size	Medicaid Income Standard (BMS)
1	382
2	468
3	583
4	683
5	777
6	857
7	897
8	938
9	982
10	1,023
11	1,066
12	1,108
13	1,150
14	1,192
15	1,236
16	1,277
17	1,320
18	1,364

R414-304-12. A, B and D Medicaid, Medicaid Work Incentive, QMB, SLMB, and QI Filing Unit.

(1) The Department adopts 42 CFR 435.601 and 435.602, 2000 ed., which are incorporated by reference. The Department adopts Subsections 1902(l)(1), (2), and (3), 1902(m)(1) and (2), and 1905(p) of the Compilation of the Social Security Laws, in effect January 1, 1999, which are incorporated by reference.

(2) The following individuals shall be counted in the BMS for A, B and D Medicaid:

(a) the client;

(b) a spouse who lives in the same home, if the spouse is eligible for A, B, or D Medicaid, and is included in the coverage;

(c) a spouse who lives in the same home, if the spouse has deemable income above the allocation for a spouse.

(3) The following individuals shall be counted in the household size for the [~~100~~]75% poverty A or D Medicaid program:

(a) the client;

(b) a spouse who lives in the same home, if the spouse is aged, blind, or disabled, regardless of the type of income the spouse receives, or whether the spouse is included in the coverage;

(c) a spouse who lives in the same home, if the spouse is not aged, blind or disabled, but has deemable income above the allocation for a spouse.

(4) The following individuals shall be counted in the household size for a QMB, SLMB, or QI case:

(a) the client;

(b) a spouse living in the same home who receives Part A Medicare or is Aged, Blind, or Disabled, regardless of whether the spouse has any deemable income or whether the spouse is included in the coverage;

(c) a spouse living in the same home who does not receive Part A Medicare and is not Aged, Blind, or Disabled, if the spouse has deemable income above the allocation for a spouse.

(5) The following individuals shall be counted in the household size for the Medicaid Work Incentive Program:

(a) the client;

(b) a spouse living in the same home;

(c) parents living with a minor child;

(d) children under age 18;

(e) children age 18, 19, or 20 if they are in school full-time.

(6) Eligibility for A, B and D Medicaid and the spenddown, if any; A and D [~~100~~]75% poverty-related Medicaid; and QMB, SLMB, and QI programs shall be based on the income of the following individuals:

(a) the client;

(b) parents living with the minor client;

(c) a spouse who is living with the client. Income of the spouse is counted based on R414-304-2;

(d) an alien client's sponsor, and the spouse of the sponsor, if any.

(7) Eligibility for the Medicaid Work Incentive Program shall be based on income of the following individuals:

(a) the client;

(b) parents living with the minor client;

(c) a spouse who is living with the client;

(d) an alien client's sponsor, and the spouse of the sponsor, if any.

(8) If a person is "included" in the BMS, it means that family member shall be counted as part of the household and his or her income and resources shall be counted to determine eligibility for the household, whether or not that family member receives medical assistance.

(9) If a person is "included" in the household size, it means that family member shall be counted as part of the household to determine what income limit applies, regardless of whether that family member's income will be counted or whether that family member will receive medical assistance.

KEY: financial disclosure, income, budgeting
[~~July 2, 2002~~]2003
Notice of Continuation February 6, 1998
26-18-1

Health, Health Care Financing, Coverage and Reimbursement Policy
R414-504
Nursing Facility Payments

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 25897
FILED: 12/31/2002, 14:26

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Effective January 1, 2003, the Department adopted a case mix or severity based payment system for nursing facilities, commonly referred to as RUGS (Resource Utilization Group System). This system reimburses facilities based on the case mix index of the facility. This amendment responds to public comments received during the public comment period.

SUMMARY OF THE RULE OR CHANGE: This amendment makes technical changes and corrections to the rule. It commits the Department to match payments to available appropriations and makes it clear that facilities may also experience reduced rates to reflect available appropriations. Newly constructed and purchased facilities may be allowed a limited property adjustment. The process for urban-rural wage indexing is simplified. A $5 stop loss for one year is put in place to cushion the impact of lower rates on some facilities. (DAR NOTE: A corresponding 120-day (emergency) rule that is effective as of January 1, 2003, is under DAR No. 25900 in this Bulletin.)

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

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: The amendments will not increase or decrease the payments to regulated facilities and therefore have no impact on the state budget.

❖ LOCAL GOVERNMENTS: The stop-loss will benefit at least one facility operated by a local government and will cushion impact on this agency. The overall reimbursement to nursing homes will not change. Under the prior system, facilities had a guaranteed amount of reimbursement per year. Under the new system, that is supported by the majority of the nursing homes in the state, the rate will fluctuate. This may cause some disruption in the nursing home industry. Local governments operate nursing homes and will be impacted.

❖ OTHER PERSONS: The stop-loss will benefit facilities that would otherwise experience even larger reductions from their current rate. Facilities that are experiencing gains in their rate due to the case mix system will have a proportionate reduction in their rate to fund the $5 stop loss for one year.

COMPLIANCE COSTS FOR AFFECTED PERSONS: This rule change is supported by and requested by the majority of nursing homes. The systems to determine the reimbursement are already part of the certification and licensing process mandated by the federal government. Compliance costs should be minimal. Facilities are experiencing problems with the accuracy of their case mix rate and believe that the Minimum Data Set is partially responsible. Public hearings and meetings with facilities are scheduled to address these issues.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule change is supported by the majority of nursing homes and is in response to input at public hearings and an advisory panel formed to evaluate concerns and comments. The amendments are adopted, without modification, based on the recommendation of the advisory panel. Rod L. Betit

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:
Ross Martin at the above address, by phone at 801-538-6592, by FAX at 801-538-6099, or by Internet E-mail at rmartin@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 02/14/2003

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE: 2/05/2003 at 4:00 PM, Cannon Health Building, 288 North 1460 West, Room 125, Salt Lake City, UT.

THIS RULE MAY BECOME EFFECTIVE ON: 02/15/2003

AUTHORIZED BY: Rod L. Betit, Executive Director

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.
R414-504. Nursing Facility Payments.
R414-504-1. Introduction.

(1) This rule adopts a case mix or severity based payment system, commonly referred to as RUGS (Resource Utilization Group System). This system [~~will~~]reimburses facilities based on the case mix index of the facility.

(2) This rule is authorized by Utah Code sections 26-1-5, 26-18-2, and 26-18-3.

R414-504-2. Definitions.

The definitions in R414-1-2 and R414-501-2 apply to this rule. In addition:

(1) "Behaviorally [~~Complex Residents" Behaviorally~~]complex resident" means a [~~Long Term C~~]long-term care resident with a severe, medically based behavior disorder[~~(~~], including [~~but not limited to Traumatic B~~]traumatic brain [~~I~~]injury, [~~D~~]dementia, Alzheimer's, Huntington's Chorea[~~)~~], which causes diminished capacity for judg[~~e~~]ment, retention of information [~~and/~~]or decision[ ]-making skills, or a resident[-], who meets the Medicaid criteria for [~~N~~]nursing facility level of care[~~,~~] and who has a medically[-]-based mental health disorder or diagnosis and has a high level resource use in the [~~N~~]nursing facility not currently recognized in the case mix.

(2) "Case Mix Index" means a score assigned to each facility based on the average of the Medicaid patients' RUGS scores for that facility[~~, excluding pending Medicaid cases.~~

~~(3) "Certified program" means a nursing facility program with Medicaid certification.~~

~~(4)~~].

(3) "Facility Case Mix Rate" means the rate the Department issue[~~d~~]s to a facility for a specified period of time. This rate utilizes the case mix index for a provider, labor wage index application and other case mix related costs.

([~~5~~]4) "FCP" means the Facility Cost Profile cost report filed by the provider on an annual basis.

([~~6~~]5)[~~ "Medicaid certification" means the right to payment from Medicaid as a provider demonstrated by a valid federal Health Care Financing Administration (CMS) Form 1539 (7-84).~~

~~(7)~~] "Minimum Data Set" (MDS) means a set of screening, clinical and functional status elements, including common definitions and coding categories, that form the foundation of the comprehensive assessment for all residents of long term care facilities certified to participate in Medicaid.

([~~8~~]6) "Nursing facility" means any Medicaid[-]-participating NF, SNF, or a combination thereof, as defined in 42 USC 1396r (a) (1988), 42 CFR 440.150 and 442.12 (1993), and UCA 26-21-2(15).

([~~9~~]7) "Patient day" means the care of one patient during a day of service[~~. In maintaining statistics~~], excluding the day of discharge[~~ is not counted as a patient day~~].

([~~10~~]8) "Property costs" means the most current property costs from the annual FCP report reported on lines 230 (Rent and Leases Expense), 240 (Real Estate and Personal Property Taxes), 250 (Depreciation - Building and Improvement), 260 (Depreciation - Transportation Equipment), 270 (Depreciation - Equipment), 280 (Interest - Mortgage, Personal Property Furniture and Equipment - Small Items), 300 (Property Insurance).

([~~11) "Prospective Payment" means that providers are issued a payment rate prior to their provision of services to the Medicaid program. The rate is final for the designated period and no cost settlement will be made.~~

~~(12~~]9) "RUGS" means the 34 RUG identification system based on the Resource Utilization Group System established by Medicare to measure and ultimately pay for the labor, fixed costs and other resources necessary to provide care to Medicaid patients. Each "RUG" [~~will be~~]is assigned a weight based on an assessment of its relative value as measured by resource utilization.

(1[~~3~~]0) "RUGS [~~S~~]score" means a total number based on the individual RUGS derived from a resident's physical, mental and clinical condition, which projects the amount of relative resources needed to provide care to the resident. RUGS [~~will be~~]is calculated from the information obtained through the submission of the MDS data.

R414-504-3. Principles of Facility Case Mix Rates and Other Payments.

The following principles[~~ shall~~] apply to the payment of freestanding and provider based nursing facilities for services rendered to nursing care level I, II, and III Medicaid patients, as defined in R414-502. [~~The current~~]This rule does not affect the system for reimbursement for intensive skilled Medicaid patients[~~will remain in effect~~].

(1) Effective January 1, 2003[~~ and continuing indefinitely~~] approximately 50% of total payments in aggregate to nursing facilities for nursing care level I, II and III Medicaid patients [~~shall~~

~~be~~]are based on a prospective facility case mix rate. In addition, these facilities shall be paid a flat basic operating expense payment equal to approximately 38% of the total payments. The balance of the total payments will be paid in aggregate to facilities as required by R414-504-3 based on other authorized factors, including property and behaviorally complex residents, in the proportion that the facility qualifies for the factor. (2) [~~E~~]The Department calculates each nursing facility's case mix index[~~ shall be calculated~~] quarterly based upon the previous 12 month[~~s~~] [~~(~~]moving average[~~)~~] case mix history.

(3) For any fiscal year, the total amount paid to nursing facilities will be [~~limited by~~]matched to available appropriations. [~~Rates~~]The Department may[~~ be adjusted~~] adjust rates as needed to reflect changes in appropriations or to [~~keep~~]match payments [~~within~~]to available appropriations.

(4) A facility may apply for a special add-on rate for behaviorally complex [~~patient may qualify for a special rate add-on upon~~]residents by filing[~~ of~~] a written request with the Division of Health Care Financing[~~ from the facility~~]. The Department may approve an add-on rate[~~,~~] if[~~ approved, will be based on~~] an assessment of the acuity and needs of the patient demonstrates that [~~are~~]the facility is not adequately reimbursed by the RUGS score for that patient. The rate is [~~added on~~]added on for the specific resident's payment and [~~will~~]is not[~~ be~~] subsumed as part of the facility case mix rate. The Resident Assessment Section will make the determination as to qualification for any additional payment. The Division of Health Care Financing will determine the amount of any add-on based on available appropriations.

(5) Property costs [~~will be~~]are paid separately from the RUGS rate. Each facility's property payment [~~will be set~~]is as follows:

(a) Each facility's reimbursement rate effective July 1, 2002 includes a property payment between $11.19 per patient day or up to a maximum of $20.00 per patient day. No facility [~~will~~]may receive a higher payment attributable to property as a result of this rule. The [~~current~~]property payment [~~will~~]shall be reduced if the occupancy of the facility is below 75%, by assuming occupancy of 75% and adjusting 2001 FCP allowable property costs accordingly. This adjusted patient day figure is then divided into actual property costs to determine allowable property costs.

(b) [~~This~~]The property payment [~~will~~]shall be set on January 1, 2003, based on the calculation in (a), above. Property payments [~~will~~]shall be phased out by reducing the payment by 25% of the January 1, 2003 amount for each of the succeeding two calendar years, with property payment stopping effective January 1, 2006. The amount reduced from property payments shall be shifted to other components of the rate and distributed to facilities consistent with R414-504-3(3).

(6) Newly constructed facilities' case mix component of the rate shall be paid at the average rate. [~~No transition for property or "add-on" will be allowed for new property construction.~~] This average rate shall remain in place for a new facility for six months, whereupon the provider's case mix index [~~will be~~]and property payment is established. [~~A~~]At this point, the Department shall issue a new case mix adjusted rate[~~ will be issued at this point in time and t~~]. T[~~hereafter t~~]he property payment to the facility [~~will be~~]is controlled by R414-504-3(5). A newly constructed facilities' property payment may not exceed $20.00 per patient day and shall be reduced if R414-504-3(5)(b) is applicable.

(7) An existing facility acquired by a new owner will continue at the same case mix index and property cost payment established for the facility under the previous ownership for the remainder of the quarter. [~~No rate adjustment will be allowed for increased property and related costs that occur due to the purchase or takeover.~~]The new owners property payment may not exceed $20.00 per patient day and shall be reduced if R414-504-3(5)(b) is applicable.

(8) If the [~~d~~]Department determines that a facility is located in an under-served area, or addresses an under-served need, the [~~d~~]Department may negotiate a payment rate that is different from the case mix index established rate. This exception [~~will~~]may be awarded only after consideration of historical payment levels and need.

(9) [~~P~~]A provider[~~s~~] may challenge the rate set pursuant to this rule using the appeal [~~process set up~~]in R410-14. [~~P~~]A provider[~~s~~] must exhaust administrative remedies before challenging rates in any other forum.

(10) [~~A wage index adjustment will be utilized to recognize the local labor market indices relative to the State as a whole. The Federal wage index promulgation for hospitals will be utilized for this purpose, but shall be adjusted to reflect unique nursing home factors. The wage index adjustment will recognize the three Standard Metropolitan Areas (SMAs) as recognized by the U.S. Department of Health and Human Services and the rural factor. The Cities of Logan and St. George shall be considered as urban SMA's. Exceptions to this rule can be requested in writing with the Division of Health Care Financing by individual nursing facilities that seek designation to another wage index area. To be designated to another rural or an urban area, a facility must demonstrate a close proximity to the area to which it seeks designation as well as documented evidence of significant wage and salary differential payments. Appropriate proximity data would be the demonstration that the distance from the facility to the area to which it would apply is no more than 35 miles. This measurement is determined by evidence of the shortest route over improved roads to the area and the distance of that route. Significant wage and salary differential information would include documentation that the facility's average hourly wage is at least 108% of the average hourly wage of the facilities in the area in which it is located and is at least 90% of the average hourly wage of the facilities in the area to which it seeks designation. Exceptions shall be granted for 3-year periods of duration, commencing with the day the exception is officially recognized by the State.~~]The Department may increase reimbursement to urban nursing homes using a wage index adjustment to recognize local labor market costs relative to the state as a whole. The Department shall use a wage index that reflects nursing home costs. This adjustment may cause a decrease in reimbursement to rural nursing homes.

R414-504-4. Transition Reimbursement Principles.

For each quarter for calendar year 2003:

(1) The Department shall determine if any facility's total rate is scheduled to be reduced by more than $5.00 per patient day, as compared to the total rate for that facility in effect on December 31, 2002. The total rate amount for the facility determined to be in effect as of December 31, 2002 shall be adjusted by any disallowances or other adjustments;

(2) For all facilities with a drop of more than $5.00 per patient day in their total rate as of the applicable quarterly adjustment, the Department shall adjust up the total rate of all such facilities to a rate where the loss is equal to $5.00 per patient day; and

(3) The total rate for all facilities with a gain in rate or a drop of less than $5.00 per patient day shall be proportionately adjusted down to fund the adjustment in R414-504-4(2).

KEY: [~~M~~]medicaid
2002
26-1-5
26-18-2
26-18-3

Health, Health Systems Improvement, Emergency Medical Services
R426-100
Emergency Medical Services Do Not Resuscitate

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 25864
FILED: 12/19/2002, 11:04

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this rule is to assure that patient preferences for end-of-life medical treatment are identified and followed throughout the health care delivery and pre-hospital systems.

SUMMARY OF THE RULE OR CHANGE: This amends the Emergency Medical Services Do Not Resuscitate (DNR) Rule to permit emergency responders to recognize the Physician Order for Life-sustaining Treatment as adopted in Rule R432-31 and approved by the Department.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Title 26, Chapter 8A

ANTICIPATED COST OR SAVINGS TO:
❖ THE STATE BUDGET: $500 to mail training information to the pre-hospital providers regarding the new form that will be acceptable in addition to the existing DNR bracelets.
❖ LOCAL GOVERNMENTS: Local governments operating emergency medical services should not incur costs due to this rule amendment. Clarifying the wishes of patients and making it easier for physicians to record those wishes should save costs as a result of less confusion.
❖ OTHER PERSONS: Persons operating emergency medical services should not incur costs due to this rule amendment. Clarifying the wishes of patients and making it easier for physicians to record those wishes should save costs as a result of less confusion.

COMPLIANCE COSTS FOR AFFECTED PERSONS: No affected person will incur costs to comply with this rule. There may be a savings in health care costs if the individual's wishes are known and unnecessary treatment is avoided.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule will allow emergency responders to quickly learn of and honor the wishes of a patient regarding resuscitation. There should be no fiscal impact on businesses. Rod L. Betit

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
HEALTH
HEALTH SYSTEMS IMPROVEMENT,
EMERGENCY MEDICAL SERVICES
CANNON HEALTH BLDG
288 N 1460 W
SALT LAKE CITY UT 84116-3231, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Jan Buttrey at the above address, by phone at 801-538-6718, by FAX at 801-538-6808, or by Internet E-mail at jbuttrey@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 02/14/2003.

THIS RULE MAY BECOME EFFECTIVE ON: 02/15/2003

AUTHORIZED BY: Rod L. Betit, Executive Director

R426. Health, Health Systems Improvement, Emergency Medical Services.
R426-100. Emergency Medical Services Do Not Resuscitate.
R426-100-1. Purpose.

This rule implements the prehospital Emergency Medical Services/Do Not Resuscitate (EMS/DNR) provisions of Section 75-2-1105.5 and clarifies that EMS personnel shall also follow a patient's treating physician's orders, which may include an order not to resuscitate a patient that does not comply with the formalities of the EMS/DNR form.

R426-100-2. EMS/DNR Forms, Directives, and Bracelets.

(1) Only the Utah Department of Health may create EMS/DNR forms. Each EMS/DNR form must have a state of Utah watermark and a unique identifying number provided by the Department.

(2) The Department shall distribute the EMS/DNR directive forms to any licensed physician as requested.

(3) An EMS/DNR directive is valid only if made on an EMS/DNR form upon which a physician licensed to practice medicine under Part 1 of Chapter 12, Title 58, the Utah Osteopathic Medicine Licensing Act, or under Part 5, of Chapter 12, Title 58, the Utah Medical Practice Act, also makes a determination certifying that the declarant is in a terminal condition.

(4) Only the Department may create an EMS/DNR bracelet which may be issued only to individuals whose physician has determined that the declarant is in a terminal condition and who submits an EMS/DNR directive to the Department. The bracelet shall clearly display the declarant's name, the name of the proxy if the EMS/DNR directive was made by a proxy, attending physician's name and telephone number, and the unique identifying number from the EMS/DNR form.

R426-100-3. Issuance of an EMS/DNR Directive, or Bracelet.

(1) If the prospective declarant or proxy desires to make an EMS/DNR directive, the physician who makes the determination that the declarant is in a terminal condition must:

(a) explain to the prospective declarant or proxy, and his family, the significance of making an EMS/DNR directive;

(b) complete the information requested on the EMS/DNR form;

(c) sign and date the EMS/DNR form certifying that the declarant is in a terminal condition;

(d) give the original of the directive with the watermark to the declarant or the proxy; and

(e) fill out and give to the declarant or proxy the authorized EMS/DNR bracelet to be placed on the declarant.

(2) The physician or designee, who places the bracelet, must explain to the declarant or proxy how and by whom the EMS/DNR directive may be revoked.

(3) The physician or designee, shall confirm with the Department the execution of the EMS/DNR directive and placement of the EMS/DNR and bracelet or necklace by submitting a duplicate original of the EMS/DNR directive to the Department.

(4) The EMS/DNR directive is effective immediately upon the physician's signing the EMS/DNR directive. The EMS/DNR directive is the property of the declarant and shall be kept with the declarant's medical record, but is not part of the medical record.

(a) To be honored by EMS personnel, the EMS/DNR directive must be placed in an unobstructed view above the declarant on the wall or in close proximity to the head of the bed or the declarant must be wearing the EMS/DNR bracelet, except in health care facilities licensed pursuant to Title 26, Chapter 21.

(b) To be honored by EMS personnel who are called to render service in health care facilities licensed pursuant to Title 26, Chapter 21, the EMS/DNR directive must be displayed in the declarant's medical record or the declarant must be wearing an EMS/DNR bracelet. Health care facility personnel must present the medical record to responding EMS personnel upon their arrival. Health care facilities shall document for Department review that appropriate health care facility staff have been informed of the declarant's EMS/DNR directive sufficient to notify EMS personnel of the existence of the EMS/DNR directive.

(5) If the EMS/DNR directive is not complete or does not appear to conform to statutory and regulatory requirements, the Department shall notify the physician and explain the defect or defects and shall notify the declarant or proxy and EMS agencies likely to respond to the declarant.

R426-100-4. Revocation of an EMS/DNR Directive.

(1) An EMS/DNR bracelet is the embodiment of an EMS/DNR directive and shall be given the same legal treatment as the actual EMS/DNR directive. An EMS/DNR directive may be revoked as provided in Section 75-2-1111.

(2) If both the original of the EMS/DNR directive with the watermark and the EMS/DNR bracelet are not intact, or have been defaced, the EMS/DNR directive is invalid. If an EMS/DNR directive is revoked, EMS personnel must provide emergency medical services to the declarant as if no EMS/DNR directive had been issued.

(3) If there is any question about the validity of an EMS/DNR directive, the EMS personnel must provide emergency medical services to the declarant as if no EMS/DNR directive had been issued.

R426-100-5. Treatment of a Declarant with an EMS/DNR Directive.

(1) As part of routine patient assessment, EMS personnel must inspect to see if the declarant is wearing an EMS/DNR bracelet or has an EMS/DNR directive either clearly displayed or located within the declarant's medical record file. If the EMS/DNR directive appears to be incorrectly executed, incomplete, or otherwise flawed in the making, EMS personnel need not honor the EMS/DNR directive. EMS personnel are not liable for failure to honor an EMS/DNR directive.

(2) An EMS/DNR directive only directs that life sustaining procedures be withheld. It does not direct the withholding of medication or the performance of any medical procedure either of which is intended to provide comfort care or to alleviate pain.

(3) In the case of a declarant who has sustained a recent injury clearly unrelated to the terminal condition that served as the basis for the EMS/DNR directive, EMS personnel may contact medical control regarding the provision of emergency medical services to the declarant.

R426-100-6. Transferable Physician Order for Life Sustaining Treatment.

(1) EMS personnel shall honor a patient's desires for life-sustaining treatment as expressed through the treating physician's standing orders. EMS personnel shall comply with treating physician orders for life-sustaining treatment as expressed on Transferable Physician Order for Life-sustaining Treatment Forms, including a physician order not to resuscitate a patient that does not meet the formalities on the EMS/DNR form established in this rule. A patient shall always be provided respect, comfort, and hygienic care.

(2) A health care facility may present a completed Transferable Physician Order for Life-sustaining Treatment Form in lieu of an EMS/DNR directive or bracelet.

KEY: emergency medical services, do not resuscitate
[~~October 12, 1999~~]2003
Notice of Continuation December 9, 1999
75-2-1105.5

Health, Health Systems Improvement, Child Care Licensing

R430-6

Criminal Background Screening

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 25865
FILED: 12/19/2002, 13:12

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The passage of S.B. 17 in the 2002 general session requires the change to the rules. (DAR NOTE: S.B. 17 is found at UT L 2002 Ch 283 and was effective May 6, 2002.)

SUMMARY OF THE RULE OR CHANGE: Changes to Sections R430-6-1 and R430-6-2 amend and correct the references to statute; in Section R430-6-3 changes amend the definition of "supported" finding and adds the definition for persons under age 18; in Section R430-6-4 changes amend the definition of supported finding and referral for appeals to the juvenile court; and the change in Section R430-6-7 changes the title of the section to Licensing Information System to comply with Section 62A-4a-116.1.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Title 26, Chapter 21

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: A fiscal note was passed with the enactment of this legislation. The Bureau of Licensing does not anticipate additional costs for implementing changes.

❖ LOCAL GOVERNMENTS: Enforcement of this rule is a state agency responsibility for denial of employment of a covered individual in a child care facility. No costs are anticipated, however there may be a savings to a local government if a person had a "substantiated finding" on the old licensing information system and they were denied employment or ownership of a facility. If the individual does not have a supported finding on the new system they would be permitted to be employed or own a child care program.

❖ OTHER PERSONS: No costs are anticipated, however there may be a savings if a person had a "substantiated finding" on the old licensing information system and they were denied employment. If the individual does not have a supported finding on the new system they would be permitted to be employed or own a child care program.

COMPLIANCE COSTS FOR AFFECTED PERSONS: No costs are anticipated as more fully explained in the cost information above.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: These changes are mandated by passage of S.B. 17 in the 2002 general session of the Legislature. Clarification of the types of instances that would prohibit a person from providing licensed child care should have a positive fiscal impact on businesses. Rod L. Betit

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

HEALTH
HEALTH SYSTEMS IMPROVEMENT,
CHILD CARE LICENSING
CANNON HEALTH BLDG
288 N 1460 W
SALT LAKE CITY UT 84116-3231, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Debra Wynkoop at the above address, by phone at 801-538-6152, by FAX at 801-538-6325, or by Internet E-mail at debwynkoop@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 02/14/2003.

THIS RULE MAY BECOME EFFECTIVE ON: 02/15/2003

AUTHORIZED BY: Rod L. Betit, Executive Director

R430. Health, Health Systems Improvement, Child Care Licensing.

R430-6. [~~Criminal~~]Background Screening.

R430-6-1. Authority.

(1) The Utah Code, Section 26-39-107, requires that a Bureau of Criminal Identification screening, referred to as BCI, screening be conducted on each person requesting to be licensed or residential certificate or to renew a license or certificate for existing, new, and proposed owners, directors, members of the governing body, employees, providers of care and volunteers, except parents of children enrolled in the child care program.

(2) The Utah Code, Section 26-39-104, requires the Department to make and enforce rules to protect children's common needs for a safe and healthy environment and provide for competent care givers. The Department shall review the [~~management~~]licensing information system for licensing and certification purposes pursuant to Section 62A-4a-116.2 to screen for individuals who may have a [~~substantiated finding of abuse or neglect since January 1, 1988, unless removed pursuant to Section 62A-4a-116.5.~~]supported finding of severe abuse and neglect by the Department of Human Services or substantiated finding by a Juvenile court under Subsection 78-3a-320.

R430-6-2. Purpose.

The purpose of the screening process using the BCI criminal background and child and adult [~~management~~]licensing information system is to protect children receiving services in a child day care program. The Criminal Background Screening (CBS) process determines whether a covered individual has been convicted of any crime. In addition, the Department screens all individuals using the [~~management~~]licensing information system and court records under Subsection 78-3a-320(4) which is limited to:

(1) [~~Substantiated~~]Supported findings of severe abuse or neglect[~~ since January 1, 1988, unless removed pursuant to Subsection 62A-4a-116.5(6)~~];

(2) An adjudication of severe child abuse or neglect by a court of competent jurisdiction; and

(3) Any criminal conviction or guilty plea related to neglect, physical abuse, or sexual abuse of any person.

R430-6-3. Definitions.

Terms used in this rule are defined in Title 26, Chapter 39. In addition:

(1) "Covered Individual" means any person that has unsupervised contact with children listed in Utah Code Ann. Subsection 26-39-107(a):

(a) owners;

(b) directors;

(c) members of the governing body;

(d) employees;

(e) providers of care, including children residing in a home where child care is provided;

(f) volunteers, including parents of children enrolled in the program that have unsupervised contact with children in the child care facility; and

(g) all adults residing in a residence where child care is provided.

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

(3) "Direct supervision" means that the care giver can see and hear the children under age six, and is near enough to intervene when needed. Care givers must be able to hear school-age children and be near enough to intervene.

(4) "[~~Substantiated~~]Supported" means a finding by the Utah Department of Human Services (DHS), at the completion of an investigation by DHS, that there is a reasonable basis to conclude that one or more of the following severe types of abuse or neglect has occurred:

(a) if committed by a person 18 years of age or older;

([~~a~~]i) severe or chronic physical abuse;

([~~b~~]ii) sexual abuse;

([~~c~~]iii) sexual exploitation;

([~~d~~]iv) abandonment;

([~~e~~]v) medical neglect resulting in death, disability, or serious illness; [~~or~~]

([~~f~~]vi) chronic or severe neglect; or

(vii) chronic or severe emotional abuse

(b) If committed by a person under the age of 18:

(i) serious physical injury, as defined in Subsection 76-5-109(1)(d) to another child which indicates a significant risk to other children, or

(ii) sexual behavior with or upon another child which indicates a significant risk to other children.

(5) "Unsupervised Contact" means contact with children that provides the unsupervised person opportunity and probability for personal communication or touch when not under the direct supervision of a child care provider or employee.

(6) "Volunteer" means an individual who is not directly compensated for providing care, including parents of children enrolled in the program, whose duties assigned by a child care provider or employee include unsupervised contact in a child care facility with children or food consumed by children on a regularly scheduled basis of one or more times per month.

R430-6-4. Exclusions from Criminal Background Screening, Emergency Care Providers.

(1) Any person, including those that would otherwise be covered individuals, involved with a child care facility that the Department is reasonably satisfied will not have unsupervised contact with children is not required to submit information for a criminal background screening.

(2) In an emergency, not anticipated in the provider's emergency plan, a provider may assign a person who has not had a criminal background screening to care for and have unsupervised contact with children.

(a) That person shall make a signed, written declaration to the provider that the person has not been convicted of a felony or misdemeanor.

(b) During the term of the emergency, that person may be counted as a provider of care for purposes of maintaining the required care provider to child ratios.

(c) The provider shall make reasonable efforts to minimize the time that this person has unsupervised contact with children.

R430-6-5. Criminal Background Screening through the Utah Division of Criminal Investigation and National Criminal History Records.

(1) Each child care provider requesting a residential certificate, to be licensed or to renew a license to provide child care shall submit to the Department the name and other identifying information on all covered individuals involved with the child care facility at the time the application is filed. A fingerprint card, waiver and fee, prepared either by the local law enforcement agency or an agency approved by local law enforcement, shall also be submitted unless an exception is granted under (4) below.

(2) The request for a certificate or a license submitted by the provider shall require the provider to state in writing, based upon the provider's best information and belief, that no person who will have unsupervised contact with a child receiving care, including the provider's own children, has ever been convicted of a felony, misdemeanor or had a consent to a supported finding from DHS or a substantiated finding from a juvenile court of severe abuse or neglect of a child. If the provider is aware of any such conviction or supported or substantiated finding, the Department shall obtain information from the provider to assess the [~~conviction~~]threat to children consistent with R430-6-5.

(3) After a license or certificate is issued or renewed, within five (5) days of a new covered individual becoming involved with a child care facility, the child care facility or licensee must submit the identifying information. A fingerprint card, waiver and fee, prepared either by the local law enforcement agency or an agency approved by local law enforcement, shall also be submitted unless an exception is granted under (4) below.

(4) Fingerprint cards are not required if the Department is reasonably satisfied that:

(a) the covered individual has resided in Utah for the last five years;

(b) the covered individual has previously submitted fingerprints under this section for a national criminal history record check and has resided in Utah continuously since that time; or

(c) as of May 3, 1999, the covered individual was involved with a child care facility in a covered individual capacity and has resided in Utah continuously since that time.

(5) If a covered individual has resided in Utah for the last five years, except for religious or military service out-of-state, the covered individual shall submit to the Department a letter from their clergy or commanding officer documenting that the covered individual was not convicted of any felony or misdemeanor during the time period of the religious or military service. The covered individual shall then be deemed to have resided in Utah for the last five years and not be required to submit fingerprint cards.

(6) The Department shall perform a criminal background screening, which includes a review of the database of the Utah Division of Criminal Investigation and Technical Services within the Department of Public Safety (BCI); and if a fingerprint card, waiver and fee were submitted; the Department shall forward the fingerprint card, waiver and fee to the Utah Division of Criminal Investigation and Technical Services for submission to the FBI for a national criminal history record check.

(7) If the BCI portion of the criminal background screening indicates that the covered individual has a conviction for a felony or misdemeanor, regardless of any exception under (4) above, the covered

individual shall submit a fingerprint card, waiver and fee upon request by the Department.

(8) The Department shall review any criminal convictions, consistent with R430-6-5, to determine if action should be taken to protect the health and safety of children receiving child care in the facility.

(9) If the Department takes an action adverse to any covered individual, based upon the criminal background screening, the Department shall send a Notice of Agency Action to the child care provider and the covered individual explaining the action and the right of appeal.

R430-6-6. Exclusion from Child Care Due to Criminal Convictions or Pending Charges.

(1) As required by Utah Code Ann. Subsection 26-39-107(2), if the criminal conviction was a felony, or is a misdemeanor that is not excluded under paragraphs (2) or (3) below, the covered individual may not provide child care, volunteer, or own or operate a child care program with a license or certificate issued by the Department. If such a covered individual resides in a home where child care is provided, the Department shall revoke an existing license or certificate and refuse to permit child care in the home until the Department is reasonably convinced that the covered individual no longer resides in the home [~~and~~]or will not have unsupervised contact with any child in care at the home.

(2) As allowed by Utah Code Ann. Subsection 26-39-107(3)(a), the Department hereby excludes the following misdemeanors and determines that a misdemeanor conviction listed below does not disqualify a covered individual from providing child care:

(a) any class B or C conviction under Chapter 6, Title 76, Offenses Against Property, Utah Criminal Code;

(b) any class B or C conviction under Chapter 6a, Title 76, Pyramid Schemes, Utah Criminal Code;

(c) any class B or C conviction under Chapter 8, Title 76, Offenses Against the Administration of Government, Utah Criminal Code;

(d) any class B or C conviction under Chapter 9, Title 76, Offenses Against Public Order and Decency, Utah Criminal Code, except for 76-9-301.8, Bestiality; 76-9-702, Lewdness; and 76-9-702.5, Lewdness Involving Child; and

(e) any class B or C conviction under Chapter 10, Title 76, Offenses Against Public Health, Welfare, Safety and Morals, Utah Criminal Code, except for 76-10-1201 to 1229.5, Pornographic and Harmful Materials and Performances; 76-10-1301 to 1314, Prostitution; and 76-10-2301, Contributing to the Delinquency of a Minor.

(3) The Executive Director may exclude, on a case-by-case basis, other misdemeanors not covered under paragraph (2) of this section if the misdemeanor did not involve violence against a child or a family member or unauthorized sexual conduct with a child. The following factors will be used in deciding under what circumstance, if any, the covered individual will be allowed to provide child care, volunteer, or own or operate a child care program with a license or certificate issued by the Department:

(a) Types and number of offenses;

(b) Passage of time since the offense was committed; offenses more than five years old will not bar approval or a license, certificate or employment;

(c) Circumstances surrounding the commission of the offense;

(d) Intervening circumstances since the commission of the offense; and

(e) Relationship of the facts under subsections (a) through (d) of this section to the individual's suitability to work with children.

(4) The Department shall rely on the criminal background screening as conclusive evidence of the conviction and the Department may revoke or deny a license, certificate and employment based on that evidence.

(5) If the covered individual is denied a license, certificate or employment based upon the criminal background screening and the covered individual disagrees with the information provided by the Criminal Investigations and Technical Services Division, the covered individual may challenge the information as provided in Utah Code Ann. Sections 77-18-10 through 77-18-15.

(6) All child care providers must report all felony and misdemeanor arrests, charges or convictions of covered individuals to the Department within 48 hours.

R430-6-7. [~~Child Abuse Management~~]Licensing Information System.

(1) Pursuant to Utah Code Subsection 26-39-104(1)(a)(ii) the Department shall screen all covered individuals, including children residing in a home where child care is provided, for a history of supported[~~substantiated~~] finding of severe abuse, neglect, or exploitation from the [~~management~~]licensing information system maintained by the Utah Department of Human Services (DHS) and the juvenile court records.

(2) If a covered individual appears on the [~~management~~]licensing information system, the Department shall assess the threat to the safety and health of children. The Department may revoke any existing license or certificate and refuse to permit child care in the home until the Department is reasonably convinced that the covered individual no longer resides in the home [~~and~~]or will not have unsupervised contact with any child in care at the home.

(a) Upon request, the Department may permit the covered individual to be employed under supervision until a decision is reached, and if the applicant can demonstrate that the work arrangement does not pose a threat to the safety and health of children being served in the licensed or residential certificate child care setting.

(b) The Department may hold the license, certificate or employment denial in abeyance until DHS or the Juvenile court renders a decision, if a covered individual appeals the [~~record of substantiation~~]supported finding.

(3) If the Department denies or revokes a license, certificate or employment based upon the [~~child or adult abuse management~~]licensing information system, the Department shall send a Notice of Agency Action to the licensee and the covered individual.

(4) If the covered individual disagrees with the [~~record of substantiation~~]supported finding of severe abuse or neglect, any appeal must be directed to and follow the process established by [~~DHS~~]Subsection 62A-4a-116.1. If the covered individual [~~agrees~~]consents to [~~with the substantiated~~]the supported finding of severe abuse or neglect that was the basis of the Department's denial or revocation, but disagrees with the action taken by the Department, the covered individual may request a hearing with the Department.

(5) If the DHS determines a covered individual has a [~~substantiated~~]supported finding of severe abuse, neglect or exploitation after the Department issues a license, certificate or grants employment; the licensee and covered individual has five working days to notify the Department. Failure to notify the Department may result in revocation of the license or certificate.

R430-6-8. Covered Individuals with Arrests or Pending Criminal Charges.

(1) If the Department determines there exists credible evidence that a covered individual has been arrested or charged with a felony or a misdemeanor that would not be excluded under R430-6-5(2), the Department shall act to protect the health and safety of children in child care that the covered individual may have contact with. The Department may revoke or suspend any license or certificate of a provider if necessary to protect the health and safety of children in care.

(2) Upon request, the Department may permit the covered individual to be employed under supervision until the felony or misdemeanor charge is resolved, if the Department is satisfied that the work arrangement does not pose a threat to the safety and health of children being served in the licensed or residential certificate child care setting.

(3) If the Department denies or revokes a license, certificate or restricts employment based upon the arrest or felony or misdemeanor charge, the Department shall send a Notice of Agency Action to the licensee and the covered individual notifying them that a hearing with the Department may be requested.

(4) The Department may hold the license, certificate or employment denial in abeyance until the arrest or felony or misdemeanor charge is resolved.

R430-6-9. Penalties.

The department may impose civil monetary penalties in accordance with Title 63, Chapter 46b, Administrative Procedures Act, if there has been a failure to comply with the provisions of this chapter, or rules promulgated pursuant to this chapter, as follows:

(1) if significant problems exist that are likely to lead to the harm of a child, the department may impose a civil penalty of $50 to $1,000 per day; and

(2) if significant problems exist that result in actual harm to a child, the department may impose a civil penalty of $1,050 to $5,000 per day.

KEY: child care facilities
[~~April 17, 2001~~]2003
26-39

▼ ▼

Health, Health Systems Improvement, Licensing
R432-3
General Health Care Facility Rules Inspection and Enforcement

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 25868
FILED: 12/19/2002, 14:25

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Adds the Accreditation Commission for Health Care, Inc. as an approved agency for requesting deemed status.

SUMMARY OF THE RULE OR CHANGE: Adds the Accreditation Commission for Health Care, Inc. as an approved agency for requesting deemed status.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Title 26, Chapter 21

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: Accreditation is voluntary and the cost is assessed to the applying agency. The Commission bases the fee on size of the agency and type of services offered. If an agency elects to become accredited, the Department of Health (DOH) may realize savings of $1,000 per agency in personnel and travel time since an annual survey will not be required.

❖ LOCAL GOVERNMENTS: Accreditation is voluntary and the cost is assessed to the applying agency. The Commission bases the fee on size of the agency and type of services offered. If a local government owned agency seeks accreditation, they will be required to pay the assessed cost based on size and scope of services. There are no local government agencies currently accredited by the Commission.

❖ OTHER PERSONS: Accreditation is voluntary and the cost is assessed to the applying agency. The Commission bases the fee on size of the agency and type of services offered. If an agency seeks accreditation, they will be required to pay the assessed cost based on size and scope of services. There are no private agencies currently accredited by the Commission.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Accreditation is voluntary and the cost is assessed to the applying agency. The Commission bases the fee on size of the agency and type of services offered. If an agency seeks accreditation, they will be required to pay the assessed cost based on size and scope of services.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule will potentially save money for regulated businesses if they choose to voluntarily seek accreditation. Fewer state surveys would result from that choice. Rod L. Betit

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

HEALTH
HEALTH SYSTEMS IMPROVEMENT, LICENSING
CANNON HEALTH BLDG
288 N 1460 W
SALT LAKE CITY UT 84116-3231, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Debra Wynkoop at the above address, by phone at 801-538-6152, by FAX at 801-538-6325, or by Internet E-mail at debwynkoop@utah.gov

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THIS RULE MAY BECOME EFFECTIVE ON: 02/15/2003

AUTHORIZED BY: Rod L. Betit, Executive Director

R432. Health, Health Systems Improvement, Licensing.
R432-3. General Health Care Facility Rules Inspection and Enforcement.
R432-3-3. Deemed Status.

The Department may grant licensing deemed status to facilities and agencies accredited by the Joint Commission on Accreditation of Healthcare Organizations (Joint Commission), Accreditation Association for Ambulatory Health Care (AAAHC), Accreditation Commission for Health Care, or Community Health Accreditation Program in lieu of the annual licensing inspection by the Department upon completion of the following by the facility or agency:

(1) As part of the annual license renewal process, the licensee shall identify on the Request for Agency Action/Application its desire to:

(a) initiate deemed status,

(b) continue deemed status, or

(c) relinquish deemed status during the licensing year of application.

(2) This request shall constitute written authorization for the Department to attend the accrediting agency exit conference.

(3) Upon receipt from the accrediting agency, the facility shall submit copies of the following:

(a) accreditation certificate;

(b) Joint Commission Statement of Construction;

(c) survey reports and recommendations;

(d) progress reports of all corrective actions underway or completed in response to accrediting body's action or Department recommendations.

(4) Regardless of deemed status, the Department may assert regulatory responsibility and authority pursuant to applicable state and federal statutes to include:

(a) annual and follow up inspections,

(b) complaint investigation,

(c) verification of the violations of state law, rule, or standard identified in a Department survey or, violations of state law, rule, or standard identified in the accrediting body's survey including:

(i) facilities or agencies granted a provisional or conditional accreditation by the Joint Commission until a full accreditation status is achieved,

(ii) any facility or agency that does not have a current, valid accreditation certificate, or

(iii) construction, expansion, or remodeling projects required to comply with standards for construction promulgated in the rules by the Health Facility Committee.

(5) The Department may annually conduct validation inspections of facilities or agencies accredited for the purpose of determining compliance with state licensing requirements. If a validation survey discloses a failure to comply with the standards for licensing, the provisions relating to regular annual inspection shall apply.

KEY: health facilities
[~~June 23, 2000~~]2003

Notice of Continuation January 11, 1999
26-21-5
26-21-14 through 26-21-16

Health, Health Systems Improvement, Licensing
R432-35
Background Screening

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 25866
FILED: 12/19/2002, 13:29

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The passage of S.B. 17 requires the change to the rules. (DAR NOTE: S.B. 17 is found at UT L 2002 Ch 283, and was effective May 6, 2002.)

SUMMARY OF THE RULE OR CHANGE: Changes in Section R432-35-2 added new language for "supported findings" and juvenile court substantiation; changes in Section R432-35-3 modified definitions to match the changes in S.B. 17 for "supported"; and the change in Section R432-35-6 changed title of the section to be Licensing Information System and adopted new procedure for supported findings.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Title 26, Chapter 21; and Section 62A-4a-116.2

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: A fiscal note was passed with the enactment of this legislation. The Bureau of Licensing does not anticipate additional costs for implementation of the language changes.

❖ LOCAL GOVERNMENTS: Enforcement of this rule is a state agency responsibility for denial of employment of a covered individual in a health care facility. No costs are anticipated, however there may be a savings to a local government if a person had a "substantiated finding" on the old licensing information system and they were denied employment. If the individual does not have a supported finding on the new system they would be permitted to be employed as a health care worker.

❖ OTHER PERSONS: No costs are anticipated, however there may be a savings if a person had a "substantiated finding" on the old licensing information system and they were denied employment. If the individual does not have a supported finding on the new system they would be permitted to be employed as a health care worker.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs associated with the rule as discussed in the cost information above.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: These changes are mandated by passage of S.B. 17 in the 2002 general session of the Legislature. Clarification of the types of instances that would prohibit a person from providing licensed health care should have a positive fiscal impact on businesses. Rod L. Betit

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

HEALTH
HEALTH SYSTEMS IMPROVEMENT, LICENSING
CANNON HEALTH BLDG
288 N 1460 W
SALT LAKE CITY UT 84116-3231, or
at the Division of Administrative Rules.

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THIS RULE MAY BECOME EFFECTIVE ON: 02/15/2003

AUTHORIZED BY: Rod L. Betit, Executive Director

R432. Health, Health Systems Improvement, Licensing.
R432-35. Background Screening.
R432-35-1. Authority.

The Utah Code, Section 26-21-9.5, requires that a Bureau of Criminal Identification screening, referred to as BCI, and a child or disabled or elderly adult [~~management~~]licensing information system screening be conducted on each person who provides direct care to a patient for the following covered health care facilities:

(1) Home health care agencies;
(2) Hospice agencies;
(3) Nursing Care facilities;
(4) Assisted Living facilities;
(5) Small Health Care facilities; and
(6) End Stage Renal Disease Facilities.

R432-35-2. Purpose.

The purpose of this rule is to define the circumstances under which a person who has been convicted of or charged with a criminal offense or who has a juvenile court substantiated or DHS supported finding report of severe child abuse or neglect or DHS substantiated finding of disabled or elder abuse or neglect, may provide direct care to a patient in a covered health care facility, taking into account the nature of the criminal offense and its relation to patient care.

R432-35-3. Definitions.

Terms used in this rule are defined in Title 26, Chapter 21. In addition:

(1) "Covered Individual" means all proposed employees who provide direct patient care in a covered health care facility, including volunteers, existing employees, persons contracted to perform direct care and, for residential settings, all individuals residing in the home where an assisted living or small health care program is to be licensed, who are 18 years old and over.

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

(3) "Substantiated" means a Department of Human Service finding, at the completion of an investigation by the Department of Human Services, that there is a reasonable basis to conclude that one or more of the following types of elder or disabled adult abuse or neglect has occurred:

(a) physical abuse;
(b) sexual abuse;
(c) sexual exploitation;
(d) abandonment;
(e) medical neglect resulting in death, disability, or serious illness;
(f) chronic or severe neglect; or
(g) financial exploitation.

(4) "Supported" means a DHS finding, at the completion of an investigation that there is a reasonable basis to conclude that one or more of the following types of severe abuse or neglect has occurred to a child:

(a) severe or chronic physical abuse;
(b) sexual abuse;
(c) sexual exploitation;
(d) abandonment;
(e) medical neglect resulting in death, disability, or serious illness; or
(f) chronic or severe emotional abuse.

([~~4~~]5) "Unsupervised Contact" means contact with residents or patients that provides the unsupervised person opportunity and probability for personal communication or touch or for access to personal funds and property when not under the direct supervision of a health care provider or employee.

([~~5~~]6) "Volunteer" means an individual who is not directly compensated for providing care, including family members of patients or residents enrolled in the program, whose duties assigned by a health care provider or employee include unsupervised contact in a health care facility on a regularly scheduled basis of one or more times per month.

R432-35-4. Bureau of Criminal Identification.

(1) The Utah Code, Section 26-21-9.5, requires that a BCI be conducted on covered individuals requesting to be licensed, to renew a license, or to be employed or volunteer in a covered health care facility.

(a) The health care facility shall submit applicant information within ten days of initially hiring an individual, include fees and releases to the Department to allow the Department to perform a criminal background screening.

(b) If the BCI indicates that the covered individual has a criminal record that indicates there is a conviction for a felony or misdemeanor the Department shall review the criminal convictions to determine whether to approve the covered individual for licensing or employment.

([~~e~~]c) If a covered individual applicant has not had residency in Utah for the last five years, the covered individual shall submit fingerprints for an FBI national criminal history record check.

(2) The Department shall review any criminal convictions, consistent with R432-35, to determine if action should be taken to

protect the health and safety of patients and residents receiving health care services in the covered health care facility.

(3) If the Department takes an action adverse to any covered individual, based upon the criminal background screening, the Department shall send a Notice of Agency Action to the health care provider and the covered individual explaining the action and the right of appeal.

R432-35-5. Exclusion from Direct Patient Care Due to Criminal Convictions or Pending Charges.

(1) As required by Utah Code Ann. Subsection 26-21-9.5(6), if a covered individual has been convicted [~~or~~]of a felony or is a misdemeanor that is not excluded under paragraphs (2) or (3) below, the covered individual may not provide direct patient care or volunteer. If such a covered individual resides in a home where health care is provided, the Department may revoke an existing license or and refuse to permit health care services in the home until the Department is reasonably convinced that the covered individual no longer resides in the home or that the individual will not have unsupervised contact with any child or disabled or elderly adult in care at the home.

(2) As allowed by Utah Code Ann. Subsection 26-21-9.5(6), the Department hereby excludes the following misdemeanors and determines that a misdemeanor conviction listed below does not disqualify a covered individual from providing direct patient care:

(a) any class B or C conviction under Chapter 6, Title 76, Offenses Against Property, Utah Criminal Code;

(b) any class B or C conviction under Chapter 6a, Title 76, Pyramid Schemes, Utah Criminal Code;

(c) any class B or C conviction under Chapter 8, Title 76, Offenses Against the Administration of Government, Utah Criminal Code;

(d) any class B or C conviction under Chapter 9, Title 76, Offenses Against Public Order and Decency, Utah Criminal Code, except for 76-9-301.8, Bestiality; 76-9-702, Lewdness; and 76-9-702.5, Lewdness Involving Child; and

(e) any class B or C conviction under Chapter 10, Title 76, Offenses Against Public Health, Welfare, Safety and Morals, Utah Criminal Code, except for 76-10-1201 to 1229.5, Pornographic and Harmful Materials and Performances; 76-10-1301 to 1314, Prostitution; and 76-10-2301, Contributing to the Delinquency of a Minor.

(3) The Executive Director may exclude, on a case-by-case basis, other misdemeanors not covered under paragraph (2) of this section if the misdemeanor did not involve violence against a child or a family member or unauthorized sexual conduct with a child or disabled adult. The following factors will be used in deciding under what circumstance, if any, the covered individual will be allowed to provide direct patient care or to volunteer in a covered health care facility:

(a) Types and number of offenses;

(b) Passage of time since the offense was committed; offenses more than five years old do not bar approval or a license, certificate or employment;

(c) Circumstances surrounding the commission of the offense;

(d) Intervening circumstances since the commission of the offense; and

(e) Relationship of the facts under subsections (a) through (d) of this section to the individual's suitability to work with children and disabled and elderly adults.

(4) The Department shall rely on the criminal background screening and search of court records as conclusive evidence of the conviction and the Department may revoke or deny a license and employment based on that evidence.

(5) If the Department denies a covered individual a license or employment based upon the criminal background screening and the covered individual disagrees with the information provided by the Criminal Investigations and Technical Services Division or court record, the covered individual may challenge the information as provided in Utah Code Ann. Sections 77-18-10 through 77-18-15.

(6) All covered health care facilities must report all felony and misdemeanor arrests, charges or convictions of covered individuals to the Department within 48 hours of discovery.

R432-35-6. [~~Child, Elder, and Disabled Adult Abuse Management~~]Licensing Information System.

(1) Pursuant to Utah Code 26-21-9.5(3) the Department shall screen all covered individuals for a history of substantiated abuse or neglect of a disabled or elder adult or a supported finding of severe abuse or neglect of a child, from the [~~management~~]licensing information system maintained by the Utah Department of Human Services (DHS)[~~ for children and disabled or elder adults~~].

(2) If a covered individual appears on the [~~management~~]licensing information system, the Department shall review the date of the supported or substantiated finding, type of substantiation, written documentation, and the legal status of the covered individual.

(3) If the Department determines there exists credible evidence that the covered individual poses a threat to the safety and health of children or disabled or elder adults being served in a covered health care facility, the Department shall not grant or renew a license, or employment.

(4) If the Department denies or revokes a license or employment based upon the [~~child or disabled or elder adult abuse management~~]licensing information system, the Department shall send a Notice of Agency Action to the licensee and the covered individual.

(5) If the covered individual disagrees with the record of substantiation of elder or disabled adult abuse or supported finding of severe child abuse or neglect , he must pursue an appeal with the DHS or the juvenile court. If the covered individual agrees with the substantiated or supported finding of abuse or neglect that was the basis of the Department's denial or revocation, but disagrees with the Department's denial or revocation, the covered individual may request a hearing with the Department.

(a) Upon request, the Department may permit the covered individual to be employed under supervision until a decision is reached and if the applicant can demonstrate that the work arrangement does not pose a threat to the safety and health of children or disabled or elder adults being served in the licensed health care facility.

(b) If a covered individual appeals the record of substantiation or supported finding, the Department may hold the license or employment denial in abeyance until DHS or the juvenile court renders a decision,.

(6) If the DHS determines a covered individual has a substantiated or supported finding of abuse, or neglect after the Department issues a license, or grants employment, the licensee and covered individual has five working days to notify the Department. Failure to notify the Department may result in revocation of the license.

R432-35-7. Covered Individuals with Arrests or Pending Criminal Charges.

(1) If the Department determines there exists credible evidence that a covered individual has been arrested or charged with a felony or a misdemeanor that would not be excluded under R432-5(2), the Department may act to protect the health and safety of patients and residents in covered health care facilities that the individual may have contact with. The Department may revoke or suspend any license or employment if necessary to protect the health and safety of patients and residents in care.

(2) Upon request, the Department may permit the covered individual to be employed under supervision until the felony or misdemeanor charge is resolved, if the facility can demonstrate that the individual can work without posing a threat to the safety and health of the resident or patient being served in the licensed health care facility.

(3) If the Department denies or revokes a license, or restricts employment based upon the arrest or felony or misdemeanor charge, the Department shall send a Notice of Agency Action to the licensee and the covered individual notifying them that they may request a hearing with the Department.

(4) The Department may hold the license or employment denial in abeyance until the arrest or felony or misdemeanor charge is resolved.

R432-35-8. Penalties.

The department may impose civil monetary penalties in accordance with Title 63, Chapter 46b, Administrative Procedures Act, if there has been a failure to comply with the provisions of this chapter, or rules promulgated pursuant to this chapter, as follows:

(1) if significant problems exist that are likely to lead to the harm of an individual resident, the department may impose a civil penalty of $50 to $1,000 per day; and

(2) if significant problems exist that result in actual harm to a resident, the department may impose a civil penalty of $1,050 to $5,000 per day.

KEY: health care facilities
[~~January 14, 2002~~]2003
26-21-9.5

Health, Health Systems Improvement, Licensing

R432-100-38

Emergency and Disaster Plan

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 25867
FILED: 12/19/2002, 14:17

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Most physicians and other frontline health professionals have never seen nor have ever seriously considered how to identify, treat, or manage patients or a community that have been exposed to bio-terror agents. Human Resources Services Administration (HRSA) grant funds have become available to train hospital personnel to combat such an attack.

SUMMARY OF THE RULE OR CHANGE: Subsection R432-100-38(4)(d) requires that one of the semi-annual disaster drills address a bio-terrorism or communicable disease event.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Title 26, Chapter 21

ANTICIPATED COST OR SAVINGS TO:
❖ THE STATE BUDGET: Costs to print the modifications and distribute to licensed health care facilities can be handled within existing appropriations. One state-owned facility will receive grant funds to participate in the training exercise.
❖ LOCAL GOVERNMENTS: Local governments who own or operate a general hospital will receive additional funding to address the disaster planning efforts.
❖ OTHER PERSONS: Other general hospitals owned by corporations will be eligible to receive HRSA grant funds to meet the required mandate.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There should be no individual expense to the facilities, since grant funds are available to off-set any cost.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Hospitals will conduct the same number of disaster drills. Once per year the drill must focus on bio-terrorism or communicable disease events. Federal funds are available to off-set any costs. Rod L. Betit

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
HEALTH
HEALTH SYSTEMS IMPROVEMENT, LICENSING
CANNON HEALTH BLDG
288 N 1460 W
SALT LAKE CITY UT 84116-3231, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Debra Wynkoop at the above address, by phone at 801-538-6152, by FAX at 801-538-6325, or by Internet E-mail at debwynkoop@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 02/14/2003.

THIS RULE MAY BECOME EFFECTIVE ON: 02/15/2003

AUTHORIZED BY: Rod L. Betit, Executive Director

R432. Health, Health Systems Improvement, Licensing.
R432-100. General Hospital Standards.
R432-100-38. Emergency and Disaster Plan.

(1) The hospital is responsible to assure the safety and well-being of patients. There must be provisions for the maintenance of a safe

environment in the event of an emergency or disaster. An emergency or disaster may include utility interruption such as gas, water, sewer, fuel or electricity interruption, explosion, fire, earthquake, bomb threat, flood, windstorm, epidemic, [~~and injury~~]bio-terrorism event or mass casualty incident.

(2) The administrator or designee is responsible for the development of a plan, coordinated with state and local emergency or disaster offices, to respond to emergencies or disasters. This plan shall be in writing and list the coordinating authorities by agency name and title. The plan shall be distributed or made available to all hospital staff to assure prompt and efficient implementation.

(a) The plan shall be reviewed and updated as necessary in coordination with local emergency or disaster management authorities. The plan shall be available for review by the Department.

(b) The administrator or designee is in charge of operations during any significant emergency. If not on the premises, the administrator shall make every reasonable effort to get to the hospital to relieve subordinates and take charge of the situation.

(c) The name of the person in charge and names and telephone numbers of emergency medical personnel, agencies and appropriate communication and emergency transport systems shall be readily available to all hospital staff.

(3) The hospital's emergency response procedures shall address the following:

(a) evacuation of occupants to a safe place within the hospital or to another location;

(b) delivery of essential care and services to hospital occupants by alternate means regardless of setting;

(c) delivery of essential care and services when additional persons are housed in the hospital during an emergency;

(d) delivery of essential care and services to hospital occupants when staff is reduced by an emergency; and

(e) maintenance of safe ambient air temperatures within the hospital.

(4) The hospital shall have an emergency plan that is current and appropriate to the operation and construction of the hospital. The plan shall be approved by the board and the hospital administrator.

(a) The hospital's emergency plan shall delineate:

(i) the person or persons with decision-making authority for fiscal, medical, and personnel management;

(ii) on-hand personnel, equipment, and supplies and how to acquire additional help, supplies, and equipment after an emergency or disaster;

(iii) assignment of personnel to specific tasks during an emergency;

(iv) methods of communicating with local emergency agencies, authorities, and other appropriate individuals;

(v) the telephone numbers of individuals to be notified in an emergency in order of priority;

(vi) methods of transporting and evacuating patients and staff to other locations; and

(vii) conversion of the hospital for emergency use.

(b) Emergency telephone numbers shall be accessible to staff at each nurses station.

(c) The hospital shall document emergency events and responses and record patients and staff evacuated from the hospital to another location. Any emergency involving patients shall be documented in the patient record.

(d) Simulated disaster drills shall be held semiannually for all staff. One disaster drill shall address a bio-terrorism or communicable disease event.

(e) Fire drills and fire drill documentation shall be in accordance with R710-4, State of Utah Fire Prevention Board.

(5) There shall be a fire emergency evacuation plan written in consultation with qualified fire safety personnel. The evacuation plan shall be posted in prominent locations throughout the hospital.

KEY: health facilities
[~~August 31, 2000~~]2003
Notice of Continuation October 16, 2002
26-21-5
26-21-2.1
26-21-20

Human Services, Recovery Services
R527-201
Medical Support Services

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 25869
FILED: 12/19/2002, 14:36

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Effective July 1994, Section 78-45-7.15 required that parents share equally in the cost of insurance premiums and that it become a separate add-on obligation and expense. However, often orders issued after that date fail to include the language regarding the insurance credit, but one of the parents enrolls the children in insurance and then requests credit. If the case is a Non-IV-A case and both of the parents agree to the credit, the parent enrolling the children in insurance receives credit. If the parents do not agree, the case is currently referred for a modification of the order to include an insurance provision so that an insurance credit can be given. If the case is a IV-A case, the parent enrolling the children in insurance and requesting credit receives credit. To maintain consistency between IV-A and Non-IV-A cases, the Office of Recovery Services/Child Support Services (ORS/CSS) would like to give credit in all cases to the parent who has enrolled his children and requested credit without first modifying the order.

SUMMARY OF THE RULE OR CHANGE: The proposed change is to delete Subsection R527-201-8(3), which will allow ORS/CSS to treat IV-A case and non-IV-A cases consistently. Subsection R527-201-8(3) specifically indicates that if a support order does not include a medical insurance provision, and a parent voluntarily enrolls the children in an insurance plan and the case is: 1) Non-IV-A - both parents have to agree to share equally in the cost of insurance before ORS/CSS can give the parent enrolling the children in insurance, credit. If the parents disagree, the order must be modified to include an insurance provision before credit can be given; and 2) IV-A case - ORS/CSS can give the parent enrolling the children in insurance, credit without both parents agreement or a modification.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 63-46b-1 et seq., 62A-11-326, 62A-11-326.2, and 62A-11-326.3; Subsection 62A-11-406(9); Section 78-45-7.15; Subsection 35A-7-105(2); and 45 CFR 303.30, 303.31, 303.32

ANTICIPATED COST OR SAVINGS TO:
❖ THE STATE BUDGET: There will be a savings to the state budget because orders dated after July 1, 1994, without insurance credit language will no longer have to be modified before ORS/CSS allows the obligated parents an insurance credit.
❖ LOCAL GOVERNMENTS: Administrative rules of the Office of Recovery Services do not apply to local government.
❖ OTHER PERSONS: There will be a savings to those parents voluntarily enrolling their children in insurance without a medical support provision in the support order.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Because the parent voluntarily enrolling his children in an insurance plan still has to request credit, there may be minimal costs associated with making that request; i.e., long distance phone call, transportation costs, etc.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule has never had an impact on business and the change to the rule does not create or cause an impact to businesses.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
HUMAN SERVICES
RECOVERY SERVICES
515 E 100 S
SALT LAKE CITY UT 84102-4211, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
LeAnn Wilber at the above address, by phone at 801-536-8950, by FAX at 801-536-8509, or by Internet E-mail at lwilber@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 02/14/2003.

THIS RULE MAY BECOME EFFECTIVE ON: 02/15/2003

AUTHORIZED BY: Emma Chacon, Director

R527. Human Services, Recovery Services.
R527-201. Medical Support Services.
R527-201-8. Credit for Premium Payments and Effect of Changes to the Premium Amount Subsequent to the Order.

1. If the order or underlying worksheet gives credit of a specific amount for the children's portion of the premium and the amount of the premium decreases, ORS/CSS may reduce the amount of the credit without seeking a modification of the order.

2. If the order or underlying worksheet does not mention a specific credit for insurance premiums, ORS/CSS shall give credit for the child(ren)'s portion of the insurance premium when the obligated parent provides the necessary verification coverage.

3. [~~When a support order does not include a medical insurance provision, and a parent voluntarily enrolls the child(ren) in an insurance plan:~~

~~a. in Non-IV-A cases, if the parents agree to share equally the cost of the insurance, ORS/CSS shall give credit or offset the other parent's share of the expense. If the parents disagree, the order must be modified to include an insurance provision before the credit or the offset shall be given.~~

~~b. in IV-A cases, ORS/CSS shall give credit for 50% of the child(ren)'s portion of the insurance premium.~~

~~4.~~]ORS/CSS shall notify both parents in writing whenever the credit is changed.

KEY: child support, health insurance, Medicaid
[~~September 4, 2002~~]2003
Notice of Continuation January 30, 2002
63-46b-1 et seq.
62A-11-326.1
62A-11-326.2
62A-11-326.3
62A-11-406(9)
78-45-7.15
35A-7-105(2)

▼ ▼

Insurance, Administration
R590-76
Health Maintenance Organization and Limited Health Plans

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 25870
FILED: 12/19/2002, 14:39

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: As a result of comments made during a hearing held November 18, 2002, and the comment period at that same time, changes of a clarification nature are being made to the rule. These changes are filed as an additional Amendment and not a Change in Proposed Rule (CPR) because at the end of the last comment period, the proposed rule changes were put into effect with the understanding that these additional changes would be made. (DAR NOTE: The previous filing on R590-76 was a proposed repeal and reenact (DAR No. 25131) that was published in the August 15, 2002, Bulletin; and then a CPR (DAR No. 25131) was filed with additional changes that was published in the November 1, 2002, Bulletin, and they were both made effective on December 11, 2002.)

SUMMARY OF THE RULE OR CHANGE: The following changes are being proposed for this rule: 1) Section R590-76-4 adds a

definition of coinsurance, removes the definition of replacement coverage since it was no longer used in the rule, and clarified the definition of "service area"; 2) Section R590-76-8 changes clarifies the HMO's notification requirements to an enrollee when a provider terminates; and 3) Section R590-76-9 clarifies what is a certifying entity.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Title 31A, Chapter 8

ANTICIPATED COST OR SAVINGS TO:
❖ THE STATE BUDGET: The changes to this rule will not create additional work for the department and therefore, will not require the hiring of an additional employee or subcontractor.
❖ LOCAL GOVERNMENTS: This rule is not linked to and will not affect the ordinances of local governments.
❖ OTHER PERSONS: The changes to this rule will not create a cost or savings to insurers or consumers. No additional filings or work are required of insurers and as a result no costs will be passed onto the consumer.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The changes to this rule will not create a cost or savings to insurers or consumers. No additional filings or work are required of insurers and as a result no costs will be passed onto the consumer.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule will create no fiscal impact on insurance businesses 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:
Jilene Whitby at the above address, by phone at 801-538-3803, by FAX at 801-538-3829, or by Internet E-mail at jwhitby@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 02/18/2003.

THIS RULE MAY BECOME EFFECTIVE ON: 02/19/2003

AUTHORIZED BY: Jilene Whitby, Information Specialist

R590. Insurance, Administration.
R590-76. Health Maintenance Organizations and Limited Health Plans.
R590-76-4. HMO Definitions.

A group or individual contract and evidence of coverage delivered or issued for delivery to any person in this state by an HMO required to obtain a certificate of authority in this state shall contain definitions respecting the matters set forth below. The definitions shall comply with the requirements of this section. Definitions other than those set forth in this regulation may be used as appropriate providing that they do not contradict these requirements. As used in this regulation and as used in the group or individual contract and evidence of coverage:

(1) "Coinsurance" is the enrollee's cost-sharing amount expressed as a percentage of covered charges.

([~~1~~]2) "Copayment" means, other than coinsurance, the amount an enrollee must pay in order to receive a specific service that is not fully prepaid.

([~~2~~]3) "Deductible" means the amount an enrollee is responsible to pay out-of-pocket before the HMO begins to pay the costs or provide the services associated with treatment.

([~~3~~]4) "Directors" mean the executive director of Department of Health or his authorized representative, and the director of the Health Division of the Utah Insurance Department.

([~~4~~]5) "Eligible dependent" means any member of an enrollee's family who meets the eligibility requirements set forth in the contract.

([~~5~~]6) "Emergency care services" means services for an emergency medical condition as defined in 31A-22-627(3).

(a) Within the service area, emergency care services shall include covered health care services from non-affiliated providers only when delay in receiving care from the HMO could reasonably be expected to cause severe jeopardy to the enrollee's condition.

(b) Outside the service area, emergency care services include medically necessary health care services that are immediately required because of unforeseen illness or injury while the enrollee is outside the geographical limits of the HMO's service area.

([~~6~~]7) "Evidence of coverage" means a certificate or a statement of the essential features and services of the HMO coverage that is given to the subscriber by the HMO or by the group contract holder.

([~~7~~]8) "Facility" means an institution providing health care services or a health care setting, including but not limited to hospitals and other licensed inpatient centers, ambulatory surgical or treatment centers, skilled nursing centers, residential treatment centers, diagnostic, laboratory and imaging centers, and rehabilitation and other therapeutic health settings which operate within their specific licensures requirements.

([~~8~~]9) "Grievance" means a written complaint submitted in accordance with the HMO's formal grievance procedure by or on behalf of the enrollee regarding any aspect of the HMO relative to the enrollee.

([~~9~~]10) "Group contract" means a contract for health care services by which its terms limit eligibility to enrollees of a specified group.

([~~10~~]11) "Group contract holder" means the person to which a group contract has been issued.

([~~11~~]12) "Individual contract" means a contract for health care services issued to and covering an individual. The individual contract may include coverage for dependents of the subscriber.

([~~12~~]13) "Medical necessity" or "medically necessary" means:

(a) Health care services or products that a prudent health care professional would provide to a patient for the purpose of preventing, diagnosing or treating an illness, injury, disease or its symptoms in a manner that is:

(i) in accordance with generally accepted standards of medical practice in the United States;

(ii) clinically appropriate in terms of type, frequency, extent, site, and duration;

(iii) not primarily for the convenience of the patient, physician, or other health care provider; and

(iv) covered under the contract; and

(b) when a medical question-of-fact exists medical necessity shall include the most appropriate available supply or level of service for the individual in question, considering potential benefits and harms to the individual, and known to be effective.

(i) For interventions not yet in widespread use, the effectiveness shall be based on scientific evidence.

(ii) For established interventions, the effectiveness shall be based on:

(a) scientific evidence;

(b) professional standards; and

(c) expert opinion.

([~~13~~]14) "Out-of-area services" means the health care services that an HMO covers when its enrollees are outside of the service area.

([~~14~~]15) "Physician" means a duly licensed doctor of medicine or osteopathy practicing within the scope of the license.

([~~15~~]16) "Primary care physician" means a physician who supervises, coordinates, and provides initial and basic care to enrollees, and who initiates their referral for specialist care and maintains continuity of patient care.[

~~(16) "Replacement coverage" means the benefits provided by a succeeding carrier.~~]

(17) "Scientific evidence" means:

(a) scientific studies published in or accepted for publication by medical journals that meet nationally recognized requirements for scientific manuscripts and that submit most of their published articles for review by experts who are not part of the editorial staff; or

(b) findings, studies or research conducted by or under the auspices of federal government agencies and nationally recognized federal research institutes.

(c) Scientific evidence shall not include published peer-reviewed literature sponsored to a significant extent by a pharmaceutical manufacturing company or medical device manufacturer or a single study without other supportable studies.

(18) "Service area" means the geographical area within a 40-mile radius of the HMO's health care facility[~~, nearest where the insured lives, resides or works~~].

(19) "Subscriber" means an individual whose employment or other status, except family dependency, is the basis for eligibility for enrollment in the HMO, or in the case of an individual contract, the person in whose name the contract is issued.

R590-76-8. Other HMO Requirements.

(1) Provider lists.

(a) An HMO shall provide its subscribers with a list of the names and locations of all of its providers no later than the time of enrollment or the time the group or individual contract and evidence of coverage are issued and upon reenrollment.

(b) [~~If~~]Upon notification to an HMO that a provider is no longer affiliated[~~ with an HMO~~], the HMO shall within 30 days[~~ of the provider termination date~~]:

(i) notify enrollees who are receiving ongoing care; and

(ii) update any applicable web site provider lists.

(c) Subject to the approval of the commissioner, an HMO may provide its subscribers with a list of providers or provider groups for a segment of the service area. However, a list of all providers shall be made available to subscribers upon request.

(d) Provider lists shall contain a notice regarding the availability of the listed primary care physicians. The notice shall be in not less than 12-point type and be placed in a prominent place on the list of providers. The notice shall contain the following or similar language:

"Enrolling in (name of HMO) does not guarantee services by a particular provider on this list. If you wish to receive care from specific providers listed, you should contact those providers to be sure that they are accepting additional patients for (name of HMO)."

(2) Description of the services area. An HMO shall provide its subscribers with a description of its service area no later than the time of enrollment or the time the group or individual contract and evidence of coverage [~~is~~]are issued and upon request thereafter. If the description of the service area is changed, the HMO shall provide at such time a new description of the service area to its affected subscribers within 30 days.

(3) Copayments, coinsurance, and deductibles. An HMO may require copayments, coinsurance, or deductibles of enrollees as a condition for the receipt of health care services. Copayments, coinsurance, and deductibles shall be the only allowable charge, other than premiums, insurers may assess to subscribers, unless otherwise allowed by law.

(4) Grievance procedure. A grievance procedure in compliance with 31A-22-629 and Rule R590-203, Health Care Benefit Plans-Grievance and Voluntary Independent Review Procedures Rule, to resolve an adverse benefit determination, shall be established and maintained by an HMO to provide reasonable procedures for the prompt and effective resolution of written grievances.

(5) Provider contracts. All provider contracts must be on file and available for review by the commissioner and the director of the UDOH.

R590-76-9. Quality Assurance.

(1) Quality assurance plan.

(a) Each HMO shall develop a quality assurance plan. The plan shall be designed to objectively and systematically monitor and evaluate the quality and appropriateness of patient care, pursue opportunities to improve patient care, and resolve identified problems

(b) Certification of quality assurance plan. [~~Each HMO shall arrange and pay for a review and certification of its quality assurance plan no later than 18 months from the effective date of this rule and at least every three years thereafter. Each~~]

(i) A new HMO shall arrange and pay for a review and certification of its quality assurance plan no later than 18 months after receiving a Certificate of Authority and commencing operation[~~, and~~].

(ii) An existing HMO shall arrange a pay for a review and certification of its quality assurance plan every three years [~~thereafter~~]unless required sooner by the certifying entity.

[~~(i) The review~~](iii) Reviews shall be conducted by [~~a professionally recognized expert~~]NCQA, JCAHO, URAC, Health Insight, or [~~entity in~~]other entities as approved by the [~~area of quality assurance programs for HMOs, such as NCQA or JACHO~~]commissioner. Reviews conducted for the federal government shall satisfy these requirements if the requirements of this subsection [~~if the requirements of subsections (i), (ii), and (iii)~~]are met.

([~~ii~~]iv) Each HMO shall arrange for the directors to receive a copy of the review findings, recommendations, and certification, or notice of non-approval, of the quality assurance plan. This material shall be sent directly from the certifying entity to the directors. Certification status and review materials will be maintained as a protected record by the directors.

([~~iii~~]v) Each HMO shall implement clinical and procedural requirements made by the certifying entity after the findings are received by the HMO.

(c) Each year on or before July 1, an HMO shall file to the directors a written report of the effectiveness of its internal quality

control. The report must include a copy of the HMO's quality assurance plan.

(2) Quality assurance audits. The commissioner may audit an HMO's quality control system. Such audit shall be performed by qualified persons designated by the commissioner.

(a) The HMO shall comply with reasonable requests for information required for the audit and necessary to:

(i) measure health care outcomes according to established medical standards;

(ii) evaluate the process of providing or arranging for the provision of patient care;

(iii) evaluate the system the HMO uses to conduct concurrent reviews and preauthorized medical care;

(iv) evaluate the system the HMO uses to conduct retrospective reviews of medical care; and

(v) evaluate the accessibility and availability of medical care provided or arranged for by the HMO.

(b) Information furnished shall only be used in accordance with 31A-8-404.

(3) Internal peer review. The HMO shall show written evidence of continuing internal peer reviews of medical care given. The program must provide for review by physicians and other health professionals; have direct accountability to senior management; and have resources specifically budgeted for quality assessment, monitoring, and remediation.

KEY: HMO insurance
[~~2002~~]2003
Notice of Continuation October 13, 1999
31A-2-201

Natural Resources, Parks and Recreation
R651-611
Fee Schedule

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 25837
FILED: 12/17/2002, 12:23

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: During the fifth legislative special session, the Legislature mandated the raising of certain fees by $2 from $7 to $9. By eliminating the Five-Day Pass at $15, and having the recreating public pay the regular $9 fee, the state will not lose revenue. Instead of one $15 Five-Day Pass, they will pay $9 per day or $45 for five days, if they do not have other special passes. (DAR Note: H.B. 5009 is found at UT L 2002, 5th Spec Sess Ch 9, and was effective September 8, 2002.)

SUMMARY OF THE RULE OR CHANGE: Whenever a rule changes, the state is entrusted to make sure there is consistency and that we protect the state revenues as well. This rule will make sure that happens by eliminating a $15 Five-Day Pass and using the regular daily pass of $9.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 63-11-17

ANTICIPATED COST OR SAVINGS TO:
❖ THE STATE BUDGET: The state budget will show an aggregate anticipated savings of approximately $15,000 because of the change in the fee structure.
❖ LOCAL GOVERNMENTS: Local government will not be affected as this change is in regard to state fees only and not any local city or county park.
❖ OTHER PERSONS: The recreating public who utilize state parks will pay the regular daily fee instead of having a pass available for a special five-day rate.

COMPLIANCE COSTS FOR AFFECTED PERSONS: In order to comply with this change in eliminating the Five-Day Pass, affected persons will bear the additional charges that are determined by the fee schedule, without a Five-Day Pass.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Based upon economic analysis on similar issues, the Department believes that the proposed rule change will have negligible fiscal impact upon businesses.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
NATURAL RESOURCES
PARKS AND RECREATION
Room 116
1594 W NORTH TEMPLE
SALT LAKE CITY UT 84116-3154, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Dee Guess at the above address, by phone at 801-538-7320, by FAX at 801-538-7378, or by Internet E-mail at deeguess@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 02/14/2003.

THIS RULE MAY BECOME EFFECTIVE ON: 02/15/2003

AUTHORIZED BY: Dave Morrow, Deputy Director

R651. Natural Resources, Parks and Recreation.
R651-611. Fee Schedule.
R651-611-1. Use Fees.

All fees required under this fee schedule are to be paid in advance of occupancy or use of facilities.

A. Fees for services covering one or more months, for docks and dry storage, must be paid in advance for the season as determined by the Division.

B. Fee permits and passes are not refundable or transferable. Duplicate annual permits and special fun tags will be issued only upon completion of an affidavit and payment of the required fee.

Inappropriate use of fee permits and passes may result in confiscation by park authorities.

C. Fees shall not be waived, reduced or refunded unless authorized by Division guideline; however, park or unit managers may determine and impose equitable fees for unique events or situations not covered in the current fee schedule. The director has the prerogative to waive or reduce fees.

D. The Multiple Park Permit, Special Fun Tag, Heritage Park Pass, [~~Five Day Pass,~~]Camping Permit and Daily Private Vehicle Permit are good for one (1) private vehicle with up to eight (8) occupants, with the exception of any special charges. Multiple Park Permits, Heritage Park Passes, and Special Fun Tags, [~~and Five Day Passes~~]are not honored at This Is The Place State Park or the OHV center at Jordan River State Park.

E. No charge for persons five years old and younger.

F. With the exception of the Multiple Park Permit, Heritage Park Pass, and Special Fun Tag, [~~and Five Day Pass,~~]fees are applicable only to the specific park or facility where paid and will not be honored at other parks or facilities.

G. The contract operator, with the approval of the Division director, will set fees for This Is The Place State Park.

R651-611-2. Day Use Entrance Fees.

Permits the use of all day activity areas in a state park. These fees do not include overnight camping facilities or special use fees.

A. Annual Permits

1. $70.00 Multiple Park Permit (good for all parks)

2. Snow Canyon Specialty Permits

a. $15.00 Family Pedestrian Permit

b. $5.00 Commuter Permit

3. Duplicate Annual Permits may be purchased if originals are lost, destroyed, or stolen, upon payment of a $10.00 fee and the submittal of a signed affidavit to the Division office. Only one duplicate is allowed.

B. Special Fun Tag - Available free to Utah residents, 62 years and older or disabled, as defined by Special Fun Tag permit affidavit.

C. Daily Permit - Allows access to a specific state park on the date of purchase.

1. $9.00 per private motor vehicle or $4.00 per person for pedestrians or bicycles for the following parks:

TABLE 1

Deer Creek	Jordanelle
Utah Lake	Willard Bay

2. $7.00 per private motor vehicle or $4.00 per person for pedestrians or bicycles for the following parks:

TABLE 2

Dead Horse Point
East Canyon
Rockport

3. $6.00 per private motor vehicle or $3.00 per person for pedestrians or bicycles for the following parks:

TABLE 3

Bear Lake	Quail Creek
Scofield	Yuba

4. $5.00 per private motor vehicle or $3.00 per person for pedestrians or bicycles for the following parks:

TABLE 4

Antelope Island	Coral Pink
Escalante	Goblin Valley
Green River	Gunlock
Huntington	Hyrum
Kodachrome	Lost Creek
Millsite	Minersville
Otter Creek	Palisade
Pineview	Piute
Snow Canyon	Starvation
Steinaker	Wasatch Mountain

5. $1.00 per person or $5.00 per family (up to eight (8) individuals. For the following parks:

TABLE [~~4~~]5

Anasazi	Camp Floyd
Edge of the Cedars	Fort Buenaventura
Fremont	Iron Mission
Territorial	Utah Field House

6. $2.00 per person for commercial groups or vehicles with nine (9) or more occupants.

[~~D. Five Day Pass - $15.00 permits day use entrance to all state parks for five (5) consecutive days.~~

] [~~E~~]D. Group Site Day Use Fee - Advance reservation only. $2.00 per person, age six (6) and over, for sites with basic facilities. Minimum $50.00 fee established for each facility.

[~~F~~]E. Educational Groups - No charge for group visits by Utah public or parochial schools with advance notice to park. When special arrangements or interpretive talks are provided, a fee of $.50 per person may be charged at the park manager's discretion.

[~~G~~]F. Heritage Park Pass: $20.00 permits up to five (5) visits to any Heritage Park during the calendar year of issue for up to eight (8) people per private motor vehicle.

[~~H~~]G. Antelope Island Wildlife Management Program: A $1.00 fee will be added to the entrance fee at Antelope Island. This additional fee will be used by the Division to fund the Wildlife Management Program on the Island.

R651-611-3. Camping Fees.

Permits overnight camping and day use for the day of arrival until 2:00 p.m. of the following day or each successive day. Camp sites must be vacated by 12:00 noon following the last camping night at Dead Horse Point. Camping is limited to 14 consecutive days at all campgrounds with the exception of Snow Canyon State Park, with a five (5) consecutive day limit.

A. Individual Sites -- One (1) vehicle with up to eight (8) occupants and any attached recreational equipment as one (1) independent camp unit. Any vehicles in addition to the independent camp unit will be charged the full price for a campsite. Fees for individual sites are based on the following schedule:

1. $8.00 with pit or vault toilets; $11.00 with flush toilets; $14.00 with flush toilets and showers or electrical hookups; $17.00 with flush toilets, showers and electrical hookups; $20.00 with full hookups.

2. Primitive camping fees may be decreased at the park manager's discretion dependent upon the developed state of the facilities to be used by park visitors. Notification of the change must be made to the Division's financial manager and reservations manager before the reduced fee can be made effective.

3. Special Fun Tag holders may receive a $2.00 discount for individual camping sites Monday through Thursday nights, excluding holidays.

4. One-half the campsite fee rounded up to the nearest dollar will be charged per vehicle at all parks and individual camping sites for all additional transportation vehicles that are separate and not attached to the primary vehicle, but are dependent upon that are allowed at any individual camp unite. No more than one additional vehicle is allowed at any individual campsite.

B. Group Sites - (by advance reservation for groups)

1. $2.00 per person, age six (6) and over at sites with vault toilets. Minimum $50.00 fee for each facility.

2. $3.00 per person, age six (6) and over at sites with flush toilets and/or pavilions. Minimum $75.00 fee for each facility, except Dead Horse Point with a minimum of $25.00.

R651-611-4. Special Fees.

A. Golf Course Fees

1. Jordan River rental and green fees

a. Nine holes general public - weekends and holidays - summer - $6.50

b. Nine holes weekdays (except holidays) - summer - $5.50

c. Nine holes Jr/Sr weekdays (except holidays) - summer) - $4.50

d. Nine holes general public (winter) - $4.50

e. Nine holes Jr/Sr (winter) - $3.50

f. All day rate weekdays (winter) - $8.00

g. All day rate weekends and holidays (winter) - $10.00

h. 20 round card pass - $75.00

i. Promotional pass weekdays (except holidays) - $250.00

j. Companion fee - adult - $2.00

k. Companion fee - child - $1.00

l. Motorized cart (9 holes) - Prohibited

m. Pull carts (9 holes) - $1.00

n. Club rental - $3.00

o. Summer season is April through October and the winter season is November through March.

2. Palisade rental and green fees.

a. Nine holes general public - weekends and holidays - $10.00

b. Nine holes weekdays (except holidays) - $9.00

c. Nine holes Jr/Sr weekdays (except holidays) $8.00

d. 20 round card pass - $140.00

e. 20 round card pass (Jr only)- $100.00

f. Promotional pass - single person (any day) - $400.00

g. Promotional pass - single person (weekdays only) - $275.00

h. Promotional pass - couples (any day) - $650.00

i. Promotional pass - family (any day) - $850.00

j. Companion fee - walking, non -player - $4.00

k. Motorized cart (9 holes) - $8.00

l. Motorized cart (9 holes single rider) - $4.00

m. Pull carts (9 holes) - $2.00

n. Club rental (9 holes) - $5.00

o. School teams - No fee for practice rounds with coach and team roster. Tournaments are $3.00 per player.

p. Driving range - small bucket - $2.50

q. Driving range - large bucket - $3.50

3. Wasatch Mountain rental and green fees.

a. Nine holes general public - $11.50

b. Nine holes general public (weekends and holidays) - $12.50

c. Nine holes Jr/Sr weekdays (except holidays) - $10.50

d. 20 round card pass - $210.00 - no holidays or weekends

e. Companion fee - walking, non-player - $4.00

f. Motorized cart (9 holes - mandatory on Mt. course) - $11.00

g. Motorized cart (9 holes single rider - $5.50)

h. Pull carts (9 holes) - $2.25

i. Club rental (9 holes) - $6.00

j. School teams - No fee for practice rounds with coach and team roster (Wasatch Co. only).

Tournaments are $3.00 per player.

k. Tournament fee (per player) - $4.00

l. Driving range - small bucket - $2.25

m. Driving range - large bucket - $4.50

n. Advance tee time booking surcharge - $10.00

4. Green River rental and green fees.

a. Nine holes general public - $9.00

b. Nine holes Jr/Sr weekdays (except holidays) - $8.00

c. Eighteen holes general public - $16.00

d. 20 round card pass - $130.00

e. Promotional pass - single person (any day) - $325.00

f. Promotional pass - single person (Jr/Sr weekdays) - $275.00

g. Promotional pass - couple (any day) - $600.00

h. Promotional pass - family (any day) - $750.00

i. Companion fee - walking, non-player - $4.00

j. Motorized cart (9 holes) - $8.00

k. Motorized cart (9 holes single rider) - $4.00

l. Pull carts (9 holes) - $2.25

m. Club rental (9 holes) - $5.00

n. School teams - No fee for practice rounds with coach and team roster. Tournaments are $3.00 per player.

5. Golf course hours are daylight to dark

6. No private, motorized golf carts are allowed, except where authorized by existing contractual agreement.

7. Jr golfers are 17 years and under. Sr golfers are 62 and older.

B. Boat Mooring and Dry Storage

1. Mooring Fees:

a. Day Use - $5.00

b. Overnight Boat Parking - $7.00 (until 8:00 a.m.)

c. Overnight Boat Camping - $10.00 (until 2:00 p.m.)

d. Monthly - $4.00/ft.

e. Monthly with Utilities - (Bear Lake) $6.00/ft.

f. Monthly with Utilities - (Other Parks) $5.00/ft.

g. Monthly Off Season - $2.00/ft

h. Monthly (Off Season with utilities) - $2.50/ft

2. Dry Storage Fees:

a. Overnight (until 2:00 p.m.) - $5.00

b. Monthly During Season - $50.00

c. Off Season - $25.00

C. Meeting Rooms and Buildings

1. Day Use: 1-4 hours between 8:00 a.m. and 6:00 p.m.

a. Up to 50 persons - $50.00

b. 51 to 100 persons - $70.00

c. 101 to 150 persons - $90.00

d. Add 50% for after 6:00 p.m.

e. Fees include day use fee

2. Overnight Use 2:00 p.m. until 2:00 p.m., up to 100 people.

a. Minimum Fee $200.00

b. November through March - Add 10%

D. Roller Skating Fees

TABLE [~~5~~]6

Public Hours	Territorial Two Hour Sessions
1. Adults	$2.00
2. Children 6 through 11	$1.00
3. Skate Rental	$1.00
4. Ice Skate Sharpening	

5. Group Reservations
a. First Hour $30.00
b. Every Hour Thereafter $20.00

E. Other Miscellaneous Fees
1. Canoe Rental (includes safety equipment).
a. Up to one (1) hour - $ 5.00
b. Up to four (4) hours - $10.00
c. All day to 6:00 p.m. $20.00
2. Paddle boat Rental (includes safety equipment).
a. Up to one (1) hour $10.00
b. Up to four (4) hours $20.00
c. All day to 6:00 p.m. $30.00
3. Cross Country Skiing Trails.
a. $4.00 per person, twelve (12) and older.
b. $2.00 per person, six (6) through eleven (11).
4. Pavilion - 8:00 a.m. - 10:00 p.m. (non -fee areas).
a. $10.00 per day - (single unit).
b. $30.00 per day - (group unit).
5. Recreation Field (non-fee areas) - $25.00.
6. Sports Equipment Rental - $10.00.
7. Life Jacket Rental - $1.00
8. Day Use Shower Fee - $2.00.
(where facilities can accommodate)
9. Application Fees - Non -refundable PLUS Negotiated Costs.
a. Grazing Permit - $20.00
b. Easement - $50.00
c. Construction/Maintenance - $50.00
d. Special Use Permit - $50.00
e. Commercial Filming - $50.00
f. Waiting List - $10.00
10. Assessment and Assignment Fees.
a. Duplicate Document - $10.00
b. Contract Assignment - $20.00
c. Returned checks - $20.00
d. Staff time - $40.00/hour
e. Equipment - $30.00/hour
f. Vehicle - $20.00/hour
g. Researcher - $5.00/hour
h. Photo copy - $ .10/each
i. Fee collection - $10.00
11. Curation Fees.
a. Annual curation agreement $50.00
b. Curation storage Edge of Cedars $400.00/cubic foot.
c. Curation storage other parks $250.00/cubic foot
d. All curation storage fees are one time only.
12. Snowmobile Parking Fee - Monte Cristo Trail head.
a. Day use (6:00 a.m. to 10:00 p.m.) - $3.00
b. Overnight (10:00 p.m. to 10:00 p.m.) - $5.00
c. Season Pass (Day use only) - $30.00
d. Season Pass (Overnight) - $50.00

R651-611-5. Reservations.

A. Camping Reservation Fees.
1. Individual Campsite $7.00
2. Group site or building rental $10.25
3. Fees identified in #1 and #2 above are to be charged for both initial reservations and for changes to existing reservations.

B. All park facilities will be allocated on a first-come, first-serve basis.

C. Selected camp and group sites are reservable in advance by calling 322-3770 or 1-800-322-3770.

D. Applications for reservation of skating rinks, meeting rooms, buildings, mooring docks, dry storage spaces and other sites not covered above, will be accepted by the respective park personnel beginning on the first business day of February for the next 12 months. Application forms and instructions are available at the park.

E. All unreserved mooring docks, dry storage spaces and camp picnic sites are available on a first-come, first-serve basis.

F. The park manager for any group reservation or special use permit may require a cleanup deposit.

G. Golf course reservations for groups of 20 or more and tournaments will be accepted for the calendar year beginning the first Monday of March. Reservations for up to two starting times (8 persons) may be made for Saturday, Sunday and Monday, the preceding Monday; and for Tuesday through Friday, the preceding Saturday. Reservations will be taken by phone and in person during golf course hours.

H. One party will reserve park facilities for more than fourteen (14) consecutive days in any 30-day period.

KEY: parks, fees
[~~September 16, 2002~~]2003
Notice of Continuation August 7, 2001
63-11-17(2)

Natural Resources, Wildlife Resources
R657-23
Process for Providing Proof of Completion of Hunter Education

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 25890
FILED: 12/31/2002, 11:58

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is being amended to provide the process and requirements for hunter education instructor and student training; and clarification of presenting and obtaining proof of having successfully completed an approved hunter education course.

SUMMARY OF THE RULE OR CHANGE: Provisions of this rule are being amended to provide the process and requirements for hunter education instructor and student training. Provisions are being added to allow the division to offer the hunter education program through the following: 1) a traditional hunter education course by attending 12 classroom hours, which will include the written test and practical shooting test; 2) a home study course, which allows a student to substitute seven of the required 12 hours of classroom time; and 3) an online hunter education course, which allows a student to substitute the 12 hours of classroom time by completing the hunter education course online and attending a one-time field day to complete the written test and practical shooting test. Section R657-23-5 is being added to provide the requirements for becoming a certified hunter education instructor. Other changes are made for consistency and clarity.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 23-19-11

ANTICIPATED COST OR SAVINGS TO:
❖ THE STATE BUDGET: This rule is being amended to provide the process and requirements for hunter education instructor and student training. The Division of Wildlife Resources (DWR) determines that this amendment does not create a cost or savings impact to the state budget or DWR's budget.
❖ LOCAL GOVERNMENTS: None--This filing does not create any direct cost or savings impact to local governments because they are not directly affected by the rule. Nor are local governments indirectly impacted because the rule does not create a situation requiring services from local governments.
❖ OTHER PERSONS: This rule is being amended to provide the process and requirements for hunter education instructor and student training. Therefore, this amendment does not impose any additional requirements on other persons, nor generate a cost or savings impact to other persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: This rule is being amended to provide the process and requirements for hunter education instructor and student training. DWR determines that there are no compliance costs associated with this amendment.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The amendments to this rule do not create an impact on businesses.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
NATURAL RESOURCES
WILDLIFE RESOURCES
1594 W NORTH TEMPLE
SALT LAKE CITY UT 84116-3154, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Debbie Sundell at the above address, by phone at 801-538-4707, by FAX at 801-538-4745, or by Internet E-mail at debbiesundell@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 02/14/2003.

THIS RULE MAY BECOME EFFECTIVE ON: 02/15/2003

AUTHORIZED BY: Kevin Conway, Director

R657. Natural Resources, Wildlife Resources.
R657-23. [~~Process for Providing Proof of Completion of~~]Utah Hunter Education Program.
R657-23-1. Purpose and Authority.

Under authority of Section 23-19-11, this rule provides the process [~~for~~]and requirements for:

(1) hunter education instructor and student training; and

(2) presenting and obtaining proof of having successfully completed an approved hunter education course.

R657-23-2. Definitions.

(1) Terms used in this rule are defined in Section 23-13-2.

(2) In addition:

(a) "Approved hunter education course" means any hunter education course that qualifies a person to receive a resident hunting license in the state, province, or country in which the hunter education course is offered.

(b) "Authorized division representative" means a volunteer hunter education instructor who has been approved by the division to issue duplicate blue cards.

(c) "Blue Card" means the certificate of completion issued by the division for having passed a Utah hunter education course or an approved hunter education course.

[~~(c)~~](d) "Certificate of completion" means a card, certificate, or other document issued by the wildlife agency of a state, province, or country, and signed by a hunter education instructor, verifying successful completion of an approved hunter education course.

(e) "Field day" means a student has successfully completed the hunter education course online and shall participate in taking a written test, a practical shooting test, and instruction on firearms safety and hunter responsibility during a minimum of five hours with a hunter education instructor.

(f) "Home study hunter education course" means a hunter education course that is offered to a person 18 years of age or older and is completed at home substituting seven hours of the minimum 12 hours classroom requirement and is taken through the division's home study workbook.

(g) "Instructor[~~(d) "Authorized division representative~~]" means a volunteer hunter education instructor [~~who has been approved by the division to issue duplicate blue cards.~~]or division employee who has been certified by the division to teach the hunter education program to students.

(h) "Online hunter education course" means a hunter education course that is completed online substituting the minimum 12 hours classroom requirement, and is taken through the division's Internet address.

(i) "Student" means a person who is registered in a hunter education course being taught by a certified hunter education instructor.

(j) "Traditional hunter education course" means a hunter education course that is a minimum of 12 classroom hours, a written test and a practical shooting test.

R657-23-3. Hunter Education Required.

(1)(a) To obtain a hunting license, any person born after December 31, 1965, must present proof of having passed a division approved hunter education course.

(b) A person may take a hunter education course offered by the division as provided in Subsection (2), (3), or (4).

(2) Completion of a traditional[~~(2)(a) Completion of a Utah~~] hunter education course requires students to:

[~~(i)~~](a) attend the minimum 12-hour classroom course;

[~~(ii)~~](b) behave in a safe and responsible manner in class;

[~~and~~

~~(iii)~~](c) obtain a passing score [~~on a written test and shooting practical as set by the division guidelines for~~]of at least 75% on a written test; and

(d) obtain a passing score of at least 50% on a shooting practical test.

(3) Completion of the home study hunter education course requires students to:

(a) complete the hunter education [~~program.~~]home study workbook;

[~~(b) The division~~](b) attend two classes for a minimum of five hours of classroom instruction within a five-week period;

(c) behave in a safe and responsible manner while attending the class;

(d) obtain a passing score of at least 75% on a written test; and

(e) obtain a passing score of at least 50% on a shooting practical test.

(4) Completion of the online hunter education course requires students to:

(a) preregister for the field day by submitting the registration form and hunter education fee to the division through the division's Internet address;

(b) comprehensively read each chapter of the online workbook, and complete and obtain a passing score of at least 80% of each quiz that is provided after each chapter of the workbook;

(c) behave in a safe and responsible manner while attending the field day;

(d) obtain a passing score of at least 75% on a written test; and

(e) obtain a passing score of at least 50% on a shooting practical test.

(5)(a) The division, through the instructor, issues a Blue Card to each individual who successfully completes the [~~Utah~~]hunter education course.

(b) A Blue Card shall not be issued to a person who has not successfully completed the hunter education requirements.

(6) The division shall accept other[~~(c) Other~~] states, provinces, and countries [~~develop~~]criteria and [~~passing~~]qualifications for their respective courses, which meet or exceed the International Hunter Education Association hunter education standards.

R657-23-4. Documents Accepted as Proof of Completion of a Hunter Education Course.

(1) The division and division approved license agents shall accept proof of completion of an approved hunter education course in accordance with Section 23-19-11.

(2)(a) Any person who has completed an approved hunter education course in another state, province, or country and becomes a Utah resident must obtain a Blue Card prior to purchasing a resident hunting license.

(b) The person must present proof of completion of an approved hunter education course to a division office as required under Subsection (1).

(c) The division shall issue the person a Blue Card at no cost.

(3)(a) If an applicant for a nonresident hunting license is not able to present a hunting license or a certificate of completion as provided in Subsection (1), the division may contact another state, province, or country to verify the completion of a hunter education course so that a nonresident hunting license may be issued.

(4)(a) If an applicant for a resident or nonresident hunting license has completed a hunter education course in Utah but is not able to present a hunting license or a certificate of completion as provided in Subsection (1), the division may research the division's hunter education records to verify that the applicant has completed the hunter education course.

(b) Upon issuance of the hunting license, the division shall indicate the applicant's hunter education number on the face of the hunting license.

(5)(a) If a Blue Card is lost or destroyed, a person may apply by mail or in person at a division office, or may contact an authorized division representative to obtain a duplicate Blue Card. The person must complete an affidavit and request a record's search.

(b) Upon verification of completion of the hunter education course, the division or authorized division representative may issue the person a duplicate Blue Card.

(6) The division requires any person whose records cannot be found or who cannot be verified as having completed a hunter education course to take the complete course as required under [~~Subsection~~]Section R657-23-3[~~(2)(a)~~].

(7) For the purpose of issuing a hunting license, the division may, upon request, provide verification to another state's wildlife agency that a resident or former resident of Utah has met the Utah hunter education requirements.

(8) The division may charge a fee for the services provided in Subsections (3), (4), and (5).

R657-23-5. Hunter Education Instructor Training.

(1) A person must be 21 years of age or older to become a certified hunter education instructor.

(2) Completion of a hunter education instructor course requires a person to:

(a) attend the 18 hour classroom course;

(b) pass a criminal background check;

(c) obtain a passing score of at least 75% on a written test; and

(d) obtain a passing score of at least 50% on a shooting practical test.

(3) The division shall issue a hunter education instructor card to each individual who successfully completes the hunter education instructor course.

KEY: wildlife, game laws, hunter education*
[~~July 18, 2001~~]2003
Notice of Continuation May 30, 2001
23-19-11

▼ ▼

Natural Resources, Wildlife Resources
R657-33
Taking Bear

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 25892
FILED: 12/31/2002, 12:01

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is being amended pursuant to Wildlife Board meetings conducted annually for taking public input and reviewing the division's bear program.

SUMMARY OF THE RULE OR CHANGE: Subsection R657-33-12(4) is being amended to clarify that when dogs are used to take a bear and there is not an open pursuit season, the owner and handler of the dogs must have a valid pursuit permit and be accompanied by a licensed hunter, or have a valid limited entry bear permit for the limited entry unit being hunted. Section R657-33-25, Taking Furbearers, is being deleted. This section is currently provided in Rule R657-11. Section R657-33-32 is being amended to allow a person to amend or withdraw an application in the limited entry bear drawing. Section R657-33-33 is being amended to clarify and make consistent the bear bonus point system with all other drawing bonus point systems. Other changes are made for consistency and clarity.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 23-14-18 and 23-14-19

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: This amendment clarifies the procedures and requirements for obtaining bear permits, and other administrative details. Therefore, the Division of Wildlife Resources (DWR) determines that these amendments do not create a cost or savings impact to the state budget or DWR's budget.

❖ LOCAL GOVERNMENTS: None--This filing does not create any direct cost or savings impact to local governments because they are not directly affected by the amendment. Nor are local governments indirectly impacted because the amendment does not create a situation requiring services from local governments.

❖ OTHER PERSONS: This amendment clarifies the procedures and requirements for obtaining bear permits, and other administrative details. The amendments do not impose any additional requirements on other persons, nor generate a cost or savings impact to other persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The amendments provide procedures and requirements for obtaining bear permits, and other administrative details. DWR determines that there are no additional compliance costs associated with this amendment.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The amendments to this rule do not create an impact on businesses.

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

NATURAL RESOURCES
WILDLIFE RESOURCES
1594 W NORTH TEMPLE
SALT LAKE CITY UT 84116-3154, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Debbie Sundell at the above address, by phone at 801-538-4707, by FAX at 801-538-4745, or by Internet E-mail at debbiesundell@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 02/14/2003.

THIS RULE MAY BECOME EFFECTIVE ON: 02/15/2003

AUTHORIZED BY: Kevin Conway, Director

R657. Natural Resources, Wildlife Resources.
R657-33. Taking Bear.
R657-33-3. Permits for Taking Bear.

(1)(a) To take a bear, a person must first obtain a valid limited entry bear permit for a specified [~~management~~]hunt unit as provided in the proclamation of the Wildlife Board for taking bear.

(b) To pursue bear, a person must first obtain a valid bear pursuit permit from a division office.

(2) Any limited entry bear permit purchased after the season opens is not valid until seven days after the date of purchase.

(3) Residents and nonresidents may apply for limited entry bear permits and purchase bear pursuit permits.

R657-33-12. Use of Dogs.

(1) Dogs may be used to take or pursue bear only during open seasons as provided in the proclamation of the Wildlife Board for taking bear.

(2) The owner and handler of dogs used to take or pursue bear must have a valid bear permit or bear pursuit permit in possession while engaged in taking or pursuing bear.

(3) When dogs are used in the pursuit of a bear, the licensed hunter intending to take the bear must be present when the dogs are released and must continuously participate in the hunt thereafter until the hunt is completed.

(4) When dogs are used to take a bear and there is not an open pursuit season, the owner and handler of the dogs must have a valid pursuit permit and be accompanied by a licensed hunter as provided in Subsection (3), or have a valid limited entry bear permit for the limited entry unit being hunted.

R657-33-25[~~. Taking Furbearers.~~

~~(1) Furbearers, including badger, beaver, black-footed ferret, bobcat, fisher, red fox, gray fox, kit fox, lynx, marten, mink, otter, ringtail, skunk, weasel, wolf and wolverine may be taken only in accordance with the Furbearer Proclamation.~~

~~(2) A person may not disturb, remove or possess a trap, trapping device or any wildlife held in a trap without first obtaining written permission from the trap owner.~~

~~R657-33-26~~]. Taking Bear.

(1) A person may take only one bear during the season and from the limited entry area specified on the permit.

(2)(a) A person may not take or pursue a female bear with cubs.

(b) Any bear, except a cub or a sow accompanied by cubs, may be taken during the prescribed seasons.

(3) Limited entry permits may be obtained by following the application procedures provided in this rule and the proclamation of the Wildlife Board for taking and pursuing bear.

(4)(a) A mandatory orientation course is required for hunters who draw a permit for the following hunts:

(i) South Slope, Yellowstone;

(ii) South Slope, Vernal/Diamond Mountain/Bonanza;

(iii) Nine Mile, Anthro-Range Creek;

(iv) LaSal Mountains, Dolores Triangle;

(v) San Juan;

(vi) Manti, North;

(vii) Manti, South;

(viii) Wasatch Mountains, West; and

(ix) Wasatch Mountains, Currant Creek-Avintaquin.

(b) Hunters will be notified of the orientation [~~date, time and location~~]process.

(c) Permits for spring bear hunts will be distributed to successful applicants [~~at~~]upon completion of the orientation.

(5) Season dates, closed areas and limited entry permit areas are published in the proclamation of the Wildlife Board for taking and pursuing bear.

R657-33-[~~27~~]26. Bear Pursuit.

(1) Bear may be pursued only by persons who have obtained a bear pursuit permit. The bear pursuit permit does not allow a person to kill a bear.

(2) Pursuit permits may be obtained at Division offices.

(3) A person may not:

(a) take or pursue a female bear with cubs;

(b) repeatedly pursue, chase, tree, corner or hold at bay the same bear during the same day; or

(c) possess a firearm or any device that could be used to kill a bear while pursuing bear.

(i) The weapon restrictions set forth in Subsection (c) do not apply to a person licensed to carry a concealed weapon in accordance with Title 53, Chapter 5, Part 7 of the Utah Code, provided the person is not utilizing or attempting to utilize the concealed weapon to injure or kill bear.

(4) If eligible, a person who has obtained a bear pursuit permit may also obtain a limited entry bear permit.

(5) When dogs are used to take a bear and there is not an open pursuit season, the owner and handler of the dogs must have a valid pursuit permit and be accompanied by a licensed hunter as provided in Section R657-33-12[~~(3)~~].

(6) Season dates, closed areas and bear pursuit permit areas are published in the proclamation of the Wildlife Board for taking and pursuing bear.

R657-33-[~~28~~]27. General Application Information.

(1) A person may not apply for or obtain more than one bear permit [~~for~~]within the same calendar year, except as provided in Subsection R657-33-27(3).

(2) A person must be 12 years of age or older by the posting date of the drawing to apply for a bear permit.

(3) Limited entry bear permits are valid only for the [~~management~~]hunt unit and for the specified season designated on the permit.

R657-33-[~~29~~]28. Waiting Period.

(1) Any person who purchases a permit valid for the current season, may not apply for a permit for a period of two years.

(2) Any person who draws a permit for the current season, may not apply for a permit for a period of two years.

R657-33-[~~30~~]29. Application Procedure.

(1) Applications are available from license agents and division offices.

(2)(a) Group applications are not accepted. A person may not apply more than once annually.

(b) Applicants may select up to five [~~management~~]hunt unit choices when applying for limited entry bear permits. [~~Management~~]Hunt unit choices must be listed in order of preference.

(c) Applicants must specify on the application whether they want a limited entry bear permit or a limited entry bear archery permit.

(i) The application may be rejected if the applicant does not specify either a limited entry bear permit or limited entry bear archery permit.

(ii) Any person obtaining a limited entry bear archery permit must also obtain a certificate of registration if intending to use bait as provided in Section R657-33-14.

(3)(a) Applications must be mailed by the date prescribed in the proclamation of the Wildlife Board for taking and pursing bear. Applications filled out incorrectly or received later than the date prescribed in the bear proclamation may be rejected.

(b) If an error is found on an application, the applicant may be contacted for correction.

(c) The opportunity to correct an error is not guaranteed.

(4)(a) Late applications received by the date published in the proclamation of the Wildlife Board for taking bear will not be considered in the drawing, but will be processed for the purpose of entering data into the division's draw database to provide:

(i) future preprinted applications;

(ii) notification by mail of late application and other draw opportunities; and

(iii) re-evaluation of division or third-party errors.

(b) The [~~$5~~]handling fee will be used to process the late application. Any permit fees submitted with the application will be refunded.

(c) Late applications received after the date published in the proclamation of the Wildlife Board for taking bear, will not be processed and will be returned.

(5) Any person who applies for a hunt that occurs on private land is responsible for obtaining written permission from the landowner to access the property. To avoid disappointment and wasting the permit and fee if access is not obtained, hunters should get permission before applying. The division does not guarantee access and does not have the names of landowners where hunts occur.

(6) Only a resident may apply for or obtain a resident permit and only a nonresident may apply for or obtain a nonresident permit, except as provided in Section R657-33-32(6)(b).

(7) To apply for a resident permit, a person must establish residency at the time of purchase.

(8) The posting date of the drawing shall be considered the purchase date of a permit.

R657-33-[~~31~~]30. Fees.

(1) Each application must include:

(a) the permit fee; and

(b) the nonrefundable handling fee.

(2) Fees must be paid in accordance with Rule R657-42-8.

R657-33-[~~32~~]31. Drawings and Remaining Permits.

(1) If permits remain after all choices have been evaluated separately for residents and nonresidents, a second evaluation will be done allowing cross-over usage of remaining resident and nonresident permit quotas.

(2) Drawing results will be posted at the Lee Kay Center, Cache Valley Hunter Education Center, division offices and on the division Internet address on the date published in the proclamation of the Wildlife Board for taking and pursuing bear.

(3) Permits remaining after the drawing will be sold only by mail or on a first-come, first-served basis beginning and ending on the dates provided in the proclamation of the Wildlife Board for taking and pursuing bear. These permits may be purchased by either residents or nonresidents.

(4) Waiting periods do not apply to the purchase of remaining permits. However, waiting periods are incurred as a result of purchasing remaining permits.

(5)(a) A person may withdraw their application for the bear drawing by requesting such in writing by the date published in the proclamation of the Wildlife Board for taking and pursuing bear.

(b) The applicant must send their notarized signature with a statement requesting that their application be withdrawn to the Salt Lake Division office.

(6)(a)[~~An applicant may reapply in the limited entry bear drawing provided:~~

~~(a) the original application is withdrawn;~~

~~(b) the new application is submitted with the request to withdraw the original application;~~

~~(c) both the new application and request to withdraw the original application are received by the initial application deadline; and~~

~~(d) both the new application and request to withdraw the original application are submitted to the Salt Lake Division office.~~

~~(7)(a)~~] An applicant may amend their application for the limited entry bear permit drawing by requesting such in writing by the initial application deadline.

(b) The applicant must send their notarized signature with a statement requesting that their application be amended to the Salt Lake Division office.

(c) The applicant must identify in their statement the requested amendment to their application.

(8) Handling fees will not be refunded.

R657-33-[~~33~~]32. Bonus Points.

(1) A bonus point is awarded for:

(a) a valid unsuccessful application in the drawing; or[~~-~~]

[~~(2)~~](b) a valid application when applying for a bonus point in the bear drawing.

(2)(a) A person may apply for one bear bonus point each year, except a person may not apply in the drawing for both a limited entry bear permit and a bear bonus point in the same year.

(b) A person may not apply for a bonus point if that person is ineligible to apply for a permit.

(c) Group applications will not be accepted when applying for bonus points.

(3)(a) Each applicant receives a random drawing number for:

(i) the current valid limited entry bear application; and

(ii) each bonus point accrued.

(b) The applicant will retain the lowest random number for the drawing.

(4)(a) Fifty percent of the permits for each hunt unit will be reserved for applicants with bonus points.

(b) Based on the applicant's first choice, the reserved permits will be designated by a random drawing number to eligible applicants with the greatest number of bonus points.

(c) If reserved permits remain, the reserved permits will be designated by random number to eligible applicants with the next greatest number of bonus points.

(d) The procedure in Subsection (c) will continue until all reserved permits have been issued or no applications for that hunt unit remain.

(e) Any reserved permits remaining and any applicants who were not selected for reserved permits will be returned to the drawing.

(5) Bonus points are forfeited if [~~the person obtains a permit, including any permit obtained after the drawing.~~]a person obtains a limited entry bear permit except as provided in Subsection (6).

[~~(3)~~](6) Bonus points are not forfeited if a person is successful in obtaining a Conservation Permit.

(7) Bonus points are not transferable.

[~~(4)~~](8) Bonus points are tracked [~~by using the applicant's social security number or division~~]using Social Security numbers or Division-issued hunter identification [~~number~~]numbers.

R657-33-[~~34~~]33. Refunds.

(1) Unsuccessful applicants, who applied in the initial drawing and who applied with a check or money order, will receive a refund in May.

(2) Unsuccessful applicants, who applied with a credit card, will not be charged for a permit.

(3) The handling fees are nonrefundable.

R657-33-[~~35~~]34. Duplicate License and Permit.

(1) Whenever any unexpired license, permit, tag or certificate of registration is destroyed, lost or stolen, a person may obtain a duplicate from a division office, for five dollars or half of the price of the original license, or permit, whichever is less.

(2) The division may waive the fee for a duplicate unexpired license, permit, tag or certificate of registration provided the person did not receive the original license, permit, tag or certificate of registration.

KEY: wildlife, bear[~~*~~], game laws
[~~February 26, 2002~~]2003
Notice of Continuation March 24, 1998
23-14-18
23-14-19
23-13-2

▼ ▼

Natural Resources, Wildlife Resources

R657-44

Big Game Depredation

NOTICE OF PROPOSED RULE
(Repeal and Reenact)
DAR FILE NO.: 25894
FILED: 12/31/2002, 12:03

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: First, this rule is being repealed and reenacted due to the significant changes in formatting. Second, this rule is being amended to provide the standards and procedures for assessing big game depredation and mitigation procedures for big game depredation.

SUMMARY OF THE RULE OR CHANGE: Section R657-44-2 provides the following additional definitions: 1) "Commercial Gain"; 2) "Cultivated Crops," to include crops on privately leased state and federal lands; 3) "Damage Incident Period," to change the words "reduce or eliminate depredation" to "prevent further depredation" in order to more accurately reflect the intent in statute; 4) "Livestock Forage"; and 5) "Private Land," to exclude tribal trust lands. The following sections of this rule have been rearranged and clarified into a more logical sequence: 1) Section R657-44-3, Damage to Cultivated Crops on Private Land; 2) Section R657-44-4, Damage to Fences on Private Land; 3) Section R657-44-5, Damage to Irrigation Equipment on Private Land; 4) Section R657-44-6, Compensation for Damage to Crops, Fences, and Irrigation Equipment on Private Land; and 5) Section R657-44-7, Damage to, or Consumption of Livestock Forage on Private Land. Sections R657-44-3, R657-44-4, R657-44-5, and R657-44-6, of this rule are found in separate sections of the Utah Code making it difficult to locate and understand. For example, it is commonly understood that damage to cultivated crops qualifies for monetary compensation and distinct methods for addressing damage prevention. Damage to fences and irrigation equipment also qualify and are addressed almost identically with crops; however, fences and irrigation equipment are covered in the section with damage to livestock forage. The latter is addressed significantly different from the former and does not qualify for compensation. The rule now addresses these topics in an understandable, logical sequence. Because Sections R657-44-3, R657-44-4, and R657-44-5 all qualify for compensation, they are immediately followed by the compensation criteria. The topic of livestock forage is left to the last and is distinct from the others. Provisions of the rule are being amended to add new sections or make clarification of the following: 1) criteria giving the division director guidance in when and how to authorize mitigation permits for antlered animals; 2) providing authority to withhold mitigation permits and vouchers from individuals who have been determined to abuse the privilege, by violating the regulations and laws, which defeat the purpose of these permits; 3) references to the Utah Code allowing establishment of conservation leases where appropriate; 4) clarification that hunting permits for landowners having rangelands are provided through Rule R657-43; 5) an option to select general season buck deer and bull elk permittees in order to take animals depredating crops in general season hunting units; and 6) criteria authorizing a depredation hunter pool.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 23-16-2, 23-16-3, 23-16-3.5, and 23-16-4

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: These amendments are for significant changes in formatting, and the clarification of the standards and procedures for assessing big game depredation, and mitigation procedures for big game depredation. The division director's authority to determine when permits or vouchers for antlered animals are authorized may lead to: 1) a savings of $30,000 annually to the division; and 2) agricultural producers will be better served and directly benefit in excess of $30,000 annually. Otherwise, the Division of Wildlife Resources (DWR) determines that these amendments do not create a cost or savings impact to the state budget or DWR's budget.

❖ LOCAL GOVERNMENTS: None--This filing does not create any direct cost or savings impact to local governments because they are not directly affected by the rule. Nor are local governments indirectly impacted because the rule does not create a situation requiring services from local governments.

❖ OTHER PERSONS: These amendments are for significant changes in formatting, and the clarification of the standards and procedures for assessing big game depredation, and mitigation procedures for big game depredation. The division director's authority to determine when permits or vouchers for antlered animals are authorized may lead to: 1) a savings of $30,000 annually to the division; and 2) agricultural producers will be better served and directly benefit in excess of $30,000 annually. In addition, persons having permits or vouchers withheld for abusing the privilege of receiving them will no longer receive an income from the sale of the vouchers. This could amount to a loss of $2,000 to $6,000 for an estimated 5 to 10 individuals annually. Otherwise, these amendments do not impose any additional requirements on other persons, nor generate a cost or savings impact to other persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The division director's authority to determine when permits or vouchers for antlered animals are authorized may lead to: 1) a savings of $30,000 annually to the division; and 2) agricultural producers will be better served and directly benefit in excess of $30,000 annually. In addition, persons having permits or vouchers withheld for abusing the privilege of receiving them will no longer receive an income from the sale of the vouchers. This could amount to a loss of $2,000 to $6,000 for an estimated 5 to 10 individuals annually.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The amendments to this rule do not create an impact on businesses.

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

NATURAL RESOURCES
WILDLIFE RESOURCES
1594 W NORTH TEMPLE
SALT LAKE CITY UT 84116-3154, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Debbie Sundell at the above address, by phone at 801-538-4707, by FAX at 801-538-4745, or by Internet E-mail at debbiesundell@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 02/14/2003.

THIS RULE MAY BECOME EFFECTIVE ON: 02/15/2003

AUTHORIZED BY: Kevin Conway, Director

R657. Natural Resources, Wildlife Resources.
[~~R657-44. Big Game Depredation.~~
~~R657-44-1. Purpose and Authority.~~

~~Under authority of Section 23-16-2, 23-16-3, 23-16-3.5 and 23-16-4, this rule provides:~~

~~(1) the procedures, standards, requirements, and limits for assessing big game depredation; and~~

~~(2) mitigation procedures for big game depredation.~~

~~R657-44-2. Definitions.~~

~~(1) Terms used in this rule are defined in Section 23-13-2.~~

~~(2) In addition:~~

~~(a) "Alternate drawing list" as defined in R657-42-2(2)(a).~~

~~(b) "Cultivated crops from or upon cleared and planted land" means any crop from or upon cleared and planted land that is routinely irrigated or routinely mechanically or manually harvested, including crop residues that have forage value for livestock, for commercial gain from or upon private land.~~

~~(c) "Damage incident period" means the period of time agreed upon between the landowner and division during which big game may be taken to reduce or eliminate depredation. All depredation incidents must end June 30 annually, an incident may be re-initiated July 1.~~

~~(d) "Irrigated" means the controlled application of water for agricultural purposes through man-made systems to supply water not satisfied by rainfall.~~

~~(e) "Mitigation permit voucher" means a document issued to a landowner or lessee, allowing the landowner or lessee to designate who may purchase a big game mitigation permit.~~

~~(f) "Private land" means land in agricultural use as provided in Section 59-2-502 and eligible for agricultural use valuation as provided in Section 59-2-503 and 59-2-504.~~

~~R657-44-3. Damage to Cultivated Crops.~~

~~(1) The owner of cultivated crops from or upon cleared and planted land shall immediately, upon discovery of big game damage, notify the appropriate regional supervisor or division representative.~~

~~(2) Notification must be made:~~

~~(a) orally to expedite field investigations to one of the regional division offices or division representative; and~~

~~(b) in writing to one of the regional division offices or a division representative.~~

~~(3) The regional supervisor or division representative shall contact the crop owner within 72 hours of notification to determine the nature of the damage and take appropriate action for the extent of the damage experienced or expected.~~

~~(4) The damage incident period shall be determined and agreed upon by the division representative and the crop owner.~~

~~(5) Division action may include any of the following:~~

~~(a) sending a Division representative onto the premises to control or remove the big game animals, including:~~

~~(i) herding;~~

~~(ii) capture and relocation;~~

~~(iii) temporary fencing; or~~

~~(iv) removal, as authorized by the division director or the division director's designee;~~

~~(b) recommending to the Wildlife Board an antlerless big game hunt in the next big game season framework;~~

~~(c) scheduling a depredation hunter pool hunt as authorized by the Wildlife Board;~~

~~(d) issuing big game mitigation permit vouchers to the landowner, allowing the landowner to designate who shall receive the big game mitigation permits to be used for hunting on the owner's or lessee's land during a general or special hunt authorized by the Wildlife Board;~~

~~(e) issue big game mitigation permit vouchers to a landowner association that has applied to the division providing a map of the association lands, the signatures of the landowners in the association and designated an association representative to act as liaison with the division, allowing the landowner association to designate who shall receive the big game mitigation permits to be used for hunting on the association's land during a general season or special season as authorized by the Wildlife Board; or~~

~~(f) issuing permits to the landowner or lessee for the harvest of big game animals causing depredation. No more than five deer or pronghorn and two elk may be retained by the landowner or lessee.~~

~~(6) A landowner or lessee who elects to pursue mitigation through measures in subsections (5) (d) through (5)(f) may not subsequently file a claim under Section 23-16-4, except as provided by an agreement made under Section 23-16-3.5(3)(b)(i).~~

~~(7) The options in subsections (5)(b) and (5)(f) are for antlerless animals only. Deer and pronghorn hunts may be August 1 through December 31 and elk hunts may be August 1 through January 31.~~

~~(8) The division director must approve any permits or vouchers issued for antlered animals.~~

~~(9)(a) The owner of cultivated crops from or upon cleared and planted land is authorized to kill big game animals doing damage to his crops after allowing the division a minimum of 72 hours to remove the offending animals or provide mitigation options after again notifying the division, after the initial 72 hour period, of the necessity of having to remove the animals himself to protect his crops.~~

~~(b) Notification must be made:~~

~~(i) orally to the appropriate regional division office or division representative; and~~

~~(ii) followed in writing to the appropriate regional division office or division representative.~~

~~(c) Immediately after making the kill, the crop owner shall notify the appropriate division representative. The carcass of any big game animal killed pursuant to Subsection (8)(a) shall become the property of the division and shall be disposed of by it.~~

~~(d) The authority of the owner of cultivated crops from or upon cleared and planted land to remove big game animals continues until the appropriate regional supervisor or division representative and crop owner agree that the damage incident is concluded.~~

~~(e) Killing big game animals after the damage incident period has expired is a violation of the Wildlife Code.~~

~~(f) The expiration of the damage incident period does not preclude the crop owner from making future claims.~~

~~R657-44-4. Damage to Livestock Forage, Fences, or Irrigation Equipment on Private Lands.~~

~~(1) If big game animals are damaging livestock forage, fences, or irrigation equipment on private land or are consuming livestock forage~~

on private land, the landowner or lessee may request the division to take action to prevent depredation.

(2) The request shall be made:

(a) orally to one of the regional division offices or division representative to expedite field investigations; and

(b) in writing to one of the regional division offices or division representative.

(3) The appropriate division representative shall investigate the situation within a reasonable time, not to exceed 72 hours, after receiving the request.

(4) If it appears that depredation by big game will continue, the division may, after consulting with the landowner or lessee, utilize one or any of the following options to address the depredation:

(a) send a Division representative onto the premises to control or remove the big game animals, including:

(i) herding;

(ii) capture and relocation;

(iii) temporary fencing; or

(iv) removal, as authorized by the division director or the division director's designee;

(b) recommend an antlerless big game hunt to the Wildlife Board in the next big game season framework;

(c) schedule a depredation hunter pool hunt, as authorized by the Wildlife Board;

(d) issue big game mitigation permit vouchers to the landowner, allowing the landowner to designate who shall receive the big game mitigation permits to be used for hunting on the owner's or lessee's land during a general season or special hunt as authorized by the Wildlife Board;

(e) issue big game mitigation permit vouchers to a landowner association that has applied to the division providing a map of the association lands, the signatures of the landowners in the association and designated an association representative to act as liaison with the division, allowing the landowner association to designate who shall receive the big game mitigation permits to be used for hunting on the association's land during a general season or special season as authorized by the Wildlife Board; or

(f) issue permits to the landowner or lessee for the harvest of big game animals causing depredation. No more than five deer or pronghorn, and two elk may be retained by the landowner or lessee.

(5) Deer and pronghorn hunts may be August 1 through December 31 and elk hunts may be August 1 through January 31. Antlerless permits shall not exceed ten percent of the animals on the private land. A maximum of twenty permits per landowner is allowed.

(6) The division director must approve any permits or vouchers issued for antlered animals.

(7)(a) The Division may enter into a conservation lease with the owner or lessee of private land for a fee, or other remuneration, as compensation for big game depredation.

(b) Any conservation lease entered into under this rule shall provide that the claimant may not unreasonably restrict hunting on the land, or passage through the land to access public land for the purpose of hunting, if those actions are necessary to control or mitigate damage by big game.

(8) In determining appropriate mitigation, the division shall consider:

(a) the extent of damage experienced or expected;

(b) any revenue the landowner derives from participation in a cooperative wildlife management unit, use of landowner permits, and charging for hunter access; and

(c) the population management objective as established in management plans approved by the Wildlife Board.

(9) The damage incident period shall be determined and agreed upon by the division representative and the landowner or lessee.

(10) A landowner or lessee who elects to pursue mitigation through the measures in Subsections (4)(d) through (4)(e) may not subsequently file a claim under Section 23-16-4, except as provided by an agreement made under Section 23-16-3.5(3)(b)(i).

R657-44-5. Compensation for Damage to Crops, Fences, or Irrigation Equipment.

(1) The Division may provide compensation to claimants for damage caused by big game to:

(a) cultivated crops from or upon cleared and planted land, including crop residues that provide forage value for livestock;

(b) fences on private land; or

(c) irrigation equipment on private land.

(2) To be eligible to receive compensation, the claimant must notify the division of the damage within 72 hours after the damage is discovered.

(3) The appraisal of damage shall be made by the claimant and the division as soon after notification as possible.

(4) The procedures and guidelines for big game damage appraisal adopted by the division director shall be used as the basis for damage appraisal.

(5) If the claimant and the division are unable to agree on a fair and equitable damage payment, they shall designate a third party, consisting of one or more persons familiar with the crops, fences, or irrigation equipment and the type of big game animals doing the damage, to appraise the damage.

(6) Any claim of $500 or less may be paid after appraisal of the damage, unless the claim brings the total amount of claims submitted by the claimant in the fiscal year to an amount in excess of $500.

(7) Any claim in excess of $500 or claim that brings the total amount of claims submitted by the claimant in the fiscal year to an amount in excess of $500 may not be paid until the total amount of the approved claims of all claimants and expenses for fencing materials for the fiscal year are determined. If the total exceeds the amount appropriated by the Legislature, claims in excess of $500, or any claim that brings the total amount of a claimant's claims in a fiscal year to an amount in excess of $500, shall be prorated.

(8) The division may deny or limit compensation if the claimant:

(a) has failed to exercise reasonable care and diligence to avoid the loss or minimize the damage; or

(b) has unreasonably restricted hunting on land under the claimant's control or passage through the land to access public lands for the purpose of hunting, after receiving written notification from the division of the necessity of allowing such hunting or access to control or mitigate damage by big game.

R657-44-6. Depredation Hunts for Buck Deer, Buck Pronghorn or Bull Elk.

(1)(a) Buck deer, buck pronghorn or bull elk depredation hunts that are not published in the big game proclamations of the Wildlife Board may be held.

(b) Buck deer, buck pronghorn or bull elk depredation hunts may be held when the buck deer, buck pronghorn, or bull elk are:

(i) causing damage to agricultural crops;

(ii) a significant public safety hazard; or

(iii) causing a nuisance in urban areas.

~~(2) The depredation hunts may occur on short notice, involve small areas, and be limited to only a few hunters.~~

~~(3)(a) Depredation buck deer, buck pronghorn or bull elk hunters shall be selected from:~~

~~(i) persons that currently possess a limited entry buck deer, buck pronghorn, or bull elk permit; or~~

~~(ii) the alternate drawing list for that limited entry unit.~~

~~(b) Pre-season depredation hunters shall be selected using hunters possessing a limited entry buck deer, buck pronghorn, or bull elk permit for that unit and secondarily, if necessary, shall use hunters from the alternate drawing list.~~

~~(c)(i) Post-season depredation hunters shall be selected using hunters from the alternate drawing list.~~

~~(ii) If the depredation hunt is not on a limited entry unit, hunters shall be selected using the alternate drawing list from the nearest adjacent limited entry unit.~~

~~(4)(a) The Division may contact hunters from the alternate drawing list to participate in a depredation hunt for a buck deer, buck pronghorn, or bull elk prior to the statewide general hunt for a given species of big game.~~

~~(b) Hunters selected for a buck deer, buck pronghorn, or bull elk depredation hunt who do not possess an unfilled, valid buck deer, buck pronghorn, or bull elk permit for the species to be hunted, must purchase the appropriate depredation permit before participating in the depredation hunt.~~

~~(5) The buck deer, buck pronghorn, or bull elk harvested during a depredation hunt must be checked with the Division within 72 hours of the harvest.~~

~~(6) If a hunter is selected from the alternate drawing list for a depredation hunt in a limited entry unit and harvests a trophy animal as defined in Section 23-13-2(46), that person shall lose their bonus points and incur a waiting period.~~

~~(7) A person may not take more than one buck deer, buck pronghorn or bull elk in any year.~~

~~**R657-44-7. Depredation Hunts for Antlerless Deer, Pronghorn or Elk.**~~

~~(1) When deer, elk or pronghorn are causing damage, antlerless control hunts not listed in the big game proclamations of the Wildlife Board may be held. These hunts occur on short notice, involve small areas, and are limited to only a few hunters.~~

~~(2) Hunters are called from a list of unsuccessful permittees or other resident hunters who have applied for depredation hunts.~~

~~(3)(a) Application does not affect eligibility for antlerless or other type hunts. However, hunters who participate in any deer, elk, or pronghorn depredation hunt may not possess an additional antlerless permit for that species during the same year except as provided in Subsection R657-5-50(3).~~

~~(b) Hunters with depredation permits for doe pronghorn, antlerless deer or antlerless elk may not possess any other permit for those species, except as provided in Subsections R657-5-27(1)(a) and R657-5-50(3), or the proclamations of the Wildlife Board for taking big game.~~

~~(4) The division may contact hunters to participate in a depredation hunt prior to the general hunt for a given species of big game. Hunters who do not possess an antlerless deer, elk, or pronghorn permit may purchase an appropriate permit.~~

~~(5) Applications must be sent to the appropriate regional division office for the area requested.~~

~~(6) Applications must be received by the date published in the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.~~

~~**R657-44-8. Appeal Procedures.**~~

~~(1) Upon the petition of an aggrieved party to a final division action relative to Utah Code Annotated relative to big game depredation and this rule, a qualified hearing examiner shall take evidence and make recommendations to the Wildlife Board which shall resolve the grievance in accordance with Rule R657-2.~~

~~**KEY: wildlife, big game*, depredation***~~
~~**November 1, 2001**~~
~~**Notice of Continuation July 3, 2002**~~
~~**23-16-2**~~
~~**23-16-3**~~
~~**23-16-3.5**~~
~~**23-16-4]**~~

R657-44. Big Game Depredation.

R657-44-1. Purpose and Authority.

Under authority of Section 23-16-2, 23-16-3, 23-16-3.5 and 23-16-4, this rule provides:

(1) the procedures, standards, requirements, and limits for assessing big game depredation; and

(2) mitigation procedures for big game depredation.

R657-44-2. Definitions.

(1) Terms used in this rule are defined in Section 23-13-2.

(2) In addition:

(a) "Alternate drawing list" means a list of persons who have not already drawn a permit and would have been the next person in line to draw a permit.

(b) "Commercial gain" means intent to profit from cultivated crops through an enterprise in support of the crop owner□s livelihood.

(c) "Cultivated crops" means any crop from or upon cleared and planted private land or privately leased state or federal land that is used for commercial gain and is routinely irrigated or routinely mechanically or manually harvested, including crop residues that have forage value for livestock.

(d) "Damage incident period" means 90 days, or some longer period as approved in writing by the division, during which the division shall take action to prevent further depredation and during which compensation for damage will be calculated.

(e) "Irrigated" means the controlled application of water for agricultural purposes through man-made systems to supply water not satisfied by rainfall.

(f) "Livestock Forage" means any forage, excluding cultivated crops and crop residues, meant for consumption by livestock, not routinely irrigated or routinely mechanically or manually harvested.

(g) "Mitigation permit voucher" means a document issued to a landowner or lessee, allowing the landowner or lessee to designate who may purchase a big game mitigation permit.

(h) "Private land" means land in private fee ownership and in agricultural use as provided in Section 59-2-502 and eligible for agricultural use valuation as provided in Section 59-2-503 and 59-2-504. Private land does not include tribal trust lands.

R657-44-3. Damage to Cultivated Crops.

(1) If big game animals are damaging cultivated crops, the landowner or lessee shall immediately, upon discovery of big game

damage, notify a division representative in the appropriate division regional office as provided in Section 23-16-3(1).

(2) Notification must be made:

(a) orally to expedite a field investigation; and

(b) in writing to a division representative in the appropriate division regional office.

(3)(a) The regional supervisor or division representative shall contact the landowner or lessee within 72 hours of notification to determine the nature of the damage and take appropriate action for the extent of the damage experienced or expected during the damage incident period.

(b) In determining the appropriate action, the division shall consider:

(i) the provisions provided in Subsections 23-16-3(2)(a) through 23-16-3(2)(d); and,

(ii) if not detrimental to the landowner or lessee, the big game population management objectives as established in the management plan approved by the Wildlife Board.

(4)(a) The division may utilize one or any of the following actions:

(i) sending a division representative onto the premises to control or remove the big game animals, including:

(A) herding;

(B) capture and relocation;

(C) temporary fencing; or

(D) removal, as authorized by the division director or the division director□s designee;

(ii) recommending to the Wildlife Board an antlerless big game hunt in the next big game season framework;

(iii) scheduling a depredation hunter pool hunt as authorized by the Wildlife Board;

(iv) issuing big game mitigation permit vouchers for use on the landowner□s or lessee□s land during a general or special hunt authorized by the Wildlife Board; or

(v) issuing mitigation permits to the landowner or lessee for the harvest of big game animals causing depredation.

(b) Vouchers may be issued in accordance with Subsection (4)(a)(iv) to:

(i) the landowner or lessee; or

(ii) a landowner association that:

(A) applies in writing to the division;

(B) provides a map of the association lands;

(C) provides signatures of the landowners in the association; and

(D) designates an association representative to act as liaison with the division.

(c) The landowner or lessee may retain no more than five deer or pronghorn, and two elk in accordance with Subsection (4)(a)(v).

(5)(a) A landowner or lessee who elects to pursue mitigation through the measures provided in Subsections (4)(a)(i) through (4)(a)(v) may not subsequently file a claim under Section 23-16-4, except as provided by an agreement made under Subsection 23-16-3.5(3)(b)(i).

(b) In determining appropriate mitigation, the division shall consider the landowner□s or lessee□s revenue pursuant to Subsections 23-16-3(2)(d) and 23-16-4(4)(b).

(c) Mitigation permits or vouchers may be withheld from persons who have violated this rule, any other wildlife rule, or the Wildlife Resources Code.

(6)(a) The options provided in Subsection (4)(a)(i) through (4)(a)(v) are for antlerless animals only.

(b) Deer and pronghorn hunts may be August 1 through December 31, and elk hunts may be August 1 through January 31.

(7)(a) The division director may approve mitigation permits or mitigation permit vouchers issued for antlered animals.

(b) A big game mitigation permit may be issued to the landowner or lessee for personal use, provided the division and the landowner or lessee desire the animals to be permanently removed.

(c) A mitigation permit voucher may be issued to the landowner or lessee, provided:

(i) the division has determined that the big game animals in the geographic area significantly contribute to the wildlife management units;

(ii) the landowner or lessee agrees to perpetuate the animals on their land; and

(iii) the damage, or expected damage, to the cultivated crop is comparable with the expected value of the mitigation permit voucher on that private land within the wildlife unit.

(8)(a) If the landowner or lessee and the division are unable to agree on the assessed damage, they shall designate a third party pursuant to Subsection 23-16-4(4)(c).

(b) Additional compensation shall be paid above the value of any mitigation permits or vouchers granted to the landowner or lessee if the damage exceeds the value of the mitigation permits or vouchers.

(9)(a) The landowner or lessee is authorized to kill big game animals damaging cultivated crops as provided in Subsections 23-16-3(1)(c) and 23-16-3(3) after notification to the division.

(b) Notification must be made:

(i) orally to a division representative in the appropriate regional division office; and

(ii) followed in writing to the division representative in the appropriate regional division office.

(c) The landowner or lessee must surrender the big game carcass to the division pursuant to Subsection 23-16-3(4)(a).

(d) The authority of the landowner or lessee to remove big game animals damaging cultivated crops expires after 90 days, unless a longer period is approved pursuant to Subsection 23-16-3(3)(a)(iii).

(10) The expiration of the damage incident period does not preclude the landowner or lessee from making future claims.

R657-44-4. Damage to Fences on Private Land.

(1) If big game animals are damaging fences on private land, the landowner or lessee may request the division to take action to prevent depredation pursuant to Subsection 23-16-3.5(1).

(2) Notification must be made:

(a) orally to a division representative in the appropriate regional division office to expedite a field investigation; and

(b) in writing to the division representative at the appropriate regional division offices.

(3)(a) The regional supervisor or division representative shall contact the landowner or lessee within 72 hours of notification to determine the nature of the damage and take appropriate action for the extent of the damage experienced or expected during the damage incident period.

(b) In determining the appropriate action the division shall consider:

(i) the provisions provided in Subsections 23-16-3(2)(a) through 23-16-3(2)(d); and

(ii) if not detrimental to the landowner or lessee, the big game population management objectives as established in the management plan approved by the Wildlife Board.

(4)(a) The division may utilize one or any of the following actions:

(i) sending a division representative onto the premises to control or remove the big game animals, including:

(A) herding;

(B) capture and relocation;

(C) temporary fencing; or

(D) removal, as authorized by the division director or the division director's designee;

(ii) recommending to the Wildlife Board an antlerless big game hunt in the next big game season framework;

(iii) scheduling a depredation hunter pool hunt as authorized by the Wildlife Board;

(iv) issuing big game mitigation permit vouchers for use on the landowner's or lessee's land during a general or special hunt authorized by the Wildlife Board; or

(v) issuing mitigation permits to the landowner or lessee for the harvest of big game animals causing depredation.

(b) Vouchers may be issued in accordance with Subsection (4)(a)(iv) to:

(i) the landowner or lessee; or

(ii) a landowner association that:

(A) applies in writing to the division;

(B) provides a map of the association lands;

(C) provides signatures of the landowners in the association; and

(D) designates an association representative to act as liaison with the division.

(c) The landowner or lessee may retain no more than five deer or pronghorn, and two elk in accordance with Subsection (4)(a)(v).

(5)(a) A landowner or lessee who elects to pursue mitigation through the measures provided in Subsections (4)(a)(i) through (4)(a)(v) may not subsequently file a claim under Section 23-16-4, except as provided by an agreement made under Subsection 23-16-3.5(3)(b)(i).

(b) In determining appropriate mitigation, the division shall consider the landowner's or lessee's revenue pursuant to Subsections 23-16-3.5(3)(c) and 23-16-4(4)(b).

(c) Mitigation permits or vouchers may be withheld from persons who have violated this rule, any other wildlife rule, or the Wildlife Resources Code.

(6)(a) The options provided in Subsections (4)(a)(i) through (4)(a)(v) are for antlerless animals only.

(b) Deer and pronghorn hunts may be August 1 through December 31, and elk hunts may be August 1 through January 31.

(7)(a) The division director may approve mitigation permits or mitigation permit vouchers issued for antlered animals.

(b) A big game mitigation permit may be issued to the landowner or lessee for personal use, provided the division and the landowner or lessee desire the animals to be permanently removed.

(c) A mitigation permit voucher may be issued to the landowner or lessee, provided:

(i) the division has determined that the big game animals in the geographic area significantly contribute to the wildlife management units;

(ii) the landowner or lessee agrees to perpetuate the animals on their land; and

(iii) the damage, or expected damage, to the fence is comparable with the expected value of the mitigation permit voucher on that private land within the wildlife unit.

(8)(a) If the landowner or lessee and the division are unable to agree on the assessed damage, they shall designate a third party pursuant to Subsection 23-16-4(4)(c).

(b) Additional compensation may be paid above the value of any mitigation permits or vouchers granted to the landowner or lessee if the damage exceeds the value of the mitigation permits or vouchers.

(9) The expiration of the damage incident period does not preclude the landowner or lessee from making future claims.

R657-44-5. Damage to Irrigation Equipment on Private Land.

(1) If big game animals are damaging irrigation equipment on private land, the landowner or lessee may request the division to take action to prevent depredation pursuant to Subsection 23-16-3.5 (1).

(2) Notification must be made:

(a) orally to a division representative in the appropriate regional division office to expedite a field investigation; and

(b) in writing to the division representative in the appropriate regional division offices.

(3)(a) The regional supervisor or division representative shall contact the landowner or lessee within 72 hours of notification to determine the nature of the damage and take appropriate action for the extent of the damage experienced or expected.

(b) In determining the appropriate action the division shall consider:

(i) the provisions as provided in Subsections 23-16-3(2)(a) through 23-16-3(2)(d); and

(ii) if not detrimental to the landowner or lessee, the big game population management objectives as established in the management plan approved by the Wildlife Board.

(4)(a) The division may utilize one or any of the following actions:

(i) sending a division representative onto the premises to control or remove the big game animals, including:

(A) herding;

(B) capture and relocation;

(C) temporary fencing; or

(D) removal, as authorized by the division director or the division director's designee;

(ii) recommending to the Wildlife Board an antlerless big game hunt in the next big game season framework;

(iii) scheduling a depredation hunter pool hunt as authorized by the Wildlife Board;

(iv) issuing big game mitigation permit vouchers for use on the landowner's or lessee's land during a general or special hunt authorized by the Wildlife Board; or

(v) issuing mitigation permits to the landowner or lessee for the harvest of big game animals causing depredation.

(b) Vouchers may be issued in accordance with Subsection (4)(a)(iv) to:

(i) the landowner or lessee; or

(ii) a landowner association that:

(A) applies in writing to the division;

(B) provides a map of the association lands;

(C) provides signatures of the landowners in the association; and

(D) designates an association representative to act as liaison with the division.

(c) The landowner or lessee may retain no more than five deer or pronghorn, and two elk in accordance with Subsection (4)(a)(v).

(5)(a) A landowner or lessee who elects to pursue mitigation through the measures provided in Subsections (4)(a)(i) through (4)(a)(v) may not subsequently file a claim under Section 23-16-4,

except as provided by an agreement made under Subsection 23-16-3.5(3)(b)(i).

(b) In determining appropriate mitigation, the division shall consider the landowner□s or lessee□s revenue pursuant to Subsections 23-16-3.5(3)(c) and 23-16-4(4)(b).

(c) Mitigation permits or vouchers may be withheld from persons who have violated this rule, any other wildlife rule, or the Wildlife Resources Code.

(6)(a) The options in Subsections (4)(a)(i) through (4)(a)(v) are for antlerless animals only.

(b) Deer and pronghorn hunts may be August 1 through December 31, and elk hunts may be August 1 through January 31.

(7)(a) The division director may approve mitigation permits or mitigation permit vouchers issued for antlered animals.

(b) A big game mitigation permit may be issued to the landowner or lessee for personal use, provided the division and the landowner or lessee desire the animals to be permanently removed.

(c) A mitigation permit voucher may be issued to the landowner or lessee, provided:

(i) the division has determined that the big game animals in the geographic area significantly contribute to the wildlife management units;

(ii) the landowner or lessee agrees to perpetuate the animals on their land; and

(iii) the damage, or expected damage, to the irrigation equipment is comparable with the expected value of the mitigation permit voucher on that private land within the wildlife unit.

(8)(a) If the landowner or lessee and the division are unable to agree on the assessed damage, they shall designate a third party pursuant to Subsection 23-16-4(4)(c).

(b) Additional compensation may be paid above the value of any mitigation permits or vouchers granted to landowner or lessee if the damage exceeds the value of the mitigation permits or vouchers.

(9) The expiration of the damage incident period does not preclude the landowner or lessee from making future claims.

R657-44-6. Compensation for Damage to Crops, Fences, or Irrigation Equipment on Private Land.

(1) The division may provide compensation to landowners or lessees for damage to cultivated crops, fences or irrigation equipment on private land caused by big game pursuant to Section 23-16-4.

(2) For purposes of compensation, all depredation incidents end on June 30 annually, but may be reinstated July 1.

R657-44-7. Damage to, or Consumption of Livestock Forage on Private Land.

(1)(a) If big game animals are damaging or consuming livestock forage on private land, the landowner or lessee may request the division to take action to prevent depredation pursuant to Section 23-16-3.5.

(b) Damage to or consumption of livestock forage is not eligible for monetary compensation from the division.

(2) The request shall be made:

(a) orally to a division representative in the appropriate regional division office to expedite field investigations; and

(b) in writing to the division representative in the appropriate regional division office.

(3)(a) The regional supervisor or division representative shall contact the landowner or lessee within 72 hours of notification and investigate the situation pursuant to Subsections 23-16-3.5(2)(a) through 23-16-3.5(3)(a)(ii).

(b) In determining appropriate mitigation, the division shall:

(i) consider the provisions provided in Subsections 23-16-3.5(2)(a)(iii) through 23-16-3.5(2)(b), and Subsections 23-16-3.5(3)(c) through 23-16-3.5(5); and

(i) if not detrimental to the landowner or lessee, the big game population management objectives as established in the management plan approved by the Wildlife Board.

(4)(a) The division may utilize one or any of the following actions:

(i) send a division representative onto the premises to control or remove the big game animals, including:

(A) herding;

(B) capture and relocation;

(C) temporary fencing; or

(D) removal, as authorized by the division director or the division director□s designee;

(ii) recommend an antlerless big game hunt to the Wildlife Board in the next big game season framework;

(iii) scheduling a depredation hunter pool hunt, as authorized by the Wildlife Board;

(iv) issuing big game mitigation permit vouchers for use on the landowner□s or lessee□s land during a general or special hunt authorized by the Wildlife Board; or

(v) issuing permits to the landowner or lessee for the harvest of big game animals causing depredation.

(b) Vouchers may be issued in accordance with Subsection (4)(a)(iv) to:

(i) the landowner or lessee; or

(ii) a landowner association that:

(A) applies in writing to the division;

(B) provides a map of the association lands;

(C) provides signatures of the landowners in the association; and

(D) designates an association representative to act as liaison with the division.

(c) The landowner or lessee may retain no more than five antlerless deer or doe pronghorn, and two antlerless elk in accordance with Subsection (4)(a)(v).

(5)(a) Antlerless deer and doe pronghorn hunts may be August 1 through December 31, and antlerless elk hunts may be August 1 through January 31.

(b) Antlerless permits shall not exceed ten percent of the animals on the private land, with a maximum of twenty permits per landowner or lessee.

(c) Mitigation permits or vouchers may be withheld from persons who have violated this rule, any other wildlife rule, or the Wildlife Resources Code.

(6) The division may enter into a conservation lease with the owner or lessee of private land pursuant to Section 23-16-3.5(6).

(7) Permits and vouchers for antlered animals using livestock forage on private land are issued only through the provisions provided in Rule R657-43.

R657-44-8. Depredation Hunts for Buck Deer, Bull Elk or Buck Pronghorn.

(1)(a) Buck deer, bull elk, or buck pronghorn depredation hunts, that are not published in the proclamation of the Wildlife Board for taking big game, may be held.

(b) Buck deer, bull elk, or buck pronghorn depredation hunts may be held when the buck deer, bull elk, or buck pronghorn are:

(i) causing damage to cultivated crops, fences or irrigation equipment;

(ii) a significant public safety hazard; or

(iii) causing a nuisance in urban areas.

(2) The depredation hunts may occur on short notice, involve small areas, and be limited to only a few hunters.

(3) Pre-season depredation hunters shall be selected using:

(a) hunters possessing a limited entry buck deer, bull elk, or buck pronghorn permit for that limited entry unit;

(b) hunters from the alternate drawing list for that limited entry unit; or

(c) general permittees for that unit through the depredation hunter pool pursuant to Section R657-44-10, provided the animals being hunted are determined by the appropriate regional division representative, to not come from a limited entry unit.

(4) Post-season depredation hunters shall be selected using:

(a) hunters from the alternate drawing list for that limited entry unit;

(b) hunters from the alternate drawing list from the nearest adjacent limited entry unit; or

(c) general permittees for that unit through the depredation hunter pool pursuant to Section R657-44-10, provided the animals being hunted are determined by the appropriate regional division representative, to not come from a limited entry unit.

(5) A person may participate in the depredation hunter pool, for depredation hunts pursuant to Subsections (3)(c) and (4)(c), as provided in Section R657-44-10.

(6)(a) Hunters who are selected for a limited entry buck deer, bull elk, or buck pronghorn depredation hunt must possess an unfilled, valid, limited entry buck deer, bull elk, or buck pronghorn permit for the species to be hunted, or must purchase the appropriate depredation permit before participating in the depredation hunt.

(b) Hunters who are selected for a general buck deer or bull elk depredation hunt must possess an unfilled, valid, general buck deer or bull elk permit, respectively.

(7) The buck deer, bull elk, or buck pronghorn harvested during a depredation hunt must be checked with the division within 72 hours of the harvest.

(8) If a hunter is selected from the alternate drawing list for a depredation hunt in a limited entry unit and harvests a trophy animal, that person shall lose their bonus points and incur the appropriate waiting period as provided in Rule R657-5.

(9)(a) Hunters with depredation permits for buck deer, bull elk, or buck pronghorn may not possess any other permit for those species, except as provided in the proclamation of the Wildlife Board for taking big game and Rule R657-5.

(b) A person may not take more than one buck deer, bull elk, or buck pronghorn in one calendar year.

R657-44-9. Depredation Hunts for Antlerless Deer, Elk or Doe Pronghorn.

(1) When deer, elk, or pronghorn are causing damage to cultivated crops, fences, or irrigation equipment, antlerless hunts not listed in the proclamation of the Wildlife Board for taking big game may be held. These hunts occur on short notice, involve small areas, and are limited to only a few hunters.

(2) Depredation hunters shall be selected using:

(a) hunters possessing an antlerless deer, elk, or doe pronghorn permit for that unit;

(b) hunters from the alternate drawing list for that unit; or

(c) the depredation hunter pool pursuant to Section R657-44-10.

(3) The division may contact hunters to participate in a depredation hunt prior to the general or limited entry hunt for a given species of big game. Hunters who do not possess an antlerless deer, elk, or doe pronghorn permit may purchase an appropriate permit.

(4) Hunters with depredation permits for antlerless deer, elk, or doe pronghorn may not possess any other permit for those species, except as provided in the proclamation of the Wildlife Board for taking big game and Rule R657-5.

R657-44-10. Depredation Hunter Pool.

(1) When deer, elk or pronghorn are causing damage, hunts not listed in the proclamation of the Wildlife Board for taking big game may be held. These hunts occur on short notice, involve small areas, and are limited to only a few hunters.

(2) Hunters shall be selected pursuant to Subsections R657-44-8(3), R657-44-8(4), and R657-44-9(2).

(3) A hunter pool application does not affect eligibility to apply for any other big game permit. However, hunters who participate in any deer, elk, or pronghorn depredation hunt may not possess an additional permit for that species during the same year, except as provided in Rule R657-5 and the proclamation of the Wildlife Board for taking big game.

(4) Applications must be sent to the appropriate regional division office for the area requested.

(5)(a) Applications must be received by the date published in the proclamation of the Wildlife Board for taking big game.

(b) Applications received after the date published in the proclamation of the Wildlife Board for taking big game may be used if adequate numbers of applicants are not available to satisfy depredation situations.

(6) Hunters who have not obtained the appropriate deer, elk, or pronghorn permit may purchase an appropriate permit.

R657-44-11. Appeal Procedures.

(1) Upon the petition of an aggrieved party to a final division action relative to big game depredation and this rule, a qualified hearing examiner shall take evidence and make recommendations to the Wildlife Board, who shall resolve the grievance in accordance with Rule R657-2.

KEY: wildlife, big game, depredation
2003
Notice of Continuation July 3, 2002
23-16-2
23-16-3
23-16-3.5

NOTICES OF
120-DAY (EMERGENCY) RULES

An agency may file a 120-DAY (EMERGENCY) RULE when it finds that the regular rulemaking procedures would:

(a) cause an imminent peril to the public health, safety, or welfare;
(b) cause an imminent budget reduction because of budget restraints or federal requirements; or
(c) place the agency in violation of federal or state law (*Utah Code* Subsection 63-46a-7(1) (2001)).

As with a PROPOSED RULE, a 120-DAY RULE is preceded by a RULE ANALYSIS. This analysis provides summary information about the 120-DAY RULE including the name of a contact person, justification for filing a 120-DAY RULE, anticipated cost impact of the rule, and legal cross-references. A row of dots in the text (· · · · ·) indicates that unaffected text was removed to conserve space.

A 120-DAY RULE is effective at the moment the Division of Administrative Rules receives the filing, or on a later date designated by the agency. A 120-DAY RULE is effective for 120 days or until it is superseded by a permanent rule.

Because 120-DAY RULES are effective immediately, the law does not require a public comment period. However, when an agency files a 120-DAY RULE, it usually files a PROPOSED RULE at the same time, to make the requirements permanent. Comment may be made on the proposed rule. Emergency or 120-DAY RULES are governed by *Utah Code* Section 63-46a-7 (2001); and *Utah Administrative Code* Section R15-4-8.

Health, Health Care Financing, Coverage and Reimbursement Policy
R414-5
Reduction in Outlier Reimbursements

NOTICE OF 120-DAY (EMERGENCY) RULE
DAR FILE NO.: 25889
FILED: 12/31/2002, 10:29

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule, along with other proposed changes to the Medicaid program, is needed to keep expenditures within appropriations authorized by the 2002 Legislature. Utilization and enrollment have increased above projected levels and expenditures must be reduced accordingly. (DAR NOTE: The proposed changes to the Medicaid Program are found under R414-63, Emergency Rule, DAR No. 25888; R414-63, Amendment, DAR No. 25898; R414-5, Emergency Rule, DAR No. 25889; R414-5, New Rule, DAR No. 25899; and R414-304, Amendment, DAR No. 25895 in this Bulletin.)

SUMMARY OF THE RULE OR CHANGE: This new rule describes how hospital services are reimbursed. The department enhances reimbursements when illnesses are especially severe and calls those payments outliers. Effective 1/03/2003, outlier payments will reduce by 33%. (DAR NOTE: A corresponding proposed new rule is found under DAR No. 25899 in this Bulletin.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 26-18-7

ANTICIPATED COST OR SAVINGS TO:
❖ THE STATE BUDGET: Annually, the state will save $3,198,500 in General Fund and will lose $7,804,400 in federal matching funds.
❖ LOCAL GOVERNMENTS: No local governments receive outlier reimbursements because they do not operate hospitals that receive such reimbursements.
❖ OTHER PERSONS: Hospitals will lose a total of $11,002,900 in outlier reimbursements.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Some adjustments in hospital computer systems to allow reconciliation of medical billings with medical payments received may be required. Estimates are that this will cost less than $1,000 per hospital.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule filing will have a negative impact on hospitals, but is an appropriate measure to control program expenditures and will support economy and efficiency in the Medicaid program. Rod L. Betit

EMERGENCY RULE REASON AND JUSTIFICATION: REGULAR RULEMAKING PROCEDURES WOULD cause an imminent budget reduction because of budget restraints or federal requirements.

Without this and other emergency and regular rulemakings, the Medicaid program would expend more than was authorized for the FY 2003 budget. The delay to implement regular rulemaking would make it impossible to generate sufficient savings to stay within appropriations authorized by the 2002 Legislature.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:
Ross Martin at the above address, by phone at 801-538-6592, by FAX at 801-538-6099, or by Internet E-mail at rmartin@utah.gov

THIS RULE IS EFFECTIVE ON: 01/03/2003

AUTHORIZED BY: Rod L. Betit, Executive Director

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.
R414-5. Reduction in Outlier Reimbursements.
R414-5-1. Introduction and Authority.

This rule describes the Utah Medicaid Program's reduction in outlier reimbursements to hospitals. This rule is authorized by Title 26, Chapter 18, Section 7, UCA.

R414-5-2. Hospital Reimbursements by DRG.

The Utah Medicaid Program reimburses hospital services based upon a prospective payment amount depending upon diagnosis. This method of reimbursement is by diagnosis related groups (DRG).

R414-5-3. Outlier Reimbursements.

The department pays an increased amount to hospitals if a patient's severity of illness causes additional expenses not covered in the DRG. These payment enhancements are called outlier reimbursements.

R414-5-4. Outlier Reimbursements Reduced.

Reimbursement for outlier claims, as set by Section 100, subpart 121 of Attachment 4.19-A of the state Medicaid plan, is hereby reduced by 33%.

(1) This reduction shall apply to all services provided after January 3, 2003.

(2) This reduction shall also apply to all claims submitted for payment after January 3, 2003.

KEY: Medicaid, hospital
January 3, 2003
26-18

▼ ▼

Health, Health Care Financing, Coverage and Reimbursement Policy

R414-63

Medicaid Policy for Pharmacy Reimbursement

NOTICE OF 120-DAY (EMERGENCY) RULE
DAR FILE NO.: 25888
FILED: 12/31/2002, 10:26

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule, along with other proposed changes to the Medicaid program, is needed to keep expenditures within appropriations authorized by the 2002 Legislature. Utilization and enrollment have increased above projected levels and expenditures must be reduced accordingly. (DAR NOTE: The proposed changes to the Medicaid Program are found under R414-63, Emergency Rule, DAR No. 25888; R414-63, Amendment, DAR No. 25898; R414-5, Emergency Rule, DAR No. 25889; R414-5, New Rule, DAR No. 25899; and R414-304, Amendment, DAR No. 25895 in this Bulletin.)

SUMMARY OF THE RULE OR CHANGE: This rulemaking increases the Medicaid discount taken from the average wholesale price of drugs. (DAR NOTE: A corresponding proposed amendment is found under DAR No. 25898 in this Bulletin.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Title 26, Chapter 18

ANTICIPATED COST OR SAVINGS TO:
❖ THE STATE BUDGET: This will save the General Fund $490,600 and will lose $1,197,000 in federal matching funds.
❖ LOCAL GOVERNMENTS: There are no local government costs involved in this rulemaking because they are not involved in dispensing drugs.
❖ OTHER PERSONS: Retail pharmacists will lose $1,687,600 in reimbursements.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There may be some minimal modifications to provider data systems in order to incorporate the lower rate of reimbursement. Cost per provider is estimated to be less than $200. There are no anticipated compliance costs for clients.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Studies by Division of Health Care Financing staff verify that pharmacies are receiving discounts on the wholesale price of drugs that are equal to or greater than the change proposed by this rule. This change will have a negative impact on pharmacies, but is an appropriate measure to control program expenditures and will support economy and efficiency in the Medicaid program. Rod L. Betit

EMERGENCY RULE REASON AND JUSTIFICATION: REGULAR RULEMAKING PROCEDURES WOULD cause an imminent budget reduction because of budget restraints or federal requirements.

Without this and other emergency and regular rulemakings, the Medicaid program would expend more than was authorized for the FY 2003 budget. The delay to implement regular rulemaking would make it impossible to generate sufficient savings to stay within appropriations authorized by the 2002 Legislature.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:
Ross Martin at the above address, by phone at 801-538-6592, by FAX at 801-538-6099, or by Internet E-mail at rmartin@utah.gov

THIS RULE IS EFFECTIVE ON: 01/01/2003

AUTHORIZED BY: Rod L. Betit, Executive Director

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.
R414-63. Medicaid Policy for Pharmacy Reimbursement.
R414-63-1. Introduction and Authority.

(1) The Medicaid Policy for reimbursement of dispensing fees for pharmacy providers was achieved through negotiations with representatives of the pharmacy industry.

(2) This rule is authorized under Chapter 26-18.

R414-63-2. Pharmacy Reimbursement.

(1) For each prescription filled for a Medicaid recipient the Department may reimburse the pharmacy provider for up to seven (7) non-exempt prescriptions in any calendar month. The limit on prescriptions will not take effect until the assessment required in section (4) of this rule is completed. A single prescription that is filled multiple times in the month is one prescription. The pharmacy provider shall be reimbursed:

(a) the average wholesale price for the medication minus [~~12~~]15%; and

(b) a dispensing fee in the amount of $3.90 for urban providers and $4.40 for rural providers.

(2) The limitation on the number of prescriptions does not apply to pregnant women or children under age 21.

(3) The following drug classes are exempt from the seven prescription limit in (1):

(a) A4A, hypotensive - vasodilator, example: minoxidil (Loniten);

(b) A4B, hypotensive - sympatholytic, example: guanethidine (Ismelin);

(c) A4C, hypotensives - ganglionic blockers, example: trimethaphan (Arfonad);

(d) A4D, hypotensives - ACE blocking type, example: captopril (Capoten);

(e) A4E, hypotensives - veratrum alkaloids, example: cryptenamine;

(f) A4F, hypotensives - angiotensin receptor antagonist, example: losartan (Cozaar);

(g) A4Y, hypotensives - miscellaneous, example: nitroprusside sodium (Nitropress);

(h) A9A, calcium channel blocking agents, example: nifedipine (Procardia);

(i) C4G, insulins;

(j) C4K, hypoglycemics - insulin-release stimulant type, example: tolbutamide (Orinase);

(k) C4L, hypoglycemics - biguanide type (non-sulfonylureas), example: metformin (Glucophage);

(l) C4M, hypoglycemics - alpha-glucosidase inhib. Type (N-S), example: miglitol (Glyset);

(m) M0E, antihemophilic factor VIII;

(n) M0F, antihemophilic factor IX;

(o) M4E, lipotropics (cholesterol lowering agents), example: pravastatin (Pravachol);

(p) R1M, loop diuretics, example: furosemide (Lasix);

(q) V1A, alkylating agents, example: chlorambucil (Leukeran);

(r) V1B, antimetabolites, example: methotrexate;

(s) V1C, vinca alkaloids, example: vinblastine (Velban);

(t) V1D, antibiotic antineoplastics, example: mitomycin (Mithracin);

(u) V1E, steroid antineoplastics, example: megestrol (Megace);

(v) V1F, antineoplastics, miscellaneous, example: tamoxifen (Nolvadex);

(w) W5B, HIV-specific, example: didanosine (Videx);

(x) W5C, HIV-specific - protease inhibitor; example: indinavir (Crixivan);

(y) Z2E, organ transplant immunosupressive agents, example: cyclosporine (Sandimmune);

(z) W1A, penicillins;

(aa) W1B, cephalosporins;

(bb) W1C, tetracyclines;

(cc) W1D, macrolides;

(dd) W1E, chloramphenicol and derivaties;

(ee) W1F, aminoglycosides;

(ff) W1G, antitubercular antibiotics;

(gg) W1J, vancomycin and derivaties;

(hh) W1K, lincosamides;

(ii) W1M, streptogramins;

(jj) W1N, polymyxin and derivatives;

(kk) W1O, oxazolidinones;

(ll) W1P, antileprotics;

(mm) W1Q, quinolones;

(nn) W1S, thienamycins;

(oo) W1W, cephalosporins - 1st generation;

(pp) W1X, cephalosporins - 2nd generation;

(qq) W1Y, cephalosproins - 3rd generation;

(rr) W2A, absorbable sulfonamides;

(ss) W2E, anti-mycobaterium agents;

(tt) W2F, nitrofuran derivatives; and

(uu) W2G, chemotherapeutics, antibacterial, misc.

(4) The Department may grant a medical exemption to the seven (7) prescription limit in (1), by:

(a) Conducting an assessment for the medical exemption with input from the recipient's prescribing physicians;

(b) Reimbursing for all medically necessary prescriptions pending agency action on the assessment;

(c) Granting the medical exemption if a preponderance of the evidence establishes that the recipient's medical needs cannot reasonably be met unless the Department agrees to pay for more than seven (7) prescriptions in any calendar month;

(d) Deferring to the decision of the prescribing physician, in the event of a disagreement between the Department and the prescribing physician on which prescriptions are medically necessary; and

(e) Setting reasonable conditions on the grant of a medical exemption to assure the most cost-effective method of meeting the medical need, such as the use of generics and other factors.

KEY: Medicaid, prescriptions
January 1, 2003
26-18

Health, Health Care Financing, Coverage and Reimbursement Policy

R414-504-4

Transition Reimbursement Principles

NOTICE OF 120-DAY (EMERGENCY) RULE
DAR FILE NO.: 25900
FILED: 12/31/2002, 15:12

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This emergency rule implements a $5 stop loss to cushion the impact of rate changes as Medicaid adopts a case mix reimbursement methodology.

SUMMARY OF THE RULE OR CHANGE: Section R414-504-4 takes effect on January 1, 2003. Nursing facilities will receive about 50% of their reimbursement based on the medical condition of the residents of the facility. Public comment identified that this change will have a dramatic impact on some facilities. This transition approach was recommended by a majority of facilities. This rule will allow it to take effect immediately. (DAR NOTE: A corresponding proposed amendment is under DAR No. 25897 in this Bulletin.)

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

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: Funding for the stop loss will come from other facilities. No net cost or savings to the State budget.

❖ LOCAL GOVERNMENTS: The stop-loss will benefit at least one facility operated by a local government and will cushion impact on this agency. The overall reimbursement to nursing homes will not change.

❖ OTHER PERSONS: The stop-loss will benefit facilities that would otherwise experience even larger reductions from their current rate. Facilities that are experiencing gains in their rate due to the case mix system will have a proportionate reduction in their rate to fund the $5 stop loss for one year.

COMPLIANCE COSTS FOR AFFECTED PERSONS: No compliance costs for regulated facilities are predicted, beyond the savings or cost detailed in the cost information above.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule change is supported by the majority of nursing homes and is in response to input at public hearings and an advisory panel formed to evaluate concerns and comments. The amendments are adopted, without modification, based on the recommendation of the advisory panel. Rod L. Betit

EMERGENCY RULE REASON AND JUSTIFICATION: REGULAR RULEMAKING PROCEDURES WOULD cause an imminent peril to the public health, safety, or welfare.

Dramatic reductions in the reimbursement for a few facilities in the state could have caused the closure of certain facilities. This one-year transition $5 stop loss will mitigate that possibility. The new rates take effect January 1, 2003, and this emergency rule allows for this to take effect quickly enough to support that purpose.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:
Ross Martin at the above address, by phone at 801-538-6592, by FAX at 801-538-6099, or by Internet E-mail at rmartin@utah.gov

THIS RULE IS EFFECTIVE ON: 01/01/2003

AUTHORIZED BY: Rod L. Betit, Executive Director

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.
R414-504. Nursing Facility Payments.
R414-504-4. Transition Reimbursement Principles.

For each quarter for calendar year 2003:

(1) The Department shall determine if any facility's total rate is scheduled to be reduced by more than $5.00 per patient day, as compared to the total rate for that facility in effect on December 31, 2002. The total rate amount for the facility determined to be in effect as of December 31, 2002 shall be adjusted by any disallowances or other adjustments;

(2) For all facilities with a drop of more than $5.00 per patient day in their total rate as of the applicable quarterly adjustment, the Department shall adjust up the total rate of all such facilities to a rate where the loss is equal to $5.00 per patient day; and

(3) The total rate for all facilities with a gain in rate or a drop of less than $5.00 per patient day shall be proportionately adjusted down to fund the adjustment in R414-504-4(2).

KEY: Medicaid
January 1, 2003
26-1-5
26-18-2
26-18-3

End of the Notices of 120-Day (Emergency) 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 responsible agency is required to review the rule. This review is designed to remove obsolete rules from the *Utah Administrative Code*.

Upon reviewing a rule, an agency may: repeal the rule by filing a PROPOSED RULE; continue the rule as it is by filing a NOTICE OF REVIEW AND STATEMENT OF CONTINUATION (NOTICE); or amend the rule by filing a PROPOSED RULE and by filing a NOTICE. By filing a NOTICE, the agency indicates that the rule is still necessary.

NOTICES are not followed by the rule text. The rule text that is being continued may be found in the most recent edition of the *Utah Administrative Code*. The rule text may also be inspected at the agency or the Division of Administrative Rules. NOTICES are effective when filed. NOTICES are governed by *Utah Code* Section 63-46a-9 (1998).

Commerce, Securities
R164-4
Licensing Requirements

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 25831

FILED: 12/17/2002, 07:48

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 61-1-4 provides licensing and notice filing procedure, Section 61-1-5 provides postlicensing provisions, and Section 61-1-6 provides information on denials, suspensions, revocations, cancellation, or withdrawal of licenses. Section 61-1-24 provides that the Division make rules necessary to carry out the provisions of the chapter.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No comments have been received.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The Utah Uniform Securities Act requires that to act as a broker-dealer, broker-dealer agent, issuer agent, investment adviser, or an investment adviser representative of a person or entity must be licensed. Rule R164-4 provides the procedure and requirements for obtaining these licenses and should be continued.

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

COMMERCE
SECURITIES
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:

Paula Faerber at the above address, by phone at 801-530-6976, by FAX at 801-530-6980, or by Internet E-mail at pfaerber@utah.gov

AUTHORIZED BY: Paula Faerber, Staff Attorney

EFFECTIVE: 12/17/2002

Commerce, Securities
R164-5
Broker-Dealer and Investment Adviser Books and Records

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 25858

FILED: 12/19/2002, 07:14

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 61-1-5 of the Utah Uniform Securities Act (Act) provides post-licensing requirements for licensees. Section 61-1-24 of the Act provides that the Division may make rules necessary to carry out the provisions of the Act.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No comments have been received.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Rule R164-5 gives guidance in interpreting Section 61-1-5 of the Act and provides specific books and records that must be maintained, and required financial reports and should be continued. Rule R164-5 does not impose additional requirements upon licensees, but rather clarifies the requirements of the Securities Act.

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

COMMERCE
SECURITIES
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:
Paula Faerber at the above address, by phone at 801-530-6976, by FAX at 801-530-6980, or by Internet E-mail at pfaerber@utah.gov

AUTHORIZED BY: Paula Faerber, Staff Attorney

EFFECTIVE: 12/19/2002

Commerce, Securities
R164-6
Denial, Suspension or Revocation of a License

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 25859
FILED: 12/19/2002, 07:17

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 61-1-6 of the Utah Uniform Securities Act (Act) states that the Director of the Division may deny, suspend, or revoke a license; censure or bar a licensee; and impose a fine. Section 61-1-24 of the Act provides that the Division may make rules necessary to carry out the provisions of the Act.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No comments have been received.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The justifications for taking a disciplinary action under Section 61-1-6 of the Act include engaging in "dishonest or unethical practices in the securities business." Rule R164-6 expands on this by listing acts which are deemed to be dishonest and unethical business practices and should be continued.

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

COMMERCE
SECURITIES
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:
Paula Faerber at the above address, by phone at 801-530-6976, by FAX at 801-530-6980, or by Internet E-mail at pfaerber@utah.gov

AUTHORIZED BY: Paula Faerber, Staff Attorney

EFFECTIVE: 12/19/2002

Commerce, Securities
R164-9
Registration by Coordination

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 25860
FILED: 12/19/2002, 07:34

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: The Utah Uniform Securities Act requires that before securities are sold in Utah, they must either be registered, exempt from registration, or be a federal-covered security for which a notice filing is made. If the securities are registered, they are registered either by coordination, qualification, or notification. Section 61-1-9 of the Act governs registrations by coordination. Section 61-1-11 provides general licensing requirements. Section 61-1-24 of the Act provides that the Division may make rules necessary to carry out the provisions of the Act.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No comments have been received.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Rule R164-9 sets forth the procedure to be used for applying for registration by coordination. It includes registration requirements, effective dates and so forth. Rule R164-9 also clarifies the multi-jurisdictional disclosure system with Canada stating that financial statements prepared in accordance with Canadian generally accepted accounting principles will be permitted in registration statements filed by Canadian issuers and should be continued.

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

COMMERCE
SECURITIES
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:
Paula Faerber at the above address, by phone at 801-530-6976, by FAX at 801-530-6980, or by Internet E-mail at pfaerber@utah.gov

AUTHORIZED BY: Paula Faerber, Staff Attorney

EFFECTIVE: 12/19/2002

Commerce, Securities
R164-10
Registration by Qualification

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 25832
FILED: 12/17/2002, 07:51

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: The Utah Uniform Securities Act requires that before securities are sold in Utah, they must either be registered, exempt from registration, or be a federal-covered security for which a notice filing is made. If the securities are registered, they are registered either by coordination, qualification, or notification. Section 61-1-10 of the Act governs registrations by qualification. Section 61-1-11 provides general licensing requirements. Section 61-1-24 of the Act provides that the Division may make rules necessary to carry out the provisions of the Act.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No comments have been received.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Rule R164-10 sets forth the procedure and requirements to be met when applying for registration by qualification and provides an enumerated list of those items that must be contained in a registration statement and should be continued. This provides the applicant more specific guidance than Section 61-1-10 of the Act.

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

COMMERCE
SECURITIES
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:
Paula Faerber at the above address, by phone at 801-530-6976, by FAX at 801-530-6980, or by Internet E-mail at pfaerber@utah.gov

AUTHORIZED BY: Paula Faerber, Staff Attorney

EFFECTIVE: 12/17/2002

Commerce, Securities
R164-14
Exemptions

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 25861
FILED: 12/19/2002, 07:37

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: The Utah Uniform Securities Act requires that before securities are sold in Utah, they must either be registered, exempt from registration, or be a federal-covered security for which a notice filing is made. Section 61-1-14 of the Act describes securities and transactions that are exempt from registration. Section 61-1-24 of the Act provides that the Division may make rules necessary to carry out the provisions of the Act.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No comments have been received.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Rule R164-14 serves to clarify some of the exemptions listed in Section 61-1-14, as

well as add additional exemptions and should be continued. Rule R164-14 does not impose additional requirements on an issuer but only clarifies existing exemptions and adds additional exemptions.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
COMMERCE
SECURITIES
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:
Paula Faerber at the above address, by phone at 801-530-6976, by FAX at 801-530-6980, or by Internet E-mail at pfaerber@utah.gov

AUTHORIZED BY: Paula Faerber, Staff Attorney

EFFECTIVE: 12/19/2002

Commerce, Securities
R164-18
Procedures

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 25862
FILED: 12/19/2002, 07:39

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 61-1-18 of the Utah Uniform Securities Act establishes the Division of Securities and defines its functions including responsibility for administration and enforcement of the securities Act. Section 61-1-24 of the Act provides that the Division may make rules necessary to carry out the provisions of the Act.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No comments have been received.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Rule R164-18 establishes procedures for administrative actions in compliance with the Utah Administrative Procedures Act. The rule includes a description of how administrative actions are commenced, when hearings are held, and when declaratory orders are issued. Rule R164-18 assists the Division in complying with the Administrative Procedures Act and should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
COMMERCE
SECURITIES
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:
Paula Faerber at the above address, by phone at 801-530-6976, by FAX at 801-530-6980, or by Internet E-mail at pfaerber@utah.gov

AUTHORIZED BY: Paula Faerber, Staff Attorney

EFFECTIVE: 12/19/2002

Corrections, Administration
R251-112
Americans With Disabilities Act Implementation and Complaint Process

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 25884
FILED: 12/30/2002, 12:06

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: 28 CFR 35.107 (1992 ed.) requires the Department of Corrections to adopt and publish complaint procedures for violations of the Americans With Disabilities Act (ADA).

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No comments have been received.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule is necessary to provide for the prompt and equitable resolution of complaints alleging any action prohibited by the ADA and related federal regulations and should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
CORRECTIONS
ADMINISTRATION
14717 S MINUTEMAN DR
DRAPER UT 84020-9549, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Ginny L Duncan at the above address, by phone at 801-545-5722, by FAX at 801-545-5523, or by Internet E-mail at gduncan@utah.gov

AUTHORIZED BY: Michael P. Chabries, Executive Director

EFFECTIVE: 12/23/2002

Financial Institutions, Credit Unions
R337-4
Establishment of "Credit Union Service Organizations"

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 25878
FILED: 12/23/2002, 10:53

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 7-1-301(15) and Section 7-1-505 authorize the Commissioner with the powers, duties, and responsibilities of all institutions subject to the jurisdiction of the Department and he shall issue appropriate rules and regulations consistent with the purposes and provisions of this title governing the regulation, supervision, and examination of those persons, institutions, or classes of institutions.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: The Department filed a Notice of Proposed Rule (Amendment) on June 28, 2002. The Department received written comments from the Utah League of Credit Unions, the Utah Bankers Association, Credit Unions and Banks currently operating in State of Utah. A number of commenters stated that the Department lacked the authority to write the rule. In addition, some commenters stated that the proposal goes beyond safety and soundness authority of the Department. Some commenters stated that the proposal did not meet the purpose of the Financial Institutions Act which is to promote competitive equality among state financial institutions. These same commenters stated that competitive equality cannot be met if Credit Union Service Organizations (CUSO) are not allowed to provide services, including extending member business credit, to the extent allowed to federally-chartered credit unions. One commenter stated that the proposal would result in unwarranted and potentially dangerous "piercing of the corporate veil." That same commenter stated that a CUSO should be allowed to make a member business loan to any one borrower in an aggregate amount of up to 10% of its authorized investment limit. Some commenters stated that the proposal was too expansive and granted powers to CUSOs not allowed under Title 7, Chapter 9, of the Utah Code. Finally, a few commenters stated that portions of the rule were appropriate.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Subsection 7-1-301(15) and Section 7-1-505 authorize the Commissioner with the powers, duties, and responsibilities of all institutions subject to the jurisdiction of the Department and he shall issue appropriate rules and regulations consistent with the purposes and provisions of this title governing the regulation, supervision, and examination of those persons, institutions, or classes of institutions. Based upon the above referenced sections, the Department disagrees with those commenters that stated that the Commissioner does not have the authority to amend the rule. The amended rule defines "credit unions service organizations" and gives procedures and requirements for establishing them. The rule clarifies that the Department has jurisdiction over credit union service organizations and the activities of credit union service organizations and should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
FINANCIAL INSTITUTIONS
CREDIT UNIONS
Room 201
324 S STATE ST
SALT LAKE CITY UT 84111-2393, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Paul Allred at the above address, by phone at 801-538-8854, by FAX at 801-538-8894, or by Internet E-mail at PALLRED@utah.gov

AUTHORIZED BY: Edward Leary, Commissioner

EFFECTIVE: 12/23/2002

Health, Health Care Financing, Coverage and Reimbursement Policy
R414-4x
Policy Statement on Denial of Payment to Medicaid Provider When Client Fails to Keep Scheduled Appointment

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 25904
FILED: 12/31/2002, 19:35

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 26-1-5 grants the Department of Health the power to adopt, amend, or rescind rules. These rules shall have the force and effect of law in dealing with matters which affect the security and improvement of public health in the state. In addition, this rule is authorized by Subsection 76-8-1205(5), which defines the filing of a claim for services not rendered as public assistance fraud. Also, 42 CFR 1001.901 authorizes this rule because it sets forth the penalties of exclusion for providers who file improper or false claims.

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 or oral comments have been received regarding this rule.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule is necessary to prevent fraudulent behavior from providers who would bill Medicaid for services not rendered and should be continued.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:
Ross Martin or Craig Devashrayee at the above address, by phone at 801-538-6592 or 801-538-6641, by FAX at 801-538-6099 or 801-538-6099, or by Internet E-mail at rmartin@utah.gov or cdevashrayee@utah.gov

AUTHORIZED BY: Rod L. Betit, Executive Director

EFFECTIVE: 12/31/2002

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Health, Health Care Financing, Coverage and Reimbursement Policy
R414-22
Administrative Sanction Procedures and Regulations

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 25901
FILED: 12/31/2002, 19:08

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule is authorized by the following state and federal statutory provisions and congressional legislation: Section 26-1-5, Subsections 26-18-3(2) and 26-18-3(4); Sections 76-8-1201, 76-8-1202, 76-8-1204, 76-8-1205 and 76-8-1206; Code of Federal Regulations Title 42, Chapter IV, Subchapter C, Part 431.54(f); Code of Federal Regulations Title 42, Chapter IV, Subchapter C, Parts 455 and 456; Code of Federal Regulations Title 42, Chapter V, Subchapter B, Part 1001 through Part 1007; Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191, Title II. State Medicaid programs are required to have a fair hearing process to resolve grievances.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No comments have been received specific to this rule. However, a number of provider issues have been raised over the past five years related to the implementation of the rule. The comments have dealt specifically with the liability that providers have in participating in the Medicaid program.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The implementation of sanctions under the Medicaid program is required under federal law and under the state's contract with the federal government for participation in Medicaid. This rule defines these sanctions and identifies penalties for providers failing to comply with their Medicaid contract or for committing fraud in the Medicaid program and should be continued.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:
Ross Martin, Craig Devashrayee, or Steve Gatzemeier at the above address, by phone at 801-538-6592, 801-538-6641, or 801-538-6455, by FAX at 801-538-6099, 801-538-6099, or 801-538-6382, or by Internet E-mail at rmartin@utah.gov, cdevashrayee@utah.gov, or sgatzeme@utah.gov

AUTHORIZED BY: Rod L. Betit, Executive Director

EFFECTIVE: 12/31/2002

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Health, Health Care Financing, Coverage and Reimbursement Policy
R414-26
Implementation and Maintenance of the Health Care Financing Administration Common Procedure Coding System (HCPCS)

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 25902
FILED: 12/31/2002, 19:22

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: 45 CFR 162.1002(e) establishes HCPCS as the system to be used in conjunction with Current Procedure Terminology-4 for physician and other health care services. Reimbursement to providers is based on this coding system. Also, 42 CFR 440.230 grants the Division of Health Care Financing the authority to limit the amount, duration, and scope of services. These limitations are based on medical necessity, appropriateness, and utilization control as applied to this coding system. This rule is also authorized by Section 26-1-5, which grants the Department of Health the power to adopt, amend, or rescind rules which shall have the force and effect of law.

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 or oral comments have been received regarding this rule.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The agency has the responsibility to update and review HCPCS annually. This rule outlines how the review, update, and implementation will be handled and should be continued.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:
Ross Martin, Craig Devashrayee, or Urla Jean Maxfield at the above address, by phone at 801-538-6592, 801-538-6641, or 801-538-9144, by FAX at 801-538-6099, 801-538-6099, or by Internet E-mail at rmartin@utah.gov, cdevashrayee@utah.gov, or umaxfield@utah.gov

AUTHORIZED BY: Rod L. Betit, Executive Director

EFFECTIVE: 12/31/2002

Health, Health Care Financing, Coverage and Reimbursement Policy
R414-32
Hospital Record-keeping Policy

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 25903
FILED: 12/31/2002, 19:29

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 26-1-5 grants the Department of Health power to adopt, amend, and rescind rules which are necessary to support the work of the department. Title 26, Chapter 18, requires that the Department of Health implement the Medicaid program. This rule is necessary to document services and payments to hospitals.

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 or oral comments have been received regarding this rule.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule sets forth the requirements for documentary evidence that services are appropriately ordered and provided and warrant reimbursement to the Medicaid provider and should be continued.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:
Ross Martin, Craig Devashrayee, or Urla Jean Maxfield at the above address, by phone at 801-538-6592, 801-538-6641, or 801-538-9144, by FAX at 801-538-6099, 801-538-6099, or

801-538-6099, or by Internet E-mail at rmartin@utah.gov, cdevashrayee@utah.gov, or umaxfield@utah.gov

AUTHORIZED BY: Rod L. Betit, Executive Director

EFFECTIVE: 12/31/2002

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Health, Health Systems Improvement, Child Care Licensing
R430-2
General Licensing Provisions, Child Care Facilities

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 25873
FILED: 12/19/2002, 17:11

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: Title 26, Chapter 39, creates the Child Care Licensing Act and requires the Department to make and enforce rules in the following areas: (i) requirements for applications, the application process, and compliance with other applicable statutes and rules; (ii) documentation and policies and procedures that providers shall have in place in order to be licensed, in accordance with Subsection (1)(a); (iii) categories, classifications, and duration of initial and ongoing licenses; (iv) changes of ownership or name, changes in licensure status, and changes in operational status; (v) license expiration and renewal, contents, and posting requirements; and (vi) procedures for inspections, complaint resolution, disciplinary actions, and other procedural measures to encourage and assure compliance with statute and rule.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: Since the initial filing of the emergency rule in 1997 and the final rule February 3, 1998, no comments have been received to support or oppose the rule.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Rule R430-2 establishes the license application process, category of licensed, and duration of license periods to implement the statute. Continuation of the rule is required to ensure that the public understands the application and license process.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
HEALTH
HEALTH SYSTEMS IMPROVEMENT,
CHILD CARE LICENSING
CANNON HEALTH BLDG
288 N 1460 W
SALT LAKE CITY UT 84116-3231, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Debra Wynkoop at the above address, by phone at 801-538-6152, by FAX at 801-538-6325, or by Internet E-mail at debwynkoop@utah.gov

AUTHORIZED BY: Rod L. Betit, Executive Director

EFFECTIVE: 12/19/2002

▼ ▼

Health, Health Systems Improvement, Child Care Licensing
R430-3
General Child Care Facility Rules Inspection and Enforcement

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 25872
FILED: 12/19/2002, 16:59

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: Title 26, Chapter 39, creates the Child Care Licensing Act and requires the Department to make and enforce rules for procedures for inspections, complaint resolution, disciplinary actions, and other procedural measures to encourage and assure compliance with statute and rule.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: Since the initial filing of the emergency rule in 1997 and the final rule January 20, 1998, no comments have been received to support or oppose the rule.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Rule R430-3 establishes the procedures for inspection, complaints, disciplinary actions and other procedure matters. Continuation of the rule is required to ensure that the public understands the inspection and enforcement process.

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

HEALTH
HEALTH SYSTEMS IMPROVEMENT,
CHILD CARE LICENSING
CANNON HEALTH BLDG
288 N 1460 W
SALT LAKE CITY UT 84116-3231, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Debra Wynkoop at the above address, by phone at 801-538-6152, by FAX at 801-538-6325, or by Internet E-mail at debwynkoop@utah.gov

AUTHORIZED BY: Rod L. Betit, Executive Director

EFFECTIVE: 12/19/2002

Health, Health Systems Improvement, Child Care Licensing

R430-30

Adjudicative Procedure

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 25874
FILED: 12/19/2002, 17:19

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: Title 26, Chapter 39, creates the Child Care Licensing Act and requires the Department to make and enforce rules for procedures for inspections, complaint resolution, disciplinary actions, and other procedural measures to encourage and assure compliance with statute and rule.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: Since the initial filing of the emergency rule in 1997 and the final rule January 20, 1998, no comments have been received to support or oppose the rule.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Rule R430-30 establishes the formal hearing process a licensee or Department shall follow to commence an adjudicative proceeding. Continuation of the rule is required to ensure that the public understands the hearing process adopted by the Department.

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

HEALTH
HEALTH SYSTEMS IMPROVEMENT,
CHILD CARE LICENSING
CANNON HEALTH BLDG
288 N 1460 W
SALT LAKE CITY UT 84116-3231, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Debra Wynkoop at the above address, by phone at 801-538-6152, by FAX at 801-538-6325, or by Internet E-mail at debwynkoop@utah.gov

AUTHORIZED BY: Rod L. Betit, Executive Director

EFFECTIVE: 12/19/2002

Health, Health Systems Improvement, Licensing

R432-151

Mental Disease Facility

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 25875
FILED: 12/19/2002, 17:25

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: Title 26, Chapter 21, creates the Health Facility Licensing and Inspection Act and Section 26-21-5 requires the Health Facility Committee to make rules in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, for the licensing of health-care facilities. Section 26-21-6 requires that the department enforce rules and make rules as necessary to implement the provisions of this chapter, except as authority is specifically delegated to the committee.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: Since the last five-year review on November 3, 1998, there have been two nonsubstantive amendments to the rule to correct citations and references. No written comments have been received to support or oppose the rule.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Rule R432-151 establishes a minimum standard for the operation of a mental disease facility which provides mental health and skilled and intermediate nursing care services. Continuation of the rule is

required to protect the state Medicaid interests and to meet federal requirements for Medicaid payment to nursing care facilities. The rule establishes standards of care and provides the minimum health and safety standards to ensure that a safe environment is provided for consumers. The Health Facility Committee supports the continuation of the rule and will continue to review this rule as medical practice and standards of care change.

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

HEALTH
HEALTH SYSTEMS IMPROVEMENT, LICENSING
CANNON HEALTH BLDG
288 N 1460 W
SALT LAKE CITY UT 84116-3231, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Debra Wynkoop at the above address, by phone at 801-538-6152, by FAX at 801-538-6325, or by Internet E-mail at debwynkoop@utah.gov

AUTHORIZED BY: Rod L. Betit, Executive Director

EFFECTIVE: 12/19/2002

Human Services, Administration
R495-861
Requirements for Local Discretionary Social Services Block Grant Funds

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 25880
FILED: 12/23/2002, 11:36

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 62A-1-114 states that the Department of Human Services shall be the sole agency responsible for the administration of federally-assisted state programs or plans. The Social Services Block Grant is one of several such programs identified in this section.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No comments have been received.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule names the local governments that receive funds from Social Services Block Grants. The rule also identifies the funding formula and match requirement for the allocation of those funds. None of these requirements have been altered and it is therefore necessary for the rule to continue.

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

HUMAN SERVICES
ADMINISTRATION
120 N 200 W
SALT LAKE CITY UT 84103-1500, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Vanessa Thompson at the above address, by phone at 801-538-9877, by FAX at (n/a), or by Internet E-mail at vthompson@utah.gov

AUTHORIZED BY: Robin Arnold-Williams, Executive Director

EFFECTIVE: 12/23/2002

Human Services, Recovery Services
R527-3
Definitions

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 25851
FILED: 12/18/2002, 13:38

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule is enacted under Sections 62A-11-103, 62A-11-202, 62A-11-303, and 62A-11-401 which contain definitions of terms for the Office of Recovery Services, the Administrative Determination of Overpayments Act, the Child Support Services Act, and Income Withholding in IV-D and Non-IV-D cases. This rule provides definitions of additional terms used by the Office of Recovery Services in its various programs which are either not mentioned or not precisely defined in these statutes.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No comments have been received.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: It is necessary to continue this rule so that terms not specified in the Utah Code that relate to the Office of Recovery Services or its programs are available to the public.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
HUMAN SERVICES
RECOVERY SERVICES
515 E 100 S
SALT LAKE CITY UT 84102-4211, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Wayne Braithwaite at the above address, by phone at 801-536-8986, by FAX at 801-536-8509, or by Internet E-mail at waynebraithwaite@utah.gov

AUTHORIZED BY: Emma Chacon, Director

EFFECTIVE: 12/18/2002

Human Services, Services for People with Disabilities
R539-1
Eligibility

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 25848
FILED: 12/18/2002, 11:22

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: Provisions of Section 62A-5-102 state, "(2) In accordance with this chapter, the division has the responsibility to plan and deliver an appropriate array of services and supports to persons with disabilities and their families in this state."

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: Division staff are planning to repeal and reenact this rule based upon changes made to policy by the Board. Debate over the eligibility section currently has to do with the reduction of funding among those who are waiver eligible but who choose not to participate in a waiver. There is also discussion whether these reductions in funding should extend beyond those who are waiver eligible. Otherwise most stake holders seem in agreement concerning the eligibility requirements that make one eligible for funding.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The Division wants to continue the existing rule as it finalizes rule changes that will respond to opposition that has been expressed and formalized already in policies passed by the Division of Services to People with Disabilities Policy Board.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
HUMAN SERVICES
SERVICES FOR PEOPLE WITH DISABILITIES
Room 411
120 N 200 W
SALT LAKE CITY UT 84103-1500, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Meredith Mannebach at the above address, by phone at 801-538-4197, by FAX at 801-538-4279, or by Internet E-mail at mmannebach@utah.gov

AUTHORIZED BY: Robin Arnold-Williams, Executive Director

EFFECTIVE: 12/18/2002

Human Services, Services for People with Disabilities
R539-2
Civil Rights

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 25853
FILED: 12/18/2002, 15:02

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: Provisions of Section 62A-5-103 state that "The division has the authority and responsibility to: (4)(b) ensure that the constitutionally protected liberty interests of persons with disabilities are not deprived without due process procedures designed to minimize the risk of error when those persons are admitted to any structured residential mental retardation facility, including the developmental center and facilities within the community such as intermediate care facilities for the mentally retarded. Those services shall include initial and periodic reviews to determine the constitutional appropriateness of the placement. The constitutional due process review process required by this subsection, with regard to intermediate care facilities for the mentally retarded, does not necessitate commitment to the division...."

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: Division staff are planning to repeal and reenact this rule based upon changes made to policy by the Board. In addition, the role of the Provider agency and family in protection of human rights is being debated and clarified. Comments received during the Board's review of policy, related to this policy section, had to do with the role of Human Right committees, expansion of

rights of people in service to choose Provider agencies, staff and Support Coordinators and clarification of Government Records Access and Management Act (GRAMA), informed consent and release of information. Also important to a rewrite of this section will be the changes required by new Health Insurance Portability and Accountability Act (HIPAA) taking effect April 2003.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The Division wants to continue the existing rule as it finalizes rule changes that will respond to opposition that has been expressed and formalized already in policies passed by the Division of Services to People with Disabilities Policy Board.

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

HUMAN SERVICES
SERVICES FOR PEOPLE WITH DISABILITIES
Room 411
120 N 200 W
SALT LAKE CITY UT 84103-1500, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Meredith Mannebach at the above address, by phone at 801-538-4197, by FAX at 801-538-4279, or by Internet E-mail at mmannebach@utah.gov

AUTHORIZED BY: Robin Arnold-Williams, Executive Director

EFFECTIVE: 12/18/2002

Human Services, Services for People with Disabilities

R539-4

Quality Assurance

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 25856
FILED: 12/18/2002, 15:11

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: Provisions of Section 62A-5-103 state that "The division has the authority and responsibility to: (5) contract for services and supports for persons with disabilities; (6) approve and monitor approved providers; (8) establish standards and rules for the administration and operation of programs operated by or under contract with the division; (9) approve and monitor division programs to insure compliance with the board's policies and standards."

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: Division staff are planning to repeal and reenact this rule based upon changes made to policy by the Board. The Division and stake holders agree this section needs major revision and have been working jointly on the development of a new quality monitoring process over the past six months. These changes will be used to update this rule section. Also to be clarified is the quality review process for those families who participate in the Self-Administered Model services who do not work with a Provider agency but hire and train staff directly.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The Division wants to continue the existing rule as it finalizes rule changes that will respond to opposition that has been expressed and formalized already in policies passed by the Division of Services to People with Disabilities Policy Board.

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

HUMAN SERVICES
SERVICES FOR PEOPLE WITH DISABILITIES
Room 411
120 N 200 W
SALT LAKE CITY UT 84103-1500, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Meredith Mannebach at the above address, by phone at 801-538-4197, by FAX at 801-538-4279, or by Internet E-mail at mmannebach@utah.gov

AUTHORIZED BY: Robin Arnold-Williams, Executive Director

EFFECTIVE: 12/18/2002

Human Services, Services for People with Disabilities

R539-5

Preparation and Maintenance of Client Records

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 25852
FILED: 12/18/2002, 14:51

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: Provisions of Section 62A-5-103 state that "The division has the authority and responsibility to: (3) supervise the programs and facilities

operated by or under contract with the division; (8) establish standards and rules for the administration and operation of programs operated by or under contract with the division; (9) approve and monitor division programs to insure compliance with the board's policies and standards."

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: Division staff are planning to repeal and reenact this rule based upon changes made to policy by the Board. Discussion of this policy will include specification of the types of documents to be maintained, timeframes and reporting processes, storage and destruction for records provided by the State to Provider agencies and records developed and created by Providers contracting with the State.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The Division wants to continue the existing rule as it finalizes rule changes that will respond to opposition that has been expressed and formalized already in policies passed by the Division of Services to People with Disabilities Policy Board.

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

HUMAN SERVICES
SERVICES FOR PEOPLE WITH DISABILITIES
Room 411
120 N 200 W
SALT LAKE CITY UT 84103-1500, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Meredith Mannebach at the above address, by phone at 801-538-4197, by FAX at 801-538-4279, or by Internet E-mail at mmannebach@utah.gov

AUTHORIZED BY: Robin Arnold-Williams, Executive Director

EFFECTIVE: 12/18/2002

Human Services, Services for People with Disabilities

R539-6

Purchase of Service Provider Requirements

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 25849
FILED: 12/18/2002, 12:18

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: Provisions of Section 62A-5-103 state that "The division has the authority and responsibility to: (2) establish either directly or by contract with private, nonprofit organizations, programs of outreach, information and referral, prevention, technical assistance, and public awareness, in an effort to enhance the quality of life for persons with disabilities in this state; (3) supervise the programs and facilities operated by or under contract with the division; (5) contract for services and supports for persons with disabilities; (6) approve and monitor approved providers; (8) establish standards and rules for the administration and operation of programs operated by or under contract with the division; (9) approve and monitor division programs to insure compliance with the board's policies and standards...."

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: Division staff are planning to repeal and reenact this rule based upon changes made to policy by the Board. Opponents have asked for more clear definitions of training requirements and timeframes along with greater flexibility and certification of staff training.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The Division wants to continue the existing rule as it finalizes rule changes that will respond to opposition that has been expressed and formalized already in policies passed by the Division of Services to People with Disabilities Policy Board.

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

HUMAN SERVICES
SERVICES FOR PEOPLE WITH DISABILITIES
Room 411
120 N 200 W
SALT LAKE CITY UT 84103-1500, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Meredith Mannebach at the above address, by phone at 801-538-4197, by FAX at 801-538-4279, or by Internet E-mail at mmannebach@utah.gov

AUTHORIZED BY: Robin Arnold-Williams, Executive Director

EFFECTIVE: 12/18/2002

Human Services, Services for People with Disabilities

R539-7

Home Based Services

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 25855
FILED: 12/18/2002, 15:06

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: Provisions of Section 62A-5-103 state, "The division has the authority and responsibility to: (1) plan, develop, and manage an array of services and supports for persons with disabilities and their families throughout the state. Those services and supports may include, but are not limited to: (c) personal attendant care; (f) respite care; (k) family support; (l) service coordination services, except as limited by Part 4; and (m) home-based services, provided in accordance with Part 4; (2) establish either directly or by contract with private, nonprofit organizations, programs of outreach, information and referral, prevention, technical assistance, and public awareness, in an effort to enhance the quality of life for persons with disabilities in this state."

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: Division staff are planning to repeal and reenact this rule based upon changes made to policy by the Board. Opponents have asked for removal of the best practice suggestions in each service type definition to increase Provider flexibility and reduce Provider risk. These suggestions will need to be worked out as the Board reviews rule changes to be completed in the first few months of 2003.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The Division wants to continue the existing rule as it finalizes rule changes that will respond to opposition that has been expressed and formalized already in policies passed by the Division of Services to People with Disabilities Policy Board.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
HUMAN SERVICES
SERVICES FOR PEOPLE WITH DISABILITIES
Room 411
120 N 200 W
SALT LAKE CITY UT 84103-1500, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Meredith Mannebach at the above address, by phone at 801-538-4197, by FAX at 801-538-4279, or by Internet E-mail at mmannebach@utah.gov

AUTHORIZED BY: Robin Arnold-Williams, Executive Director

EFFECTIVE: 12/18/2002

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Human Services, Services for People with Disabilities

R539-8

Community Based Services

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 25847
FILED: 12/18/2002, 11:14

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 62A-5-103 states, "The division has the authority and responsibility to: (1) plan, develop, and manage an array of services and supports for persons with disabilities and their families throughout the state. Those services and supports may include, but are not limited to: (a) residential services and supports; (b) day training services and supports, including work activity, sheltered employment, and supported employment; (c) personal attendant care; (d) apartment follow-along; (e) supervised apartment living; (g) specialized foster care; (h) community skills training; (i) transportation; (j) assessment; (l) service coordination services, except as limited by Part 4; (2) establish either directly or by contract with private, nonprofit organizations, programs of outreach, information and referral, prevention, technical assistance, and public awareness, in an effort to enhance the quality of life for persons with disabilities in this state; (3) supervise the programs and facilities operated by or under contract with the division; (4)(a) cooperate with other state, governmental, and private agencies that provide services to persons with disabilities."

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: Division staff are planning to repeal and reenact this rule based upon changes made to policy by the Board. Opponents have asked that this rule be combined with Rule R539-2 for greater clarification of services funded by the division and to reduce duplication.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The Division wants to continue the existing rule as it finalizes rule changes that will respond to opposition that has been expressed and formalized already in policies passed by the Division of Services to People with Disabilities Policy Board.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
HUMAN SERVICES
SERVICES FOR PEOPLE WITH DISABILITIES
Room 411
120 N 200 W
SALT LAKE CITY UT 84103-1500, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Meredith Mannebach at the above address, by phone at 801-538-4197, by FAX at 801-538-4279, or by Internet E-mail at mmannebach@utah.gov

AUTHORIZED BY: Robin Arnold-Williams, Executive Director

EFFECTIVE: 12/18/2002

Natural Resources, Water Resources
R653-7
Administrative Procedures for Informal Proceedings

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 25833
FILED: 12/17/2002, 09:02

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: As required by Section 63-46b-1, the Administrative Procedures Act, this rule provides the administrative procedures for informal hearings and declaratory orders.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No comments have been received.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The Division of Water Resources is still required to provide administrative procedures for informal proceedings, as required by the Administrative Procedures Act, and this rule outlines those procedures and should continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
NATURAL RESOURCES
WATER RESOURCES
Room 310
1594 W NORTH TEMPLE
SALT LAKE CITY UT 84116-3154, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Nancy Fullmer at the above address, by phone at 801-538-7251, by FAX at 801-538-7279, or by Internet E-mail at nancyfullmer@utah.gov

AUTHORIZED BY: Larry Anderson, Director

EFFECTIVE: 12/17/2002

Natural Resources, Water Resources
R653-8
Flaming Gorge Water Right Assignment

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 25834
FILED: 12/17/2002, 09:40

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 the priorities and procedures for segregating portions of the Flaming Gorge Water Right No. 41-3479 owned by the Board of Water Resources, as outlined in Section 73-10-26.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No comments have been received.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The Board of Water Resources is still accepting applications for portions of the Flaming Gorge Water Right and therefore needs this rule outlining the priorities and procedures.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
NATURAL RESOURCES
WATER RESOURCES
Room 310
1594 W NORTH TEMPLE
SALT LAKE CITY UT 84116-3154, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Nancy Fullmer at the above address, by phone at 801-538-7251, by FAX at 801-538-7279, or by Internet E-mail at nancyfullmer@utah.gov

AUTHORIZED BY: Larry Anderson, Director

EFFECTIVE: 12/17/2002

Natural Resources, Wildlife Resources
R657-23
Process for Providing Proof of Completion of Hunter Education

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 25891
FILED: 12/31/2002, 12:00

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: Under Sections 23-14-18, 23-14-19, and 23-19-11 the Wildlife Board is authorized to adopt rules to prescribe safety measures and provide the process and requirements for hunter education instructor and student training; and the process for obtaining proof of successfully completing an approved hunter education course.

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 Division of Wildlife Resources and the Wildlife Board have not received written comments, either in support or opposition to Rule R657-23. Written comments received in opposition to the rule are resolved using existing policies and procedures or the issue is placed on the Regional Advisory Council's and Wildlife Board's agenda for review and discussion during the review process for taking public input. The public is welcome to view the Regional Advisory Council minutes, Wildlife Board minutes, and administrative record for this rule at the Division of Wildlife Resources.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Rule R657-23 provides the procedures and requirements for: 1) hunter education instructor and student training; and 2) presenting and obtaining proof of having successfully completed an approved hunter education course. The procedures adopted in this rule have provided an effective and efficient process. Continuation of this rule is necessary for continued success of the hunter education program.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
NATURAL RESOURCES
WILDLIFE RESOURCES
1594 W NORTH TEMPLE
SALT LAKE CITY UT 84116-3154, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Debbie Sundell at the above address, by phone at 801-538-4707, by FAX at 801-538-4745, or by Internet E-mail at debbiesundell@utah.gov

AUTHORIZED BY: Kevin Conway, Director

EFFECTIVE: 12/31/2002

Natural Resources, Wildlife Resources
R657-33
Taking Bear

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 25893
FILED: 12/31/2002, 12:03

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: Under Sections 23-14-18 and 23-14-19 the Wildlife Board is authorized and required to regulate and prescribe the means by which wildlife may be taken.

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 Division of Wildlife Resources (DWR) and the Wildlife Board have not received written comments, either in support or opposition to Rule R657-33. DWR and the Wildlife Board have received several verbal comments during the public meetings, both in support and opposition to Rule R657-33. Verbal comment received during the last five-year review specifically regarded the use of dogs and bait while hunting bear, and the five-year experimental spring bear hunt. Both written and verbal comments received opposing the rule are resolved using existing policies and procedures or the issue is placed on the Regional Advisory Council's and Wildlife Board's agenda for review and discussion during the review process for taking public input. The public is welcome to view the Regional Advisory Council minutes, Wildlife Board minutes, and administrative record for this rule at the Division of Wildlife Resources.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Rule R657-33 provides the procedures, standards, and requirements for taking and pursuing bear. The provisions adopted in this rule are effective in providing the standards and requirements for taking and pursuing bear. Continuation of this rule is necessary for continued success of this program.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
NATURAL RESOURCES
WILDLIFE RESOURCES
1594 W NORTH TEMPLE
SALT LAKE CITY UT 84116-3154, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Debbie Sundell at the above address, by phone at 801-538-4707, by FAX at 801-538-4745, or by Internet E-mail at debbiesundell@utah.gov

AUTHORIZED BY: Kevin Conway, Director

EFFECTIVE: 12/31/2002

Public Safety, Highway Patrol
R714-110
Permit to Operate a Motor Vehicle in Violation of Equipment Laws

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 25846
FILED: 12/17/2002, 16:08

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Sections 41-6-117 through 41-6-175.5 address the equipment requirements for motor vehicles in Utah. Section 41-6-117.5 allows the department to issue permits which will allow motor vehicles to be operated in violation of those requirements. Subsection 53-8-204(5)(a) authorizes the department to write rules regarding the operation of motor vehicle equipment.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No comments have been received.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: It is necessary to continue this rule in order to inform the public how they may apply for a permit to operate a motor vehicle in violation of motor vehicle equipment laws, how the department responds to such applications, and how a person may appeal a denial of such application.

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:
J. Francis Valerga at the above address, by phone at 801-965-4466, by FAX at 801-965-4608, or by Internet E-mail at jfvalerg@utah.gov

AUTHORIZED BY: Robert Flowers, Commissioner

EFFECTIVE: 12/17/2002

Public Safety, Highway Patrol
R714-158
Vehicle Safety Inspection Program Requirements

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 25842
FILED: 12/17/2002, 15:57

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: Title 53, Chapter 8, Part 2, provides for the establishment of a vehicle safety inspection program. Section 53-8-203 establishes a Motor Vehicle Safety Inspection Advisory Council (Council). The Council hears appeals of administrative actions suspending or revoking inspection permits and certificates and advises the Highway Patrol on vehicle safety inspection program issues. Section 53-8-204 provides that a vehicle which is required to be registered, may not be operated without having passed safety inspection. Subsection 53-8-204(5) authorizes the Highway Patrol to make rules administering the vehicle safety inspection program.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No comments have been received.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule should be continued because it assists the Highway Patrol in administering the vehicle safety inspection program and provides notice to the public in general and to safety inspection stations and inspectors in particular regarding program requirements.

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:
J. Francis Valerga at the above address, by phone at 801-965-4466, by FAX at 801-965-4608, or by Internet E-mail at jfvalerg@utah.gov

AUTHORIZED BY: Robert Flowers, Commissioner

EFFECTIVE: 12/17/2002

Public Safety, Highway Patrol
R714-200
Standards for Vehicle Lights and Illuminating Devices

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 25845
FILED: 12/17/2002, 16:03

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: Title 41, Chapter 6, Article 16, addresses various equipment, including lights and illuminating devices, that are required on vehicles in Utah. Section 41-6-142 provides that the department shall adopt standards governing the specifications, installation, and function of such lights and illuminating devices. Section 41-6-117 and Subsection 53-1-106(1)(a) authorize the department to make rules regarding such lights and illuminating devices.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No comments have been received.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule should be continued because it assists the department in ensuring that vehicle lights and illuminating devices meet certain specifications and that they are installed and function consistently with the requirements of other states and with regulations of the United States Department of Transportation.

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:
J. Francis Valerga at the above address, by phone at 801-965-4466, by FAX at 801-965-4608, or by Internet E-mail at jfvalerg@utah.gov

AUTHORIZED BY: Robert Flowers, Commissioner

EFFECTIVE: 12/17/2002

Public Safety, Highway Patrol
R714-210
Standards for Motor Vehicle Air Conditioning Equipment

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 25843
FILED: 12/17/2002, 15:59

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 41-6-154.10 addresses vehicle air conditioning equipment. Subsection 41-6-154.10(b) provides that such equipment be manufactured, installed, and maintained with due regard for public safety. Subsection 41-6-154.10(c) allows the department to adopt rules to ensure the above.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No comments have been received.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule should be continued because it assists the department in ensuring that vehicle air conditioning equipment meet certain public safety requirements and that such requirements conform to the requirements approved by the Society of Automotive Engineers.

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:
J. Francis Valerga at the above address, by phone at 801-965-4466, by FAX at 801-965-4608, or by Internet E-mail at jfvalerg@utah.gov

AUTHORIZED BY: Robert Flowers, Commissioner

EFFECTIVE: 12/17/2002

Public Safety, Highway Patrol
R714-220
Standards for Motorcycle Protective Headgear

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 25844
FILED: 12/17/2002, 16:02

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 41-6-107.8(1) prohibits a person under age 18 from operating or riding on a motorcycle unless the person is wearing protective headgear that complies with standards established by the commissioner of Public Safety. Subsection 41-6-107.8(3) requires the commissioner to make rules establishing those standards.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No comments have been received.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule should be continued because the commissioner is required to make rules establishing specifications and standards for the use of motorcycle protective headgear for persons under age 18 who operate or ride on a motorcycle and because such specifications are necessary to provide for the safety of those persons.

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:
J. Francis Valerga at the above address, by phone at 801-965-4466, by FAX at 801-965-4608, or by Internet E-mail at jfvalerg@utah.gov

AUTHORIZED BY: Robert Flowers, Commissioner

EFFECTIVE: 12/17/2002

Public Safety, Highway Patrol
R714-230
Standards and Specifications for Vehicle Seat Belts and Safety Harnesses

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 25840
FILED: 12/17/2002, 15:53

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 41-6-142 requires the department to adopt standards for all types of vehicle safety equipment including seat belts. Section 41-6-148.10 requires the department to adopt standards specifically for vehicle seat belts. Sections 41-6-142 and 41-6-148.10 implicitly authorize the department to make rules establishing such standards.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No comments have been received.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule should be continued because it assists the department in ensuring that vehicle seat belts meet minimum safety requirements in terms of design and installation.

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:
J. Francis Valerga at the above address, by phone at 801-965-4466, by FAX at 801-965-4608, or by Internet E-mail at jfvalerg@utah.gov

AUTHORIZED BY: Robert Flowers, Commissioner

EFFECTIVE: 12/17/2002

Public Safety, Highway Patrol
R714-240
Standards and Specifications for Child Restraint Devices and Seat Belts

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 25841
FILED: 12/17/2002, 15:55

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 41-6-182(3) provides that a driver transporting a child in a motor vehicle shall provide for the protection of that child by using a child restraint device or safety belt approved by the commissioner of public safety and implicitly authorizes the commissioner to make rules ensuring the appropriateness of such child restraint device or safety belt.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No comments have been received.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule should be continued because it assists the commissioner in ensuring that motor vehicle child restraint devices and safety belts are appropriate to provide for the protection of children.

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:
J. Francis Valerga at the above address, by phone at 801-965-4466, by FAX at 801-965-4608, or by Internet E-mail at jfvalerg@utah.gov

AUTHORIZED BY: Robert Flowers, Commissioner

EFFECTIVE: 12/17/2002

Public Safety, Highway Patrol
R714-300
Standards for Motor Vehicle Braking System

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 25839
FILED: 12/17/2002, 15:52

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 41-6-145 provides that motor vehicles shall have braking systems that comply with performance standards issued by the department, and implicitly authorizes the department to make rules providing for such standards.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No comments have been received.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule should be continued because it assists the department in ensuring that motor vehicle braking systems are appropriate for safe operation.

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:
J. Francis Valerga at the above address, by phone at 801-965-4466, by FAX at 801-965-4608, or by Internet E-mail at jfvalerg@utah.gov

AUTHORIZED BY: Robert Flowers, Commissioner

EFFECTIVE: 12/17/2002

Public Safety, Highway Patrol
R714-550
Rule for Spending Fees Provided under Section 53-1-117

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 25836
FILED: 12/17/2002, 11:43

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule is enacted under Section 53-1-117 which requires the department to establish criteria and procedures to administer revenues from the "Public Safety Restricted Account" established by Subsection 53-3-106(1). Funds from the account are awarded by the Law Enforcement Alcohol and Drug Fee Committee to law enforcement agencies of the state and its political subdivisions to assist in the enforcement of alcohol or drug-related offenses.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No comments have been received.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The rule needs to be continued to provide the Law Enforcement Alcohol and Drug Fee Committee the criteria and procedures it needs to follow in order to properly and fairly administer the revenues from the Public Safety Restricted Account.

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:
J. Francis Valerga at the above address, by phone at 801-965-4466, by FAX at 801-965-4608, or by Internet E-mail at jfvalerg@utah.gov

AUTHORIZED BY: Robert Flowers, Commissioner

EFFECTIVE: 12/17/2002

Public Service Commission, Administration
R746-346
Operator-Assisted Services

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 25876
FILED: 12/20/2002, 15:48

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule is authorized pursuant to Section 54-8b-13 which requires the Commission to make rules to implement requirements for operator assisted services.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: There were no comments received after the five-year review of this rule in 1997.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Section 54-8b-13 continues to require this rule. This rule ensures that customers of operator-assisted service are informed of rates, surcharges, terms, or conditions of using operator-assisted services. The rule contains requirements for information: to be provided at the telephone set; to inform customers as to which provider is providing the service, or that a call is being transferred to another provider; and requirements for providers of operator-assisted services before a call is completed and when a call in "uncompleted." Requirements for 911 calls, "0" calls, and end-user choice are also provided in this rule. Availability of customer complaint toll-free number requirements are contained in this rule, along with caller access when a call

aggregator is involved. This rule also contains enforcement provisions and 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:
Barbara Stroud at the above address, by phone at 801-530-6714, by FAX at 801-530-6796, or by Internet E-mail at bstroud@utah.gov

AUTHORIZED BY: Barbara Stroud, Paralegal

EFFECTIVE: 12/20/2002

Public Service Commission, Administration
R746-356
Intrastate (IntraLATA) Equal Access To Toll Calling Services By Telecommunications Carriers

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 25877
FILED: 12/20/2002, 15:52

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule is authorized pursuant to Section 54-8b-2.2 which requires the Commission to make rules to implement the competitive provision of facilities-based intraLATA toll and local exchange services and to adopt rules which implement the competitive provision of facilities-based intraLATA toll and local exchange services. These rules are required to address those issues the commission determines are essential for a competing telecommunications corporation to provide intraLATA toll and local exchange services and necessary to protect the public interest, including the interconnection with essential facilities and the purchase and sale of essential services of telecommunications corporations authorized to provide public telecommunications services in the same or overlapping service territories on a nondiscriminatory and reasonably unbundled basis.

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 only comments received after this rule was made effective in 1997 was a Motion to Continue the Permissive Dialing Period filed by Tel-America in January of 1998. The Commission considered the motion and based on Tel-America's representation that ending the permissive dialing period would render the 700 service ineffective, and recognizing that intraLATA equal access may be available that summer to solve the problem, the Commission granted the motion in a Second Amended Order, dated February 18, 1998, modifying its previous permissive dialing period so that it would end on September 20, 1998.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Section 54-8b-2.2 requirements continue to authorize this rule for the reasons stated in the "concise explanation of the particular statutory provisions" above and 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:
Barbara Stroud at the above address, by phone at 801-530-6714, by FAX at 801-530-6796, or by Internet E-mail at bstroud@utah.gov

AUTHORIZED BY: Barbara Stroud, Paralegal

EFFECTIVE: 12/20/2002

Transportation, Operations, Traffic and Safety
R920-4
Proposed Policy for Special Road Use

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 25857
FILED: 12/18/2002, 17:28

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: The traffic code, Section 41-22-15, requires special conditions on these permit requests.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS

SUPPORTING OR OPPOSING THE RULE: No comments have been received.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The requirements for the permit still exist so the rule should be continued.

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

TRANSPORTATION
OPERATIONS, TRAFFIC AND SAFETY
CALVIN L RAMPTON COMPLEX
4501 S 2700 W
SALT LAKE CITY UT 84119-5998, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
James Beadles at the above address, by phone at 801-965-4168, by FAX at 801-965-4796, or by Internet E-mail at jbeadles@utah.gov

AUTHORIZED BY: John R. Njord, Executive Director

EFFECTIVE: 12/18/2002

End of the Five-Year Notices of Review and Statements of Continuation Section

NOTICES OF RULE EFFECTIVE DATES

These are the effective dates of PROPOSED RULES or CHANGES IN PROPOSED RULES published in earlier editions of the *Utah State Bulletin*. These effective dates are at least 31 days and not more than 120 days after the date the following rules were published.

Abbreviations
AMD = Amendment
CPR = Change in Proposed Rule
NEW = New Rule
R&R = Repeal and Reenact
REP = Repeal

Administrative Services
Fleet Operations
No. 25561 (AMD): R27-3-11. Daily Motor Pool Van, Four Wheel Drive Sport Utility Vehicle (4x4 SUV), and Wheel Chair Accessible Vehicle Lease Criteria.
Published: November 15, 2002
Effective: December 18, 2002

Community and Economic Development
Community Development, Energy Services
No. 25370 (REP): R203-3. Utah Commercial/Industrial Energy Loan Program.
Published: October 15, 2002
Effective: January 1, 2003

Governor
Planning and Budget, Chief Information Officer
No. 25551 (AMD): R365-3. Computer Software Licensing, Copyright, Control, Retention, and Transfer.
Published: November 15, 2002
Effective: December 17, 2002

Health
Health Care Financing, Coverage and Reimbursement Policy
No. 25502 (NEW): R414-504. Nursing Facility Payments.
Published: November 1, 2002
Effective: December 31, 2002

Health Systems Improvement, Licensing
No. 25157 (AMD): R432-2-6. Application.
Published: September 1, 2002
Effective: December 30, 2002

No. 25448 (AMD): R432-6. Assisted Living Facility General Construction.
Published: November 1, 2002
Effective: December 19, 2002

No. 25158 (NEW): R432-31. Transferable Physician Order for Life-Sustaining Treatment.
Published: September 1, 2002
Effective: December 19, 2002

No. 25371 (NEW): R432-40. Long-Term Care Facility Immunizations.
Published: October 15, 2002
Effective: December 19, 2002

Center for Health Data, Vital Records and Statistics
No. 25296 (AMD): R436-4-10. Delayed Registration of Birth Resulting in Stillbirth.
Published: October 1, 2002
Effective: December 19, 2002

Insurance
Administration
No. 25556 (AMD): R590-164. Uniform Health Billing Rule.
Published: November 15, 2002
Effective: December 19, 2002

Labor Commission
Antidiscrimination and Labor, Labor
No. 25567 (AMD): R610-3-16. Retaliation.
Published: November 15, 2002
Effective: December 17, 2002

Industrial Accidents
No. 25566 (AMD): R612-1-10. Permanent Total Disability.
Published: November 15, 2002
Effective: December 17, 2002

No. 25565 (AMD): R612-4-2. Premium Rates for the Uninsured Employers' Fund and the Employers' Reinsurance Fund.
Published: November 15, 2002
Effective: December 17, 2002

Occupational Safety and Health
No. 25568 (AMD): R614-1-4. Incorporation of Federal Standards.
Published: November 15, 2002
Effective: December 17, 2002

No. 25571 (AMD): R614-1. General Provisions.
Published: November 15, 2002
Effective: December 17, 2002

Safety
No. 25564 (AMD): R616-2-3. Safety Codes and Rules for Boilers and Pressure Vessels.
Published: November 15, 2002
Effective: December 17, 2002

Natural Resources
Wildlife Resources
No. 25361 (CPR): R657-6. Taking Upland Game.
Published: November 15, 2002
Effective: December 18, 2002

No. 25361 (AMD): R657-6. Taking Upland Game.
Published: October 15, 2002
Effective: December 18, 2002

Workforce Services
Administration
No. 25547 (R&R): R982-101. Americans with Disabilities Act Complaint Procedure.
Published: November 15, 2002
Effective: January 1, 2003

Employment Development
No. 25427 (AMD): R986-700-703. Client Rights and Responsibilities.
Published: October 15, 2002
Effective: January 1, 2003

No. 25572 (AMD): R986-700-710. Income and Asset Limits for ES CC.
Published: November 15, 2002
Effective: January 1, 2003

No. 25574 (AMD): R986-900-902. Options and Waivers.
Published: November 15, 2002
Effective: January 1, 2003

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, 2002, through December 31, 2002. The *Rules Index* is published in the *Utah State Bulletin* and in the annual *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).

DAR NOTE: Because of publication constraints, neither index is printed in this Bulletin.

A copy of the *Rules Index* is available for public inspection at the Division of Administrative Rules (4120 State Office Building, Salt Lake City, UT), or may be viewed online at the Division's web site (http://www.rules.utah.gov/).

DAR NOTE: The index may contain inaccurate page number references. Also the index is incomplete in the sense that index entries for Changes in Proposed Rules (CPRs) are not preceded by entries for their parent Proposed Rules. These difficulties with the index are related to a new software package used by the Division to create the Bulletin and related publications; we hope to have them resolved as soon as possible. Bulletin issue information and effective date information presented in the index are, to the best of our knowledge, complete and accurate. If you have any questions regarding the index and the information it contains, please contact Nancy Lancaster (801 538-3218), Mike Broschinsky (801 538-3003), or Kenneth A. Hansen (801 538-3777).