UTAH STATE BULLETIN

OFFICIAL NOTICES OF UTAH STATE GOVERNMENT
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Number 2003-3
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Kenneth A. Hansen, Director
Nancy L. Lancaster, Editor

The *Utah State Bulletin (Bulletin)* is the official noticing publication of the executive branch of Utah State Government. The Department of Administrative Services, Division of Administrative Rules produces the *Bulletin* under authority of Section 63-46a-10, *Utah Code Annotated* 1953.

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 EFFECTIVE DATE ERROR ON THE FILING ON SECTION R311-401-2

On January 3, 2003, the Division of Administrative Rules (Division) discovered that due to a computer error, a notice of effective date for the filing on Section R311-401-2 (DAR No. 25116), that was published in the August 15, 2002, *Utah State Bulletin*, which was filed on October 1, 2002, was not properly recorded so it was not published in the November 1, 2002, *Bulletin*. The Division has corrected this error and a notice of this effective action is published under the "Notices of Rule Effective Dates" section in this *Bulletin*.

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

AGRICULTURE AND FOOD
ADMINISTRATION

UTAH SOIL CONSERVATION COMMISSION 2003 MEETING SCHEDULE

Public Notice is hereby given of the 2003 calendar year meeting schedule for the Utah Soil Conservation Commission, hereafter called "Commission," a state agency policy making body authorized by Title 4, Chapter 18, Utah Code. Its purpose is to help bring about sensible development and wise conservation of Utah's soil and water resource on private lands. To accomplish this the Commission assists Utah's 38 local soil conservation districts to fulfill their purposes; administering the Agriculture Resource Development Loan program; and, facilitates the coordination of state and federal conservation partnership government agencies and groups who may influence these programs.

Six meetings for 2003 are planned as follows:

1. January 29 (Wednesday) at 1:00 - 4:00 p.m. in Salt Lake City
2. March 17 (Monday) at 2:00 - 5:00 p.m. in St George*
3. May 21 (Wednesday) at 1:30 - 4:30 p.m. in Roosevelt*
4. July 15 (Tuesday) at 1:00 - 4:00 p.m. in Salt Lake City
5. September (Date, time, and location to be determined and announced later.)
6. November 12 (Wednesday) at 2:00 - 5:00 p.m. in St. George*

* The place for meetings out of Salt Lake City will be determined by the Commission staff and a notice will be published two weeks prior.

Meetings are held either in the Main Conference Room of the Utah Department of Agriculture and Food (UDAF), 350 North Redwood Road, Salt Lake City, or at such other place as the Commission shall designate prior to any such meeting. Additionally, meetings for the briefing of members of the Commission may be held at such place and location as the Commission shall designate prior to any such meeting.

Commission contact: K. N. "Jake" Jacobson, Administrative Officer with the UDAF, PO Box 146500, 350 N Redwood Road, Salt Lake City, UT 84116-6500; phone: (801) 538-7171; FAX: (801) 538-4940; or E-mail at: JakeJacobson@utah.gov.

In compliance with the Americans with Disabilities Act (ADA), individuals needing special accommodations (including auxiliary communicative aids and services) during any of these meetings should notify UDAF's ADA Coordinator, Renee Matsuura, at the above UDAF address, phone: (801) 538-7110 (TDD: (801) 538-7100) at least three working days prior to the meeting.

COMMERCE
OCCUPATIONAL AND PROFESSIONAL LICENSING

PUBLIC HEARING - RESIDENCE LIEN RECOVERY FUND SPECIAL ASSESSMENT

In accordance with Subsection 63-38-3.2(5), notice is hereby provided that on February 12, 2003, at 8:00 a.m., in Room 426 of the Heber M. Wells Building, 160 East 300 South, Salt Lake City, Utah, a public hearing will be held to receive public input concerning the following proposed fees under Title 38, Chapter 11, The Residence Lien Restriction and Lien Recovery Fund Act.

For special assessment pursuant to the requirements of Subsection 38-11-206-(1)(a):

1. a special assessment fee for qualified beneficiary registrants that are licensed by the Division of Occupational and Professional Licensing as contractors of $120;

2. a special assessment fee for qualified beneficiary registrants that are licensed by the Division of Occupational and Professional Licensing in a profession or occupation other than a contractor of $60; and

3. a special assessment fee for qualified beneficiary registrants that are not licensed by the Division of Occupational and Professional Licensing or that may be licensed but have a history and or future intent of claiming against the Lien Recovery Fund in a capacity not licensed by the Division of Occupational and Professional Licensing of $1,200.

Any one having questions about this matter may contact W. Earl Webster, Lien Recovery Fund Program Coordinator, at (801) 530-7632 or ewebster@utah.gov.

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 January 1, 2003, 12:00 a.m., and January 15, 2003, 11:59 p.m. are included in this, the February 1, 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 March 3, 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 June 1, 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.

Education, Administration
R277-483
Persistently Dangerous Schools

NOTICE OF PROPOSED RULE
(New Rule)
DAR FILE NO.: 25965
FILED: 01/15/2003, 17:04

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is created to comply with federal law and to provide for student transfers, consistent with state law and local board policies, if students are residents of schools designated as persistently dangerous or victims of specific violent criminal offenses.

SUMMARY OF THE RULE OR CHANGE: The rule provides criteria and procedures designating schools as persistently dangerous and providing for parent notification and transfers for students if appropriate.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 53A-1-401(3) and 20 USC 7912 Section 9532(a)

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: There are no cost or savings to state budget. Although the State Office of Education is involved in the process and also responsible for distribution of federal funding to school districts under the federal No Child Left Behind program, the State Office of Education is not responsible for actual school administration of the program at the school district or school level.

❖ LOCAL GOVERNMENTS: Any potential cost or savings to schools or school districts under this rule would be minimal. There is a parental notification requirement to parents whose students are assigned to schools designated as persistently dangerous. This notification could readily be handled by the district through current correspondence with parents. School districts are not responsible for transporting students who may transfer to a non-neighborhood school under this rule.

❖ OTHER PERSONS: There may be costs to parents who choose to send their students to non-neighborhood schools under this rule. Parents could provide transportation through UTA passes in urban areas ($12/month per student x 9 months = $102/school year) or personal transportation in rural areas (costs would vary depending upon vehicle and distance - the standard state reimbursement is $.28/mile).

COMPLIANCE COSTS FOR AFFECTED PERSONS: Parents may choose to send students to non-neighborhood schools under this rule. Projected cost per student are calculated above under "anticipated cost or savings to other persons."

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: I have reviewed this rule, and I see no fiscal impact on businesses. Steven O. Laing

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
EDUCATION
ADMINISTRATION
250 E 500 S
SALT LAKE CITY UT 84111-3272, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Carol Lear at the above address, by phone at 801-538-7835, by FAX at 801-538-7768, or by Internet E-mail at clear@usoe.k12.ut.us

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 03/03/2003.

THIS RULE MAY BECOME EFFECTIVE ON: 03/04/2003

AUTHORIZED BY: Carol Lear, Coordinator School Law and Legislation

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R277. Education, Administration.
R277-483. Persistently Dangerous Schools.
R277-483-1. Definitions.

A. "Adequate yearly progress" means a specific level of student achievement has been met by an individual school consistent with the requirements of the federal No Child Left Behind (NCLB) Act.

B. "Board" means the Utah State Board of Education.

C. "Charged" means the accusation of a crime by a formal complaint, information, or indictment.

D. "Days" for purposes of this rule mean school days, unless otherwise specified.

E. "Expelled" for purposes of this rule means a denial of school services at the student's school of residence for at least 60 consecutive school days. Expulsion differs from suspension in that a suspension is a less drastic method of discipline and generally continues for a shorter period than expulsion. A student shall be expelled by the local school board consistent with Section 53A-11-903.

F. "Federal gun-free schools violation" means any violation involving a firearm as defined under U.S.C., Title 18, Section 921.

G. "Homebound/hospitalized services" means services provided by a school district to a student that include the following:

(1) a minimum of two instructional contact hours per week;

(2) documentation of that contact;

(3) justification of the services which may include specific injuries, surgery, illness, other disabilities, pregnancy, or a district determination that a student should receive home instruction and supervision for a designated period of time. The expected period of absence must be estimated.

H. "Parent" for purposes of this rule, means the custodial parent, court-appointed legal guardian, or district-appointed guardian.

I. "Persistently dangerous school" means a public K-12 school with any combination of grades and that meets the following criteria: The school has at least three percent of the student body, as determined by the October 1 count, that has been expelled, as defined by this rule, in each of three consecutive school years for:

(1) violent criminal offenses, as defined in this rule, that occurred on school property or at school sponsored activities; or

(2) federal gun free school violations.

J. "USOE" means the Utah State Office of Education.

K. "Victim" for purposes of this rule means the student who is the object of a violent criminal offense that occurs on the property of the school the student attends.

L. "Violent criminal offense" means actual or attempted criminal homicide under Section 76-5-201, rape under Section 76-5-402 through 76-5-402.3, aggravated sexual assault under 76-5-405, forceable sexual abuse under 76-5-404, aggravated sexual abuse of a child under 76-5-404.1, aggravated assault under 76-5-103 and robbery under 76-6-301. The offense shall be reported to law enforcement and charged as indicated to qualify for purposes of this rule. The list of violent criminal offenses identified in this definition shall be maintained by the USOE and be readily available to the U.S. Department of Education.

R277-483-2. Authority and Purpose.

A. This rule is authorized by Utah Constitution Article X, Section 3 which vests general control and supervision of public education in the Board, Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities, and Title IX, Part E, Subpart 2, Section 9532, Unsafe School Choice Options, which requires a state receiving funds under this Act to establish and implement a statewide policy requiring that a student attending a persistently dangerous public elementary or secondary school, or who becomes a victim of a violent criminal offense while in or on the grounds of a public elementary or secondary school that the student attends, be allowed to attend a safe public elementary or secondary school within the school district, including a public charter school.

B. The purpose of this rule is to comply with federal law and to provide for student transfers, consistent with state law and local board policies, if students are residents of schools designated as persistently dangerous or victims of violent criminal offenses identified in R277-483-1L.

R277-483-3. Persistently Dangerous School Data Collection.

A. The USOE shall provide consistent definitions and forms for collection of data necessary to make designations under this rule.

B. The USOE shall use data to count violent criminal offenses, identified in R277-483-1L, collected annually in the Safe Schools Incident Report, received by the USOE by June 15 annually, and required by the Elementary and Secondary Education Act, Section 4122.

R277-483-4. Identification of Persistently Dangerous Schools.

A. For the 2003-04 and 2004-05 school years, a school that reports data showing three percent or more of its studentbody has been expelled for violent criminal offenses, as defined under R277-483-1H and federal gun-free schools violations, as defined under R277-483-1E, shall be required to provide data to the USOE for the previous two school years documenting the number and type of student expulsions. If the documentation shows that more than three percent of the school's studentbody for both years in question was expelled for offenses designated in R277-483-1E or R277-483-1H or both, the school shall be designated a persistently dangerous school for the upcoming school year under this rule.

B. Following review of data collected under R277-483-3 and application of the criteria of this rule, the USOE shall recommend to the Board a list of persistently dangerous schools no later than July 1 of each school year beginning with the 2003-2004 school year.

C. The Board shall review the list of recommended persistently dangerous schools. The board shall designate persistently dangerous schools at a regular open Board meeting in July or August of each year.

D. A school, working with the local board, shall be removed by the Board from the list on an annual basis if:

(1) the school provides evidence and information to the Board's satisfaction that proves that the school no longer meets the qualifying criteria of this rule and

(2) the school presents evidence to the Board of regular and consistent training of students, staff, and community about school safety, harassment, bullying, and problem solving.

R277-483-5. Parental Notification.

If a school is designated by the Board as persistently dangerous, parents of all students attending the school shall be notified by the local board of available transfer schools in a reasonable manner by no later than August 15 of the school year of designation.

R277-483-6. Students' Right to Transfer to and Continued Attendance.

A. Parents receiving notification of persistently dangerous school status may choose to transfer and shall indicate desire to transfer and school of preference to the local board within 30 calendar days of the date of the notification letter. Schools or local school boards shall provide by written policy a window of at least 30 school days for student transfers. Students shall be assigned to a non-dangerous school within 30 days of written parent request for transfer.

B. Parents of students moving into a persistently dangerous school community following the transfer window shall be notified immediately of the school's persistently dangerous status and shall have 30 calendar days following registration to request transfer from the local board and indicate school preference. The local board shall have 30 calendar days to assign a school. Parents shall make a decision within 10 days following notification to accept the school assignment as offered by the local board or have their children remain in the resident school.

C. The local board shall designate available transfer schools within the district. The local board shall develop criteria for transfer schools and shall not designate other persistently dangerous schools or schools that failed to make adequate yearly progress (Section 1111 of the NCLB Act 1116 NCLB) as transfer schools.

D. Students attending alternative schools that have been designated as persistently dangerous shall be offered choices consistent with district policies for alternative school placement. If a local board determines that the only appropriate placement for a student is an alternative school, the local board shall offer homebound/hospitalized services, under R277-419, or other home or non-school based programs as an option to the alternative school.

E. Students who have been disciplined for any of the violations identified in this rule forfeit the right to transfer from a persistently dangerous school.

F. Students shall be eligible to participate in all extracurricular activities immediately in their new schools of residence if they transfer consistent with this rule.

G. A student shall have a right to continued attendance at a school selected under this rule or a local board may require, by local board policy, a student to return to the student's resident school upon change of school safety designation, under R277-483-5.

R277-483-7. Student Victims of School Safety Offenses.

A. Students who are victims of a violent criminal offense, as defined in R277-483-1J, and their parent(s)/guardian(s), shall receive notice of available non-dangerous schools in the district as soon as reasonably possible after the school's or district's official notification of the incident by law enforcement.

B. The local board shall make available a school within 15 days of parental notification or arrange for homebound/hospitalized services, under R277-419, within 15 days of parental notification. The transfer shall not result in loss of credit or reduction in grade of the victimized student as long as the parent and student cooperate fully in the transfer process.

R277-483-8. Corrective Action.

A. The Board may assist local boards to develop corrective action plans for schools designated as persistently dangerous.

B. Corrective action plans shall include such training as improving communication among schools, parents, local law enforcement; training about harassment and bullying for both school personnel and students; activities that address and increase student social competency; improved student supervision; and consistent enforcement of school discipline plans.

C. Local boards shall provide annual assurance to the Board that corrective action plans have been implemented in all designated persistently dangerous schools.

R277-483-9. Complaint and Appeal Procedure.

A. A designated standing committee of the Board shall be the appeals committee for schools designated as persistently dangerous.

(1) The designated standing committee of the Board shall establish procedures for the appeal process.

(2) Annually, the USOE shall notify local boards of proposed designation of persistently dangerous schools prior to presenting the list to the Board.

(3) The designated standing committee of the Board shall provide an opportunity to the local board to appeal the proposed designation. The Board shall receive the designated standing committee's designations prior to a final decision by the Board. Local boards may only appeal based on evidence of incomplete or inaccurate data.

B. Parent appeal process of decisions made by local boards under this rule:

(1) A local board shall develop a procedure or use an existing appeals procedure to address appeals of decisions made under this rule.

(2) A parent shall attempt to resolve a complaint involving the application of this rule at the school level, where the parent shall receive, upon request, a copy of this rule and the local board's policy for handling parental complaints.

(3) If a parent is not satisfied, the parent shall attempt to resolve the complaint with the local board or its designee.

R277-483-10. Miscellaneous Provisions.

A. The Board shall maintain a record of the data collected and used to identify persistently dangerous schools and other appropriate records in order to demonstrate compliance with the law.

B. School districts have no responsibility for transportation of students under this rule.

KEY: expelled, persistently dangerous schools, school choice 2003
Art X Sec 3
53A-1-401(3)
Title IX, Part E, Subpart 2, Section 9532

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Education, Administration
R277-485
Loss of Enrollment

NOTICE OF PROPOSED RULE
(New Rule)
DAR FILE NO.: 25966
FILED: 01/15/2003, 17:05

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this rule is to compensate a school district financially for an excessive loss in student enrollment due to factors beyond its control.

SUMMARY OF THE RULE OR CHANGE: The rule provides for the use of the carry-forward balance to compensate school districts and provides a formula if funds are available.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 53A-1-401(3)

ANTICIPATED COST OR SAVINGS TO:
❖ THE STATE BUDGET: There are no anticipated cost or savings to state budget. These funds are currently available for use by the State Office of Education. No funds will be provided under this rule if there is not an unencumbered carry-forward balance.
❖ LOCAL GOVERNMENTS: School districts will benefit from this rule provided a carry-forward balance is available.
❖ OTHER PERSONS: There is no cost or saving to other persons. School districts will receive any funding if there is a carry-forward balance available.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for affected persons. School districts will receive any funding if there is a carry-forward balance available.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: I have reviewed this rule, and I see no fiscal impact on businesses. Steven O. Laing

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

EDUCATION
ADMINISTRATION
250 E 500 S
SALT LAKE CITY UT 84111-3272, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Carol Lear at the above address, by phone at 801-538-7835, by FAX at 801-538-7768, or by Internet E-mail at clear@usoe.k12.ut.us

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 03/03/2003.

THIS RULE MAY BECOME EFFECTIVE ON: 03/04/2003

AUTHORIZED BY: Carol Lear, Coordinator School Law and Legislation

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R277. Education, Administration.
R277-485. Loss of Enrollment.
R277-485-1. Definitions.

A. "ADM" means average daily membership as defined in R277-419.

B. "Board" means the Utah State Board of Education.

C. "Carryforward balance" means the unspent amount of MSP Uniform School Fund monies from the previous fiscal year.

D. "Fall Update" means the annual Minimum School Program allocation report made by school districts to the Utah State Office of Education in late fall or early winter.

E. "Historical Mean ADM" means the mean of the two highest ADM in the three years preceding the prior year.

F. "Local Effort" means the prior year sum of tax rates imposed by the local school board.

G. "Lost ADM" means the difference between prior year ADM and Historical Mean ADM.

H. "Minimum School Program (MSP)" means the state supported Minimum School Program as defined in 53A-17a.

I. "Weighted Pupil Unit (WPU)" means the unit of measure of factors that is computed in accordance with the MSP for the purpose of determining the costs of a program on a uniform basis for each district.

R277-485-2. Authority and Purpose.

A. This rule is authorized by Utah Constitution Article X, Section 3 which vests general control and supervision of public education in the Board, and Section 53A-17a-139 which allows the Board to increase funds for a school district in order to avoid penalizing it for an excessive loss in student enrollment due to factors beyond its control.

B. The purpose of this rule is to compensate a school district financially for an excessive loss in student enrollment due to factors beyond its control.

R277-485-3. Eligibility.

A. A school district shall be eligible for funding if the district's lost ADM is at least four percent less than the district's historical mean ADM.

B. Charter schools are not eligible for funding under this rule.

R277-485-4. Funding.

A. The source of funding to the district shall be the current unencumbered MSP carryforward balance. This rule shall provide funds to school districts only after all other authorized uses of the carryforward balance have been carried out.

B. The total amount of funds made available for distribution shall be equal to the lesser of:

(1) the sum of lost ADM in eligible districts multiplied by 25 percent of the current year value of the WPU; or

(2) 25 percent of the current unencumbered MSP carryforward balance.

C. Available funds shall be distributed proportional to lost ADM (90 percent) and prior year local effort (10 percent) among eligible districts.

D. If there are not any current year unencumbered MSP funds, eligible districts shall not be funded.

R277-485-5. Implementation.

A. Funds shall be distributed annually in one lump sum with the fall update of the current year MSP.

B. Funds shall be distributed initially in FY 2004.

KEY: student, enrollment
2003
Art X Sec 3
53A-17a-139

Health, Health Care Financing, Coverage and Reimbursement Policy
R414-5
Reduction in Hospital Payments

NOTICE OF PROPOSED RULE
(New Rule)
DAR FILE NO.: 25967
FILED: 01/15/2003, 18:31

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. This rule substitutes a different methodology for reducing hospital reimbursement.

SUMMARY OF THE RULE OR CHANGE: This rule describes how hospital services are reimbursed. Hospital inpatient payments will be reduced by a percentage to reduce overall payments by $4,600,000. (DAR NOTES: A corresponding 120-day (emergency) rule that is effective as of January 15, 2003, is under DAR No. 25948 in this issue. All the proposed changes to the Medicaid Program are found under R414-5, Emergency Rule, DAR No. 25948; R414-5, New Rule, DAR No. 25967; R414-21, Emergency Rule, DAR No. 25968; R414-21, Amendment, DAR No. 25973; R414-6, Emergency Rule, DAR No. 25969; R414-6, New Rule, DAR No. 25974; R414-52, Emergency Rule, DAR No. 25970; R414-52, Amendment, DAR No. 25976; R414-53, Emergency Rule, DAR No. 25971; and R414-53, Amendment, DAR No. 25972 in this Bulletin.))

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 26-18-7 and 26-1-5

ANTICIPATED COST OR SAVINGS TO:
❖ THE STATE BUDGET: Annually, the state will save $1,380,000 in the General Fund and will lose $3,220,000 in federal matching funds.
❖ LOCAL GOVERNMENTS: Local government operated hospitals are estimated to receive $120,000 less in reimbursement.
❖ OTHER PERSONS: Hospitals that are not operated by local governments will lose approximately $4,480,000 in inpatient payments.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Other than the loss of significant revenue and this direct impact on all hospital providers, no other compliance costs are anticipated on the part of the providers or any other affected persons.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This change 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 03/04/2003

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

THIS RULE MAY BECOME EFFECTIVE ON: 03/05/2003

AUTHORIZED BY: Rod L. Betit, Executive Director

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.
R414-5. Reduction in Hospital Payments.
R414-5-1. Introduction and Authority.
This rule describes the Utah Medicaid Program's uniform reduction in hospital inpatient payments. This rule is authorized by Title 26, Chapter 18, Section 7, UCA.

R414-5-2. Hospital Reimbursements.
The Utah Medicaid Program reimburses hospital services based upon diagnosis for urban hospitals and based upon a percent-of-charges for rural hospitals as described in the UTAH STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT MEDICAL ASSISTANCE PROGRAM attachment 4:19A, Section 190.

R414-5-3. Inpatient Hospital Payments Reduced.
For payment claims related to discharges occurring after January 15, 2003, the following reductions will be applied:
(1) For state fiscal year 2003, which ends June 30, 2003, a pro-rata reduction shall be applied to all claims at a percentage that will generate a $4.6 million reduction in the amount that would otherwise be paid to hospitals for claims that apply during the state fiscal year 2003.
(2) For subsequent state fiscal years, the pro-rata reduction will be reduced to a level that will generate a $4.6 million reduction for claims that apply during the subsequent state fiscal year.
(3) The executive director, after consultation with hospital providers, shall set the percentage at the level that is predicted to generate the requisite savings. The executive director may adjust the percentage as necessary, after consultation with hospital providers.

KEY: Medicaid, hospital
2003
26-18

▼ ▼

Health, Health Care Financing, Coverage and Reimbursement Policy
R414-6
Reduction in Certain Targeted Case Management Services

NOTICE OF PROPOSED RULE
(New Rule)
DAR FILE NO.: 25974
FILED: 01/15/2003, 19:36

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.

SUMMARY OF THE RULE OR CHANGE: This new rule defines targeted case management services and eliminates services for the homeless, those with HIV/AIDS, and recipients exposed to tuberculosis. (DAR NOTES: A corresponding 120-day (emergency) rule that is effective as of January 15, 2003, is under DAR No. 25969 in this issue. All the proposed changes to the Medicaid Program are found under R414-5, Emergency Rule, DAR No. 25948; R414-5, New Rule, DAR No. 25967; R414-21, Emergency Rule, DAR No. 25968; R414-21, Amendment, DAR No. 25973; R414-6, Emergency Rule, DAR No. 25969; R414-6, New Rule, DAR No. 25974; R414-52, Emergency Rule, DAR No. 25970; R414-52, Amendment, DAR No. 25976; R414-53, Emergency Rule, DAR No. 25971; and R414-53, Amendment, DAR No. 25972 in this Bulletin.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 26-1-5 and 26-18-2.3

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: Annually, the state will save $76,700 in General Fund and will lose $187,300 in federal matching funds.

❖ LOCAL GOVERNMENTS: Local governments are not affected because there no local entities that provide these specific case management services.

❖ OTHER PERSONS: Case managers will lose up to $264,000 in reimbursements.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Some adjustments in various computer systems to allow reconciliation of billings with medical payments received may be required. The costs should be minimal.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This change will have a negative impact on providers of targeted case management services, 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

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

THIS RULE MAY BECOME EFFECTIVE ON: 03/05/2003

AUTHORIZED BY: Rod L. Betit, Executive Director

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.
R414-6. Reduction in Certain Targeted Case Management Services.
R414-6-1. Introduction and Authority.

This rule describes the Utah Medicaid Program's reduction in certain targeted case management services. Utilization of cost-containment methods is authorized by Title 26, Chapter 18, Section 2.3, UCA.

R414-6-2. Definition.

"Targeted Case Management Services" are a set of planning, coordinating and monitoring activities that assist Medicaid recipients in the target group to access needed housing, employment, medical, nutritional, social, education, and other services to promote independent living and functioning in the community.

R414-6-3. Targeted Case Management Services for Homeless Recipients.

Upon the effective date of this rule, targeted case management services for homeless recipients are not available.

R414-6-4. Targeted Case Management Services for Recipients with HIV/AIDS.

Upon the effective date of this rule, targeted case management services for recipients with HIV/AIDS are not available.

R414-6-5. Targeted Case Management Services for Recipients Exposed to Tuberculosis.

Upon the effective date of this rule, targeted case management services for recipients exposed to tuberculosis are not available.

KEY: Medicaid, case management
2003
26-18

▼ ▼

Health, Health Care Financing, Coverage and Reimbursement Policy
R414-21
Physical Therapy

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 25973
FILED: 01/15/2003, 19:31

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.

SUMMARY OF THE RULE OR CHANGE: In Section R414-21-4, the phrases "and occupational therapy" and "except for non-pregnant adult recipients ages 21 and older" are added to exclude occupational therapy and physical therapy from that group. In Section R414-21-5, the phrases "and occupational therapy" and "except for non-pregnant adult recipients ages 21 and older" are added to exclude physical and occupational therapy from that group. (DAR NOTES: A corresponding 120-day (emergency) rule that is effective as of January 15, 2003, is under DAR No. 25968 in this issue. All the proposed changes to the Medicaid Program are found under R414-5, Emergency Rule, DAR No. 25948; R414-5, New Rule, DAR No. 25967; R414-21, Emergency Rule, DAR No. 25968; R414-21, Amendment, DAR No. 25973; R414-6, Emergency Rule, DAR No. 25969; R414-6, New Rule, DAR No. 25974; R414-52, Emergency Rule, DAR No. 25970; R414-52, Amendment, DAR No. 25976; R414-53, Emergency Rule, DAR No. 25971; and R414-53, Amendment, DAR No. 25972 in this Bulletin.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Title 26, Chapter 18; and Section 26-1-5

ANTICIPATED COST OR SAVINGS TO:
❖ THE STATE BUDGET: The state will save $93,000 in General Fund and will lose $226,900 in federal matching funds.
❖ LOCAL GOVERNMENTS: There is no impact on local governments because none is a Medicaid provider of physical or occupational therapy services.
❖ OTHER PERSONS: Physical and occupational therapy providers will lose a total of $319,900 in reimbursements.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There may be some minimal data entry costs involved in complying with this rulemaking.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This change will have a negative impact on physical therapists, 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

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

THIS RULE MAY BECOME EFFECTIVE ON: 03/05/2003

AUTHORIZED BY: Rod L. Betit, Executive Director

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.
R414-21. Physical and Occupational Therapy.
R414-21-1. Policy Statement.

(1) "Qualified" physical therapists may provide services for Medicaid eligible individuals upon the order of a doctor of medicine, osteopathy, dentistry or podiatry.

(2) Non-licensed therapists, although they may have received the required academic training, may not provide services for Medicaid eligible recipients with the expectation of reimbursement from Medicaid.

R414-21-2. Authority and Purpose.

(1) Authority

(a) The provision of physical therapy evaluation and treatment is authorized under the authority of the 42 CFR in the following Sections:

(i) 405.1718a Medicare Standard, Nursing Home patients;

(ii) 405.1718b Medicare Standard, Nursing Home equipment;

(iii) 405.1718c Medicare Standard, Nursing Home personnel;

(iv) 440.70(b)(4) Home health provisions of service;

(v) 440.110(a)(1)(2) Physical Therapy definition and qualifications;

(vi) 442.486 Physical Therapy services, ICF/MR;

(vii) 442.487 ICF/MR records and evaluation.

(2) Purpose

(a) The purpose of the physical therapy program is to increase the functioning ability of each handicapped Medicaid recipient whether the handicap is temporary or permanent.

(b) The rehabilitation goals must include evaluation of the potential of each individual patient, the factual statement of the level of functions present, the identification of the goal that may reasonably be achieved, and the predetermined space of time and concentration of services that would achieve the goal.

(c) The Medicaid program is designed to provide services within financial limitations. A desired level of function must be balanced with an achievable level of function within a defined length of time. The objectives of the program are to provide a scope

of service, supplementary information, limitations, and instructions concerning prior authorizations, billing, and utilization which clearly direct the provider to accomplish the goals he has identified for the patient.

(d) The goal of the physical therapist is to improve the ability of the patient, through the rehabilitative process, to function at a maximum level.

(e) The objectives of the provider must include:

(i) The evaluation and identification of the existing problem, not an anticipated problem;

(ii) The evaluation of the potential level of function actually achievable;

(iii) The restoration, to the level reasonably possible, of functions which have been lost due to accident or illness;

(iv) The establishment, to the level reasonably possible, of functions which are lacking due to defects of birth.

(v) The eventual termination or transfer of the responsibility for identified procedures to family, guardians, or other care-givers.

R414-21-3. Definitions.

(1) Physical Therapy: means the treatment of a human being by the use of exercise, massage, heat or cold, air, light, water, electricity, or sound for the purpose of correcting or alleviating any physical or mental condition or preventing the development of any physical or mental disability, or the performance of tests of neuromuscular function as an aid to the diagnosis or treatment of any human condition, provided, however, that physical therapy shall not include radiology or electrosurgery.

(2) Physical Therapist: means a person who practices physical therapy. "Physical therapist," "physiotherapist" and "physical therapy technician" are equivalent terms and reference to any one of them in this rule shall include the others.

(3) Qualified Physical Therapist: means an individual who is:

(a) a graduate of a program of physical therapy approved by both the Council on Medical Education of the American Medical Association and the American Physical Therapy Association, or its equivalent;

(b) licensed by the State of Utah; and

(c) a provider for Medicaid.

(4) Rehabilitation: means the process of treatment that leads the disabled individual to attainment of maximum function.

(5) Rehabilitation Services: means the delivery of rehabilitative medical or remedial services recommended by a physician or other licensed practitioner of the healing arts, within the scope of his practice under state law, for maximum reduction of physical or mental disability and restoration of a recipient to his best possible functional level. (42 CFR 440.130 (d).)

R414-21-4. Eligibility Requirements/Coverage.

[~~The service is~~]Physical and occupational therapy services are available to categorically and medically needy individuals under Medicaid except for non-pregnant adult recipients ages 21 and older.

R414-21-5. Program Access Requirements.

[~~The service is~~]Physical and occupational therapy services are available to categorically and medically needy individuals under Medicaid except for non-pregnant adult recipients ages 21 and older.

R414-21-6. Service Coverage.

(1) Providers of physical therapy shall offer an adequate program that provides services which utilize therapeutic exercise and the modalities of heat, cold, water, air, sound, massage and electricity; recipient evaluations and tests; and measurements of strength, balance, endurance, range of motion, and activities.

(a) Patients in need of physical therapy services are accepted for evaluation with a referral or recommendation by a physician, dentist, podiatrist or osteopath.

(b) Provision of services is with the expectation that the condition under treatment will improve in a reasonable and predictable time. Continuation of treatment beyond the maximum rehabilitative potential within a specified time will not be approved. Length of time and number of treatments will be predicated by Physical Therapy Association guidelines.

(c) Physical therapy treatments are limited to one per day.

(d) All therapy services after the first ten sessions per client per provider per calendar year require prior authorization.

(2) ICF/MR Residents. Where residents require physical therapy as part of their plan of care, the facility is legally bound to provide and pay for this need.

(a) To clarify this requirement, the following Federal Register (42 CFR) requirements are listed:

Intermediate Care Facilities for Mentally Retarded (42 CFR 442.486) ICF/MR. Evaluation and therapy (treatment) for residents of ICF/MR facilities are no longer Medicaid benefits. These services are components of the "active treatment" concept and are the responsibility of the facility. In the event that services are ordered by the facility or by the physician for a resident in an ICF/MR facility, said services must be billed to and paid by the facility.

R414-21-7. Standards of Care.

(1) The services must be considered under accepted standards of medical practice to be a specific and effective treatment for the recipient's conditions.

(2) The services must be of a level of complexity and sophistication, or the condition of the recipient must be such, that services required can be safely and effectively performed only by a qualified physical therapist. To constitute physical therapy, a service must, among other things, be reasonable and necessary to the treatment of the individual's illness. If an individual's expected rehabilitative potential would be insignificant in relation to the extent and duration of the physical therapy, it would not be considered reasonable and necessary. There must be an expectation that the recipient's condition will improve significantly in a reasonable (and generally predictable) period of time. If, at any point in the treatment of an illness, it is determined that the expectation will not materialize, the services will no longer be considered reasonable and necessary.

(3) The amount, frequency, and duration of the services must be reasonable. Requests will be reviewed and a determination made by Health Care Financing, Utilization Management Staff using guidelines provided by the American Physical Therapy Association.

R414-21-8. Limitations.

(1) General Limitations

(a) More than ten services per calendar year per client per provider are not reimbursable without prior approval following the evaluation. All other services by the same billing provider require prior authorization.

(b) The following services are not covered:

(i) Treatment for social or educational needs;

(ii) Treatment for patients who have stable chronic conditions which cannot benefit from physical therapy services;

(iii) Treatment for recipients where there is no documented potential for improvement;

(iv) Treatment for recipients who have reached maximum potential for improvement;

(v) Treatment for recipients who have achieved stated goals;

(vi) Treatment for non-diagnostic, non-therapeutic, routine, repetitive or reinforced procedures;

(vii) Treatment for CVA which begins more than 60 days after onset of the CVA;

(viii) Treatment for residents of ICF/MR;

(ix) Treatment in excess of one session or service per day.

(2) Specific Specifications. Various physical therapy modalities are included in the therapy procedure code. There are no specific procedure codes in the Medicaid program for such procedures as heat, cold, whirlpool, massage, air and sound therapy. Any modality the therapist chooses is acceptable under the one procedure code.

(a) The following specific limitations apply:

(i) Clinics. Physical therapists associated with a professional practice group in a hospital or clinic are required to use the Medicaid physical therapy guidelines, service definitions and codes for their services when their license number is identified in box H of the HCFA invoice. All limitations apply including prior approval for all services after the first ten sessions, except evaluation. CPT4 codes for physical medicine are to be used only when the physician directly performs the service and bills Medicaid with his provider number.

(ii) Hot Pack, Hydrocollator, Infra-Red Treatments, Parafinn Baths and Whirlpool Baths. Heat treatments of this type, including whirlpool baths, do not ordinarily require the skills of a qualified physical therapist. However, in a particular case, the skills, knowledge, and judgment of a qualified physical therapist might be required for such treatments as baths where the recipient's condition is complicated by circulatory deficiency, areas of desensitization, open wounds, or other complications. Also, if such treatments are given prior to, but as an integral part of, a skilled physical therapy procedure, they would be considered part of the physical therapy service.

(iii) Gait Training. Gait evaluation and training furnished a recipient whose ability to walk has been impaired by neurological, muscular, or skeletal abnormality, require the skills of a qualified physical therapist. However, if gait evaluation and training cannot reasonably be expected to improve significantly the patient's ability to walk, such services would not be considered reasonable or medically necessary. Repetitious exercises to improve gait or maintain strength and endurance and assist in walking are appropriately provided by supportive personnel such as aides or nursing personnel and do not require the skills of a qualified physical therapist.

(iv) Ultrasound, shortwave, and microwave treatments. These modalities must always be performed by a qualified physical therapist.

(v) Range of Motion Tests. Therapeutic exercises which must be performed by or under the supervision of a qualified physical therapist, due either to the type of exercise employed or condition of the recipient, would constitute physical therapy. Range of motion exercises require the skills of a qualified physical therapist only when they are part of active treatment of a specific disease which has resulted in the loss or restriction of mobility (as evidenced by physical therapy notes showing the degree of motion lost and the degree to be restored). Such exercises, either because of their nature or condition of the recipient, may be performed safely and effectively by a qualified physical therapist briefly. Generally, range of motion exercises related to the maintenance of function do not require the skills of a qualified physical therapist and are not reimbursable.

(3) Home Health Limitations

(a) In a home health agency where the therapist is an employee of the agency or where there is a contractual arrangement with the therapist, the home health agency must follow the Medicaid guidelines.

(b) All therapy services, including the evaluation, require prior authorization.

R414-21-9. Prior Authorization.

(1) Ten services per calendar year per client are reimbursable without prior approval following the evaluation.

(a) All other services by the same provider require prior authorization.

(b) All physical therapy treatment, therapies, or sessions require a prior approval beginning after the first ten services per client per calendar year per billing provider.

(2) Process. The evaluation does not require prior approval. The first ten services per patient per billing provider per calendar year do not require prior approval. Prior approval for therapy services after the first ten services per provider per calendar year require prior approval before the services begin. The request for prior approval for treatment should include a copy of the plan of treatment for the patient or a document which includes:

(a) the diagnosis, and the severity of the condition;

(b) the prognosis for progress;

(c) the expected goals and objectives for the recipient to attain;

(d) the detail of the method(s) of treatment;

(e) the frequency of treatment sessions, length of each session, and duration of the program.

(3) Prior Approval Procedure

(a) Prior approval requests will be evaluated for the number, frequency, and duration of treatments.

(i) The number of services approved will be based on the documented diagnosis, history and goals.

(ii) The frequency of services will be determined by the provider not to exceed one treatment per day.

(b) Reauthorization will require review by the patient's primary physician and will be dependent upon the medical necessity of the patient. Medicaid physician consultants will review and evaluate requests for continued service.

(4) Prior Approval Criteria

(a) Prior approval requests for treatment will be reviewed and approved or denied based on the following criteria:

(i) Services are for treatment of medically oriented disorders and disabilities.

(ii) Services are professionally appropriate under standards in the field, utilizing professionally appropriate methods and materials, in a professionally appropriate environment.

(iii) Services are provided with the expectation that the condition under treatment will improve in a reasonable and predictable time to the identified level.

(iv) Services are provided with a plan that explicitly states the methods to be used and the termination conditions.

(v) Services are requested for a patient suffering from CVA within 60 days of the CVA.

(5) Reauthorization

(a) When a reauthorization is necessary after the initial prior-approved sessions, a medical evaluation and documentation from the physician, as well as the therapist, must be attached to the prior authorization request. A new treatment plan is necessary defining the new goals. A new medical summary from the physician must also be attached. Additional requests should also include any supplemental data such as past treatment, progress made, family problems that may hinder progress, and a definite termination date. Medicaid physician consultants will review and evaluate requests for continued service in accordance with the process and criteria set forth in R414-21.

R414-21-10. Reimbursement for Services.

Physical therapy reimbursement procedure codes and instructions are found in the Physical Therapy Provider Manual.

KEY: M[~~m~~]edicaid
[~~1993~~]2003
Notice of Continuation May 6, 2002
26-1-4.1
26-1-5
26-18-3

Health, Health Care Financing, Coverage and Reimbursement Policy

R414-52

Optometry Services

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 25976
FILED: 01/15/2003, 21:57

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. The savings generated by eliminating optometry services to this group will enable the state to remain within budget while maintaining the integrity of the overall Medicaid program.

SUMMARY OF THE RULE OR CHANGE: In Subsection R414-52-2(2), the location of the definition of "Client" is changed to accurately reflect where it is located. The same change is made in Section R414-52-3. Also in Section R414-52-3, the phrase "except for non-pregnant adult recipients ages 21 and older" is added to exclude that group from optometry services. (DAR NOTES: A corresponding 120-day (emergency) rule that is effective as of January 15, 2003, is under DAR No. 25970 in this issue. All the proposed changes to the Medicaid Program are found under R414-5, Emergency Rule, DAR No. 25948; R414-5, New Rule, DAR No. 25967; R414-21, Emergency Rule, DAR No. 25968; R414-21, Amendment, DAR No. 25973; R414-6, Emergency Rule, DAR No. 25969; R414-6, New Rule, DAR No. 25974; R414-52, Emergency Rule, DAR No. 25970; R414-52, Amendment, DAR No. 25976; R414-53, Emergency Rule, DAR No. 25971; and R414-53, Amendment, DAR No. 25972 in this Bulletin.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Title 58, Chapter 16a; Section 26-1-5; and Title 26, Chapter 18

ANTICIPATED COST OR SAVINGS TO:
❖ THE STATE BUDGET: Annually, the state will save $755,900 in General Fund and will lose $1,844,300 in federal matching funds.
❖ LOCAL GOVERNMENTS: No cost--Local governments are not involved in dispensing optometry services.
❖ OTHER PERSONS: Annually, optometrists will lose a total of $2,600,200 in reimbursements.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Compliance costs involved with this rulemaking may involve data entry costs that should be minimal.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This change will have a negative impact on optometrists, 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

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

THIS RULE MAY BECOME EFFECTIVE ON: 03/05/2003

AUTHORIZED BY: Rod L. Betit, Executive Director

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.
R414-52. Optometry Services.
R414-52-1. Authority and Purpose.

Optometry services are authorized by 42 CFR, section 440.60, October 1992 edition, which addresses medical services provided by licensed practitioners. The Optometry Program provides optometry services to meet the optometry needs of Medicaid clients.

R414-52-2. Definitions.

(1) The definitions in the Utah Optometry Practice Act, Title 58, Chapter 16[~~(~~]a[~~)~~], apply to this rule.

(2) For the purposes of this rule, "Client" has the same meaning defined in R414-1-[~~1~~]2.

R414-52-3. Client Eligibility Requirements.

Optometry services are available to Categorically and Medically Needy individuals except for non-pregnant adult recipients ages 21 and older. Definitions of Categorically and Medically Needy individuals are found in R414-1-[~~1~~]2.

R414-52-4. Service Coverage.

(1) Optometry services include the examination, evaluation, diagnosis, and treatment of visual deficiency; removal of a foreign body; and prescription of corrective lenses.

(2) The optometrist must document in the patient record that the eye examination is medically necessary.

KEY: M[~~m~~]edicaid
[~~1993~~]2003
Notice of Continuation June 22, 1998
26-1-5
26-18-3

▼ ▼

Health, Health Care Financing, Coverage and Reimbursement Policy

R414-53

Eyeglasses Services

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 25972
FILED: 01/15/2003, 19:18

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.

SUMMARY OF THE RULE OR CHANGE: In Section R414-53-3, the location of the definitions of Categorically and Medically Needy individuals is changed to accurately reflect where they are located. Also in Section R414-53-3, the phrase "except for non-pregnant adult recipients ages 21 and older" is added to exclude eyeglasses services from that group. (DAR NOTES: A corresponding 120-day (emergency) rule that is effective as of January 15, 2003, is under DAR No. 25971 in this issue. All the proposed changes to the Medicaid Program are found under R414-5, Emergency Rule, DAR No. 25948; R414-5, New Rule, DAR No. 25967; R414-21, Emergency Rule, DAR No. 25968; R414-21, Amendment, DAR No. 25973; R414-6, Emergency Rule, DAR No. 25969; R414-6, New Rule, DAR No. 25974; R414-52, Emergency Rule, DAR No. 25970; R414-52, Amendment, DAR No. 25976; R414-53, Emergency Rule, DAR No. 25971; and R414-53, Amendment, DAR No. 25972 in this Bulletin.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Title 58, Chapter 16a; Section 26-1-5; and Title 26, Chapter 18

ANTICIPATED COST OR SAVINGS TO:
❖ THE STATE BUDGET: The state will save $69,800 in General Fund and will lose $170,200 in federal matching funds.
❖ LOCAL GOVERNMENTS: No local governments are involved in dispensing eyeglasses services.
❖ OTHER PERSONS: Eyeglasses providers will lose a total of $240,000 in reimbursements.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Compliance costs involved with this rulemaking may involve data entry costs that should be minimal.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This change will have a negative impact on providers of eyeglass services, 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 03/04/2003

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

THIS RULE MAY BECOME EFFECTIVE ON: 03/05/2003

AUTHORIZED BY: Rod L. Betit, Executive Director

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.
R414-53. Eyeglasses Services.
R414-53-1. Authority and Purpose.

Eyeglasses are authorized by 42 CFR, 440.120(d), October 1992 edition. The Eyeglasses Program provides eyeglasses services to meet the basic vision care needs of Medicaid recipients.

R414-53-2. Definitions.

"Eyeglasses" means lenses, including frames, contact lenses, and other aids to vision that are prescribed by a physician skilled in diseases of the eye or by an optometrist.

R414-53-3. Client Eligibility Requirements.

Eyeglasses are available to Categorically and Medically Needy individuals except for non-pregnant adult recipients ages 21 and older. Definitions of Categorically and Medically Needy individuals are found in R414-1-[~~1~~]2.

R414-53-4. Service Coverage.

(1) Corrective lenses and frames may be provided based on medical need. Medical need includes a change in prescription or replacement as a result of normal lens or frame wear. Frames must be those in which lenses can be replaced readily without having to provide a new frame. Corrective lenses must be suitable for indoor and outdoor use, and for day and night use.

(2) Single vision, bifocal, or trifocal lenses, with or without slab-off prism, in clear glass or plastic, may be provided.

(3) Only the least expensive frame practicable for use, either plastic or metal, may be provided.

(4) Replacements for existing lenses or frames may be provided if the prescribing physician or optometrist declares them to be medically necessary. Eyeglasses may not be replaced more often than every two years unless the prescribing physician or optometrist declares an earlier replacement to be medically necessary. Circumstances which would warrant providing new eyeglasses or contact lenses, are a diopter change of .75 or more, or disease or damage to the eye. Eyeglasses or contact lenses may not be replaced if they were damaged through client negligence or abuse.

(5) Frames which have hearing aids placed in the earpieces may be provided by the audiologist or hearing aid provider. Lenses for these frames must be dispensed by the prescribing physician or optometrist.

(6) The following may be provided if the prescribing physician or optometrist declares them to be medically necessary:

(a) Contact lenses;

(b) Soft contact lenses;

(c) Gas permeable contact lenses;

(d) Tints for eyeglasses or contact lenses where diseases or conditions are present which render the client unusually light-sensitive;

(e) Low vision aids.

(7) The following are not provided:

(a) Additional eyeglasses such as reading glasses, distance glasses, or a "spare";

(b) Extended wear contact lenses or disposable contact lenses.

KEY: M[~~m~~]edicaid
[~~1993~~]2003
Notice of Continuation June 22, 1998
26-1-5
26-18-3

▼ ▼

Human Services, Services for People with Disabilities

R539-3

Service Coordination

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 25975
FILED: 01/15/2003, 21:08

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The rule has been updated to reflect changes made to policy by the Division's Policy Board. Comments were received from the public that some of the language was confusing and unnecessary. The Board voted to make changes based upon the comments received.

SUMMARY OF THE RULE OR CHANGE: The revised rule clarifies responsibilities for completing needs assessment, standardization of scoring methodology, and the protocol used to rank order people waiting for service based upon needs assessment score.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 62A-5-102

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: There is no change in cost. The amendment clarifies practices that have been in place for the past four years which did not add any requirements or cost for the Division.

❖ LOCAL GOVERNMENTS: No local government funding is used in the prioritization of the waiting list, therefore, there is no cost to local governments.

❖ OTHER PERSONS: In some cases, families may be asked to travel from home to region offices in their communities to complete an assessment. But in the majority of cases, the support coordinator will be traveling to the families' home. The cost to the family will be in time.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Cost to people seeking services and their families in terms of time.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Businesses are not involved in the assessment of needs, thus there is no fiscal impact on businesses.

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 03/03/2003

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE: 2/21/2003 at 10:00 AM, Human Services Building, 120 N 200 W, Room 411, Salt Lake City, UT.

THIS RULE MAY BECOME EFFECTIVE ON: 03/07/2003

AUTHORIZED BY: Robin Arnold-Williams, Executive Director

R539. Human Services, Services for People with Disabilities.
R539-3. Service Coordination.
R539-3-1. Definitions.

(1) Immediate Need: Person that requires and could use support services on the day of intake

R539-3-[~~1~~]2. Waiting List.

A. Policy.

[~~If no services are currently available, an applicant will be placed on a waiting list following the eligibility determination for Division of Services for People with Disabilities services. The case manager will determine the array of needed services with the individual applicant and legal representatives. If an appropriate service is not available and the person accepts a more restrictive placement, the person will be maintained on the waiting list for placement in a less restrictive and more appropriate setting of their choice. When services become available, the region shall inform the individual on the waiting list most in need of service. Individuals with disabilities residing out-of-state cannot be put on the waiting list for services in Utah. Applicants or their legal guardian must be a resident of the State.~~](1) The Division shall determine a person's eligibility for service, followed by a determination of that person's priority relative to others who are also eligible. Each region shall use a standardized needs assessment to score and prioritize the Person's level of need. Persons with the highest scores shall receive support first. The support coordinator shall assess with the person or representative the array of supports that may be needed. If funding is not immediately available, the person will be placed on a waiting list for the support. Persons who have been determined eligible for the division's Medicaid Waiver can choose to wait for division support services or seek services available through Medicaid in an Intermediate Care Facility for Persons with Mental Retardation (ICF/MR).

B. Procedures.[

~~1. Region offices will develop and maintain prioritized waiting lists for services based on rational criteria. A prioritization of the individual's need for the identified service will be rated as having a (1) critical, (2) immediate, or (3) future level of need, according to the following criteria:~~

~~a. Severity of the disabling condition;~~

~~b. Critical needs of the individual and/or family;~~

~~c. Length of time on the waiting list;~~

~~d. Appropriate alternatives available; and~~

~~e. Other factors determined by the region to reflect accurately on individual need.~~

~~2. Persons who are 20 years of age and currently in a school district special education program may be placed on the waiting list for application to day training/supported work programs.~~]

(1) A needs assessment form 2-2 shall be completed for all persons with an immediate need for support services. The needs assessment determines the score of each person in accordance with subsection 62A-5-102(3).

(2) The region needs assessment committee determines the Person's score, rank orders the scores within each region to determine the order in which each person receives funding, and enters the person's name and score on the waiting list.

(3) A person's ranking may change as needs assessments are completed for new applicants.

(4) A child, upon reaching age 16, who is in a school district special education program and meets all eligibility requirements for division services shall be entered on the waiting list as having a future need for supported employment or day training. No age limitations apply to a person placed on the waiting list for community living support or family support.

R539-3-[~~2~~]3. The Individual Plan.

A. Policy.

An Individual Plan will be developed for each recipient of Division residential and day services to ensure that the appropriate array of services and supports is designed to address the identified needs and desires of the individual. The plan must either follow a person-centered planning approach or the traditional behavioral approach. The traditional behavioral approach must be used for individuals receiving any type of residential service, level 5 or higher, or any type of day service, level 3 or higher. Integrated plans across providers are optimal and encouraged where feasible.

B. Procedures.

1. The initial Individual Plan will be developed within 30 calendar days of program admission during a meeting of the members of the planning team. Team members include:

a. the individual receiving services;

b. the family and/or legal representative;

c. the qualified region case manager and other Professionals whenever appropriate;

d. appropriate provider staff; and

e. anyone else the individual or legal representative invites.

2. It is the responsibility of the provider to schedule the meeting and provide written notification to all Individual Plan team members at least ten days in advance; however, if the individual or legal representative desires to schedule the meeting and/or send out invitations the provider shall assist them to do so as requested.

3. In the event the region case manager is not able to attend the planning meeting, the meeting will be rescheduled (the new meeting time should be on or before the due date).

4. In the event consensus is not reached by the members of the planning team, members should not sign the document and should instead follow R539-2-5, Notice and Hearings for Service Changes.

5. It is the responsibility of the provider to produce the Individual Plan document, implement services and supports they are responsible for as specified by the Individual Plan, evaluate the individual's progress, and revise the plan as needed with the planning team. The document shall:

a. be dated, including the month, day, and year of the plan. The plan shall be updated at least annually and dated within the same month as the original plan.

b. list the following demographic information:

(1) person's full name;

(2) date of birth, including month, day, and year; and

(3) date the person entered the program.

c. include the individual's services and supports needed and outcomes or goals as stated on the Individual Support Plan document which are relevant to the particular service.

d. identify individualized outcomes, or long term goals and short term objectives in major life areas which generally include, but are not limited to, self-care, receptive language, mobility, self direction, capacity for independent living, and economic self-sufficiency.

6. Prior to the planning meeting, the provider shall ensure that each person receiving Division services will have had an appropriate assessment which identifies the individual's preferences, choices, strengths, and needed supports; however, if the assessment occurs, as a part of the person-centered planning process, at the time of the planning meeting, it does not have to be completed prior to the meeting.

a. Formal assessment documentation will be maintained in the individual record.

b. The assessment used must either be standardized or an agency prepared document which identifies the individual's preferences, strengths, and needed services and supports. Assessments shall include:

(1) a formal assessment instrument, or a well documented person-centered planning process such as Personal Futures Planning, etc.;

(2) input and observation from team members, including the individual receiving services and supports; and

(3) other pertinent information.

c. Assessments will be reviewed and updated annually prior to the planning meeting and findings will be shared with the team at the scheduled meeting; however, if the assessment review and update occur, as a part of the person-centered planning process, at the time of the planning meeting, they do not have to be completed prior to the meeting.

7. If using a person-centered planning approach, specific outcomes shall be provided which relate to the individual's preferences and choices. If using the traditional behavioral approach, short term objectives in a specific skill area shall be established and prioritized in order to achieve long-term goals. This traditional approach should also address the individual's preferences and choices as much as possible.

a. Outcomes shall be observable if using a person-centered planning process (outcomes may not necessarily be written in measurable and behavioral terms). If using the traditional approach, objectives shall be measurable, observable, and written in behavioral terms. If the person has complex maladaptive behaviors, including all individuals receiving any type of residential service, level 5 or higher, or any type of day service, level 3 or higher, the Individual Plan must contain objectives to address these behaviors which are measurable, observable, and written in behavioral terms. The following information must be included as it relates to either outcomes or objectives:

(1) For each outcome, a statement of the conditions under which the person will receive specific supports or services. For each objective, a statement of where, when, and under what conditions the person shall be expected to perform a task.

(2) The person's name.

(3) For each outcome, the current status of the expected observable outcome. For each objective, the baseline data, which is the level of the person's current performance.

(4) For each outcome, an observable indicator of when the outcome has been achieved. For each objective, the level of performance that the individual must exhibit in order to complete the objective.

8. For each outcome, a specific outline of actions to be taken by staff or others in providing supports or services to the individual. For each objective, training methods will be identified which outline what the staff will do to assist or support the individual to reach the identified objective.

a. The following information must be included as it relates to either outcomes or objectives:

(1) For both outcomes and objectives, the name of the responsible staff or person and their relationship to the individual.

(2) For outcomes, an outline of staff actions to be taken in providing services or supports to achieve the outcome. For objectives, a task analysis or sequential outline of training steps.

(3) For both outcomes and objectives, the level and type of assistance or supports to be rendered by the staff.

(4) For both outcomes and objectives, the method of withdrawing the level of assistance or supports (if applicable) as the person masters the objective or achieves the outcome.

(5) For outcomes, if applicable, the method of withdrawing or increasing supports as the person requires. For objectives, identification of the reinforcer(s) and any methodology to be used to withdraw the reinforcement when the objective is achieved.

(6) For outcomes, system to be used to track the status of observable indicators. For objectives, data collection to be used to record the individual's performance.

(7) For outcomes, a plan to maintain the desired observable outcome or transition the outcome to a system of natural supports, unless it is a one-time achievement and does not require maintenance. For objectives, measures of maintenance and generalization of the desired skill.

b. Supports or training should be provided in a functional context and in the natural routine of daily living to include:

(1) Setting;

(2) Time period;

(3) Frequency; and

(4) Other relevant factors.

9. Monthly progress notes will be written by the provider for each outcome or objective to document the progress or lack of progress made by the individual receiving services and supports, utilizing the following guidelines:

a. For objectives, data reported will be substantiated with raw data collection sheets.

b. For both outcomes and objectives, necessary Individual Plan modifications will be discussed in the progress notes.

c. Progress notes must contain the responsible staff's signature, relationship to the individual, and date (day, month, year).

10. The planning team members will sign the document to indicate approval of outcomes, or goals and objectives identified for the upcoming year.

a. The Individual Plan document is signed at the annual planning meeting within the same month of the effective date on the original or previous Individual Plan.

b. Signatures will include the name, date, and relationship of the team members to the individual.

11. A formal written review of the Individual Plan will occur annually and dated within the same month as the original or previous Individual Plan effective date and shall be documented in the Individual Support Plan annual review. The provider shall maintain documentation of the Individual Plan review in the individual record.

12. The effective date of the Individual Plan may serve as the time-line for annual reviews rather than the Individual Plan team signature date. The planning team meeting may occur up to 30 days prior to the effective date. The team may meet to review the Individual Plan as often as the team determines necessary, but the Plan shall be reviewed at least annually, due within the same month as the original or previous Plan effective date.

13. Should the region case manager determine that the Individual Plan is not being implemented as outlined, or receives a complaint from the individual or legal guardian, the case manager shall implement the following corrective action.

a. Step 1: Hold a conference with the provider and the individual or legal guardian if appropriate to review the problem, outcomes or objectives, and methods for possible corrections.

b. Step 2: If resolution cannot be reached in Step 1, the case manager will hold a conference with the region supervisor, the region director, if applicable, the individual and the legal representative, if any, and the provider. The involved parties will attempt to resolve the problem.

c. Step 3: If resolution is not reached, and following written notification to the provider, the case manager will inform the Division Contract Administrator and the Division will review the matter and take appropriate action.

d. Step 4: If there is not resolution through the above process, or if the case manager is unable to negotiate a solution, the Department Hearing process will be followed (R539-2-5, Notice and Hearings for Service Changes).

R539-3-[~~3~~]4. Referral to Services.

A. Procedures.

1. Referrals for services are made by the case manager to established providers of service in the following fashion:

a. The individual and legal representative select a service with the case manager.

b. A referral packet with current information is submitted to the identified service provider.

c. The Provider will schedule a placement meeting. The purchase of service provider will coordinate the placement meeting, which consists of the person with disabilities, legal representative (advocate), case manager(s), and other relevant members, including the Utah State Developmental Center staff, education representative for school-age individuals, and Division staff. The meeting should be held at the prospective site of placement whenever possible. The prospective Provider shall chair the meeting.

2. The prospective Provider will submit an acceptance or denial letter within ten working days to the case manager(s), person with disabilities, and legal representative. The referral file contents of a person denied for services will be returned to the case manager.

a. An acceptance letter shall include a written description of the following:

(1) services to be provided.

(2) location of the service.

(3) name and address of the primary care physician or other medical specialists, including, for example, neurologist or dentist.

(4) a training and in-service schedule for the staff to meet with the admitted person.

(5) proposed date of admission.

b. A denial letter shall include a written description of the specific reason for the denial. The letter will be submitted with the returned file.

c. A copy of the denial or acceptance letter will be submitted to the Director of Planning and Program Development and the Chairperson of the Community Based Committee.

3. Admission to Division programs from a Nursing Facility under OBRA 1987 will be coordinated by the OBRA specialist at the Division with the nursing facility social worker, the case manager, the prospective provider, and the person with disabilities.

4. The physical move to a receiving residential facility will be the responsibility of the Provider who submits the billing as the first day of service or last day as negotiated with the new Provider.

R539-3-[4]5. Discharge.

A. Policy.

1. Any interested member of the interdisciplinary team who recommends that a recipient be discharged or may benefit from service change shall contact the individual's case manager.

B. Procedures.

1. In the event that a request for discharge is received, the DSDP case manager shall arrange with the Provider for a discharge meeting. The following people shall be invited to attend:

a. The individual with disabilities.

b. Legal representative, as appropriate.

c. DSDP case manager.

d. Provider, teacher.

e. Receiving agency, as appropriate.

2. Topics in the discharge meeting shall include at a minimum:

a. A detailed discussion of the recipient's progress and current status in the program.

b. Specific reasons for the request for discharge outlined by the individual initiating the request.

3. Consensus decision must be reached regarding discharge from a program (see R539-2-5, Notice and Hearings). The decision shall be documented in the Individual Program Plan.

4. If the decision is to discharge an individual, a discharge summary shall be completed prior to the actual date of such action. A discharge summary shall be written by the Provider to include:

a. Reason for termination.

b. Summary of services provided.

c. Evaluation of strengths and needs; achievement of goals and objectives.

d. Signature and title of Provider preparing the summary.

5. The written summary will be sent to the receiving case manager, client and legal representative, discharging case manager, and provider within ten days of the person's last day of service.

6. A Provider may not request discharge of a person who has been identified by the Division as "zero reject", that is an individual with severe challenges, without 90 days notice.

R539-3-[5]6. Consumer Placement Review.

A. Policy.

It is the intent of the Division of Services for People with Disabilities that service providers shall offer programs that best meet the needs of individuals with disabilities, and promote a sufficient choice of service options for individuals and legal representatives to consider. An existing provider of services, therefore, will have the opportunity to proper notice and the opportunity to resolve concerns regarding services to a consumer.

B. Procedures.

1. The recipient of services or legal representative must be notified in writing of all actions taken pursuant to the above process, must be invited to all meetings to discuss individual services, and must receive notice of final resolution within 30 working days of the first meeting of the Individual Program Plan team to discuss the issue.

2. If a review is requested by the service provider, it must be made in writing to the appropriate Region Supervisor or Director within ten working days of the Individual Program Plan team meeting. Except in an emergency or unless requested by the individual or legal representative, services will continue unchanged during the review process. It is the responsibility of the Region Supervisor or Director to attempt to resolve the disagreement.

3. If the issue is not resolved to the services provider's satisfaction, a subsequent joint review by the Division Director and Region Director may be requested in writing by the service provider within 20 days of the date of the original Individual Program Plan meeting.

4. Providers may pursue their right to a formal hearing with the Department of Human Services via the Utah Administrative Procedures Act.

R539-3-[6]7. Targeted Case Management.

A. Policy

The Division of Services for People with Disabilities will provide Targeted Case Management for people with disabilities who are eligible in accordance with R414-33. Targeted Case Management is available only to individuals eligible for Division services who are also eligible for Medicaid. Pending a change in the state Medicaid Plan, only individuals under the age of 21 are eligible for Targeted Case Management. Individuals receiving case management services under the Home and Community-Based Waiver are not eligible.

B. Procedures

Documentation of eligibility will include a form 19 (Eligibility for Services), an Inventory for Client and Agency Planning (documenting the need for targeted case management services), and verification the individual is eligible for Medicaid.

R539-3-[7]8. Individual Family Support Plan.

A. Policy.

An Individual Family Support Plan will be developed for all individuals receiving family support services funded by the Division. These services are provided to help support a family in keeping a relative with a disability at home.

B. Procedures.

1. The Individual Family Support Plan will be developed by the family, the region case manager and the providers within 30 days following approval for service.

2. It is the responsibility of the agency provider to write the portion of the Plan document regarding the supports and services they will provide.

KEY: social services, disabled persons[~]
[~~October 16, 1995~~]2003
Notice of Continuation September 6, 2002
62A-5-103

Human Services, Services for People with Disabilities

R539-8-3

Supported Employment

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 25949
FILED: 01/15/2003, 13:20

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This amendment clarifies and updates federal and state policy and procedures changes related to supported employment services. It also clarifies and updates existing rules, and adds requirements for new Medicaid Waivers. Comments were received regarding the requirement of a written marketing plan. Providers felt this was too prescriptive. There were also comments regarding the minimum hours acceptable for persons to work per week. This is redundant to earlier language in the Rule and expresses an opinion not a requirement. The Board voted to make changes based upon the comments received.

SUMMARY OF THE RULE OR CHANGE: The amendment does away with the old requirement that a person must have been discharged from an intermediate care facility for people with mental retardation before being eligible for Medicaid funding through the home- and community-based waiver. Changes make division policy, home- and community-based waiver definitions and the rule congruent.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 62A-5-101, 62A-5-102, and 62A-5-103

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: Supported employment is slowly gaining recognition as an alternative to traditional day services, wherein the consumer can develop individual job skills and increase their own income. The change in federal law allows the State to seed the funding for a Medicaid match in the Home- and Community-Based Waiver program, whereas previously it was fully State-funded. This change should result in cost neutrality since the purpose of reducing the State portion of the program funding would be to bring more people into service from the Waiting List.

❖ LOCAL GOVERNMENTS: No local government funding is used in determining eligibility for these services; it is expected, therefore there is no cost to local governments.

❖ OTHER PERSONS: People who are eligible for Waiver services but who chose not to participate may lose a portion of their support.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The only compliance cost may be for a very limited number of individuals who will need to spend down personal money to maintain eligibility for waiver funding.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Service providers may lose some consumers if those consumers opt not to receive federal funds and thereby reduce the services they may purchase to the amount state funds will support. This potential affect should be mitigated by the addition of new consumers who will be funded by the savings of general fund dollars. Service providers have expressed their support of this rule change.

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 03/03/2003

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE: 2/21/2003 at 10:00 AM, Human Services Building, 120 N 200 W, Room 411, Salt Lake City, UT.

THIS RULE MAY BECOME EFFECTIVE ON: 03/07/2003

AUTHORIZED BY: Robin Arnold-Williams, Executive Director

R539. Human Services, Services for People with Disabilities.
R539-8. Community-Based Services.
R539-8-3. Supported Employment.

A. Policy.

[~~1.~~]The Division of Services for People with Disabilities will assist eligible individuals who want to work to obtain opportunities for [~~competitive~~]supported employment.[~~in an integrated setting with on-going support services. Supported Employment services are available for Division eligible individuals for whom:~~

~~a. Competitive employment has not traditionally occurred or has been interrupted or is intermittent as a result of disabilities;~~

~~b. Competitive employment at or above minimum wage would be unlikely;~~

~~c. Because of their disability, need ongoing support to perform in a competitive work setting beyond the time limited period in which the Division of Rehabilitation Services can provide services; and~~

~~d. Have the ability or potential to obtain and maintain employment with the provision of training and ongoing support.~~]

B. Procedures.

[~~1. Individuals served shall be referred to the provider by the region case manager from the waiting list or existing day services programs.~~

~~a. Individuals must be 22 years of age or older for Supported Employment services, unless waived by the Region Director.~~

~~b. Depending upon the availability of funding, an individual may be placed on a waiting list in accordance with R539-3-1, Waiting List.~~

~~c. If the individual receives this service funded through the Home and Community Based Waiver, then the individual shall have the following documentation in their individual file:~~

~~(1) That this service is not otherwise available under a program funded under the Rehabilitation Act of 1973 or Public Law 94-142 (form 58 will satisfy this requirement); and~~

~~(2) That the individual has been deinstitutionalized from a nursing facility or intermediate care facility, at some prior time.~~

~~d. The individual shall be referred to the Supported Employment program of their choice and services will be coordinated and funded by the rehabilitation counselor for a predetermined amount of time (determined by the rehabilitation counselor according to Division of Rehabilitation Services Policy). Long-term funding from the region or other community resource must be reasonably expected prior to the Division of Rehabilitation Services authorizing Supported Employment services.~~

~~e. After the initial predetermined amount of time under the Division of Rehabilitation Services, the coordination and funding of supported employment services shall be the responsibility of the region.~~

~~f. If an individual loses the supported employment job, the region is responsible to fund services to assist the individual to secure another job. Once the individual has secured another supported employment job, then additional funding for Supported Employment services may be available from the Division of Rehabilitation Services.~~

~~g. If Division of Rehabilitation Services funding is not available, and regional funding is available, an individual may be served entirely through the Division system. There must still be a reasonable expectation for long-term funding from the region.~~

~~2. The provider will comply with:~~

~~a. The Home and Community Based Services Waiver (if applicable).~~

~~b. Division policies and procedures which apply.~~

~~c. Office of Licensing standards and Division certification.~~

~~d. All services must be provided by staff that meet Division provider qualifications as specified in the contract.~~

~~e. Individuals shall have assurance that ongoing support is available as needed to assist them in placement, training and job maintenance.~~

~~f. The provider will have a policy for services during periods of unemployment (Refer to Vendor Guidelines for billable hours).~~

~~g. All other standards which are identified by the contract.~~]1. Supported employment can be full or part time and is in a work setting where the person works with others without disabilities, not including staff or contracted co-workers paid to support the person. Supported employment may occur anytime during a 24 hour day. Supports assist the person to achieve competitive employment. Competitive employment is defined as work compensated at or above the minimum wage, but not less than the customary wage and

level of benefits paid by the employer for the same or similar work performed by employees who are not disabled. Persons in supported employment are supported and employed consistent with the strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice of the person as indicated in the person's individual service plan. A person may be supported one-on-one or in a group. When appropriate, the provider may contract with a co-worker to provide additional support, under the direction of a job coach, as a natural extension of the work day.

2. Payment will only be made for adaptations, supervision and training required by a person as a result of the person's disability and will not include payment for the supervisory activities rendered as a normal part of the business setting.

Documentation must be maintained, for all persons whose supports are funded by the waiver, showing that supported employment services rendered are not available under a program funded by either the Rehabilitation Act of 1973 or the Individuals with Disabilities Education Act. Federal financial participation will not be claimed for incentive payments, subsidies, or unrelated vocational training expenses such as incentive payments made to an employer or beneficiaries to encourage or subsidize an employer's participation in a supported employment program, payments that are passed through to a beneficiary of supported employment programs, or for payments for vocational training that is not directly related to a beneficiary's supported employment program.

[~~3. The provider provides program services that will meet the following minimum standards:~~

~~a. Individuals with disabilities shall be employed for a significant number of hours at a level which is optimal for them, in accordance with their capabilities and desires. This should be determined at the Individual Support Plan/Individual Plan meeting. The Division considers at least 20 hours per week the optimum minimum level for most individuals.~~

~~b. Individuals shall be compensated at minimum wage or better. If minimum wage is not feasible, compensation shall be at a commensurate wage based on individual productivity. Individuals shall be provided benefits by the employer which are comparable to workers who are not disabled.~~

~~c. Supported Employment is conducted in a variety of settings, particularly work sites in which persons without disabilities are employed. Individuals shall be encouraged to participate in work and non-work activities alongside individuals who are not disabled and who are not paid care givers.~~

~~d. There shall be no more than eight individuals with disabilities in any one enclave.~~

~~e. Satisfaction surveys shall be given to the individual, and if appropriate, family members and residential providers. Documentation is needed to show how the survey results are used to improve Supported Employment services.~~

~~f. Work shall be performed to the satisfaction of employers. Assistive technology shall be used to enhance productivity when appropriate (referral through the Division of Rehabilitation Services/Division of Services for People with Disabilities).~~

~~g. Jobs or contract employment shall be developed through the use of a written marketing plan.~~

~~h. An individual assessment of functional capacity shall be conducted within thirty (30) days of the referral to the program. To increase the individual performance on the job, program staff shall perform a systematic procedure to insure that the job is appropriate for the individual, that the individual has had input into the decision of employment, and that the most effective training and support techniques are utilized. Techniques should foster the use of natural supports; example: family, friends, or co-workers.~~

~~i. Supported Employment direct service staff and their immediate supervisors shall be trained in the standards and implementation procedures required for each individual's particular supported employment placement or job.~~

~~j. Contractors shall have the support of their Board of Directors to build strong supported employment services and maintain accounting and management practices which assure accountability and effective services.~~]3. Provider agency standards:

a. Persons shall be employed for a significant number of hours, at a level optimal for the person and in accordance with the person's capabilities and desires. This should be determined at the person centered plan meeting. The hours worked by persons receiving supported employment should approximate the hours worked by other employees;

b. Persons shall be compensated at minimum wage or better. If minimum wage is not feasible, compensation shall be at a commensurate wage based on a person's productivity. Persons shall be provided benefits by the employer which are comparable to workers who are not disabled.

c. There shall be no more than eight persons in any one enclave.

d. Assistive technology shall be used to enhance productivity when appropriate in accordance with the Americans with Disabilities Act.

e. An individual assessment of work interests shall be conducted within 30 days of the person's referral to the provider agency. To increase the persons performance on the job, provider staff ensure that the job is appropriate for the person, that the person has had input into the decision of employment, and that the most effective training and support techniques are used. Techniques should foster the use of natural supports such as family, friends, and co-workers.

f. Supported employment direct service staff and their immediate superiors shall be trained in the support strategies required for each person's particular supported employment placement or job.

KEY: disabled persons[~~*~~], social services
[~~February 8, 1996~~]2003
Notice of Continuation December 18, 1997
62A-5-103

▼ ▼

Insurance, Administration
R590-183
Title Plant Rule

NOTICE OF PROPOSED RULE
(New Rule)
DAR FILE NO.: 25942
FILED: 01/14/2003, 14:21

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule applies only to title insurers authorized to transact business in Utah and permits them to include title plants as qualified assets.

SUMMARY OF THE RULE OR CHANGE: This rule was inadvertently overlooked when the Five-Year Review was to be filed, and as a result it expired. This action is being taken now to put it back into effect. The text of the rule remains the same as the text of the rule before the expiration. (DAR NOTE: Rule R590-183 expired on 1/2/2003. The notice of expiration is published in this Bulletin under DAR No. 25908.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 31A-17-201

ANTICIPATED COST OR SAVINGS TO:
❖ THE STATE BUDGET: This rule will have no impact on the state's budget. It simply allows title insurers to include a title plant as a qualified asset on their annual statement.
❖ LOCAL GOVERNMENTS: This rule will have no impact on local government since it deals only with their financial statements given to the Insurance Department.
❖ OTHER PERSONS: This rule allows insurers to list any title plants they have as a qualified asset on their annual financial statement with the department.

COMPLIANCE COSTS FOR AFFECTED PERSONS: This rule allows insurers to list any title plants they have as a qualified asset on their annual financial statement with the department.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule will give title insurers, of which there are 17 licensed to do business in Utah, the right to include title plants they may have in Utah, as qualified assets on their annual statement. The rule will create no cost to the business owner.

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 03/03/2003.

THIS RULE MAY BECOME EFFECTIVE ON: 03/04/2003

AUTHORIZED BY: Jilene Whitby, Information Specialist

R590. Insurance, Administration.
R590-183. Title Plant Rule.
R590-183-1. Authority.

This rule is adopted pursuant to Section 31A-17-201(2)(j), which allows the commissioner to authorize qualified assets other than those enumerated in Subsections 31A-17-201(2)(a) through (i).

R590-183-2. Purpose and Scope.

A. The purpose of this rule is to permit title insurers to include title plants as qualified assets.

B. This rule applies only to title insurers authorized to transact business in Utah.

R590-183-3. Definitions.

For the purpose of this rule, the following definitions apply:

A. "Foreign title insurer" means any title insurer incorporated or organized under the laws of any other state of the United States, the District of Columbia, or any other jurisdiction of the United States.

B. "Alien title insurer" means any title insurer incorporated or organized under the laws of any foreign nation or any province or territory.

C. "Title insurer" means a company organized under the laws of this state for the purpose of transacting the business of title insurance and any foreign or alien title insurer licensed in this state to transact the business of title insurance.

D. "Title plant" means a set of records consisting of documents, maps, surveys or entries affecting title to real property or any interest in or encumbrance on the property, which have been filed or recorded in the jurisdiction for which the title plant is established or maintained.

E. "Qualified assets" are defined in Subsection 31A-17-201(2).

R590-183-4. Rule.

In determining the financial condition of title insurers authorized to conduct title insurance business in Utah, a title plant or plants in an amount equal to the lesser of the actual cost or the current fair market value shall be allowed as a qualified asset. The aggregate amount of the investment may not exceed the lesser of 20% of qualified assets or 40% of surplus as regards policyholders as shown on the most recent annual statement on file with the commissioner.

R590-183-5. Separability.

If any provision of this rule or its application to any person or circumstance is for any reason held to be invalid by a court of competent jurisdiction, the remainder of the rule and the application of this revision to other persons or circumstances may not be affected.

KEY: title insurance
2003
31A-17-201

▼ ▼

Insurance, Administration
R590-219
Credit Scoring

NOTICE OF PROPOSED RULE
(New Rule)
DAR FILE NO.: 25958
FILED: 01/15/2003, 15:37

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule sets forth minimum standards for all property and casualty insurers doing private passenger automobile business in Utah that use credit history or an insurance score as part of their underwriting criteria or rating plans.

SUMMARY OF THE RULE OR CHANGE: This rule sets forth minimum standards for all property and casualty insurers doing private passenger automobile business in Utah that use credit history or an insurance score as part of their underwriting criteria or rating plans.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 31A-2-201, 31A-2-202, and 31A-22-320

ANTICIPATED COST OR SAVINGS TO:
❖ THE STATE BUDGET: The Insurance Department will be able to assimilate any additional work resulting from this rule. An insurance company, not already in compliance with the rule, will need to prepare, print and mail a notification to their insureds as specified in Subsection R590-219-4(4). Printing and mailing costs will be incurred as a result of this requirement.
❖ LOCAL GOVERNMENTS: The rule will have no fiscal impact on local government. The laws and requirements of this rule do not interact with local government laws.
❖ OTHER PERSONS: Those insurers not already in compliance with the provisions of the rule will need to pay costs to print and mail the notice required in Subsection R590-219-4(4) to their auto insureds. Also, when an insured finds that their credit score is incorrect, they can ask the insurer to adjust their auto premium to comply with the correct score. This will require the insurer to either bill the difference or return premium to the insured.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Those insurers not already in compliance with the provisions of the rule will need to pay costs to print and mail the notice required in Subsection R590-219-4(4) to their auto insureds. Also, when an insured finds that their credit score is incorrect, they can ask the insurer to adjust their auto premium to comply with the correct score. This will require the insurer to either bill the difference or return premium to the insured.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The rule will cause some fiscal impact to insurers as a result of the notification requirement and the requirement to adjust premiums when the insured finds that their credit score is incorrect. In most cases, the insurer will be required to return premium to the insured when this happens.

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 03/03/2003

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE: 2/18/2003 at 10:00 AM, 777 Winchester (6600 S 777 E) Murray, UT, First Floor, Training Room.

THIS RULE MAY BECOME EFFECTIVE ON: 03/04/2003

AUTHORIZED BY: Jilene Whitby, Information Specialist

R590. Insurance, Administration
R590-219. Credit Scoring.
R590-219-1. Authority.

This rule is promulgated pursuant to Subsection 31A-2-201(3)(a) in which the commissioner may make rules to implement the provisions of this title. Also, specific authority is provided in Subsection 31A-22-320(3) to enforce the provisions of Section 31A-22-320.

R590-219-2. Scope and Purpose.

This rule sets forth minimum standards for all property and casualty insurers doing private passenger automobile business in Utah that use credit history or an insurance score as part of their underwriting criteria or rating plans.

R590-219-3. Definitions.

In addition to the definitions in Section 31A-1-301 and 31A-22-320, the following definition shall apply for the purposes of this rule:

(1) "Significant factor" means an important element of the consumer's credit history or insurance score. Significant factors include:
(a) bankruptcies, judgments and liens;
(b) delinquent accounts;
(c) accounts in collection;
(d) payment history outstanding debt;
(e) length of credit history; and
(f) number of credit accounts.
(2)(a) "Initial underwriting" shall include:
(i) deciding whether or not to issue a policy to the consumer;

(ii) the amount and terms of the coverage;
(iii) the duration of the policy; and
(iv) the rates or fees charged.
(b) "Initial underwriting" shall not include additional vehicles or drivers added to the household of a current auto insurance policyholder of the insurer, provided:
(i) the additional vehicle is owned by the named insured, spouse or persons related to the named insured by blood, marriage, adoption, or guardianship that are residents of the named insured's household;
(ii) the additional driver is related to the named insured or spouse by blood, marriage, adoption, or guardianship and is a resident of the named insured's household, including those who usually make their home in the same household but temporarily live elsewhere; or
(iii) a divorced spouse or child where an insurer has a record of the driving history from an existing policy.
(3) "Adverse action" shall have the same meaning as defined in the Fair Credit Reporting Act, 15 U.S.C. sec.1681 et seq. An adverse action includes the following:
(a) cancellation, denial or non-renewal of insurance coverage;
(b) charging a higher premium than would have been offered if the credit history or credit score had been more favorable, whether the charge is by:
(i) application of a rating rule;
(ii) assignment to a rating category within a single insurer, into which insureds with substantially like insuring, risk or exposure factors and expense elements are placed for purposes of determining rate or premium, that does not have the lowest available rates;
(iii) placement with an affiliate insurer that does not offer the lowest rates available to the consumer within the affiliate group of insurers; or
(iv) a reduction or an adverse or unfavorable change in the terms of coverage or amount of insurance owing to a consumer's credit history or insurance score.
(c) A reduction or an adverse or unfavorable change in the terms of coverage occurs when:
(i) coverage provided to the consumer is not as broad in scope as coverage requested by the consumer but available to other insureds of the insurer or any affiliate; or
(ii) the consumer is not eligible for benefits such as dividends that are available through affiliate insurers.

R590-219-4. Insurer's Obligation If Credit Information Is Used.
(1) An insurer must notify an applicant or insured of the significant factors that influenced the insurer's adverse action decision. If more than four significant factors influenced the insurer's decision, only the four most significant factors need be disclosed to the applicant.
(2) In order to meet the requirements of subsection (1) of this section, an insurer must explain the significant factors in clear and simple language. The use of generalized terms such as "poor credit history", "poor credit rating", or "poor insurance score" does not meet the explanation requirements of this subsection. Standardized credit explanations provided by consumer reporting agencies or other third party vendors are deemed to comply with this section.
(3) An insurer may choose to tell an applicant or insured which factors positively affect an applicant's or insured's credit history or insurance score.
(4) An insurer must comply with all notification requirements of the federal Fair Credit Reporting Act, 15 U.S.C. 1681 et seq. If any adverse action is taken, the insurance company must provide to the applicant or insured:
(a) the identity, telephone number, and address of any consumer-reporting agency from which a credit report was obtained;
(b) notification of the applicant's or insured's right to receive a free copy of their credit report from the consumer reporting agency for a period of 60 days from the date of application; and
(c) notification of the applicant's or insured's right to lodge a dispute with the consumer-reporting agency and have erroneous information corrected in accordance with the Fair Credit Reporting Act.
(5) After an adverse action is taken, if it is later determined that the initial information in the credit report was incorrect, the insurance company, at the request of the applicant or insured, shall underwrite or rate the policy again using the correct information. If the insurer determines that the insured has overpaid premium, the insurer shall refund to the insured the amount of overpayment calculated back to the shorter of either the last 12 months of coverage or the actual policy period.
(6) An insurer shall establish procedures that allow consumers or their insurance producers to request that a person's credit history or score is re-examined.
(7) An insurer shall refrain from penalizing consumers based on identity theft; credit inquiries not initiated by the consumer; insurance-related inquiries; medical related collection accounts, if the information can be identified on a credit report; and multiple lender inquiries, if captured on a credit report as being from the home mortgage industry and made within a 30 day period, unless only one inquiry is considered.

R590-219-5. Prohibited Uses of Credit Information.
Insurers may not use credit information:
(1) to cancel or non-renew any private passenger auto insurance policy that has been in effect for 60 days or more;
(2) as the primary reason to decline or refuse to issue a new personal auto insurance policy;
(3) to determine rates as part of a filed rating plan for private passenger auto insurance, except to provide a premium discount or similar reduction in rates and, when an insurer issues a policy with a discount based on credit, that discount shall not be removed or reduced based on credit information only;
(4) to cancel or non-renew an existing private passenger auto insurance policy which has been in effect for 60 days or more, nor decline or refuse to issue a new policy or coverage for an additional vehicle owned by the named insured or persons related to the named insured by blood, marriage, adoption, or guardianship who are residents of the named insured's household; or
(5) to cancel or non-renew an existing private passenger auto insurance policy which has been in effect for 60 days or more when adding a newly licensed driver who is related to the named insured by blood marriage, adoption, or guardianship, and continues to be a resident of the named insured's household.

R590-219-6. Offer of Placement.
An offer of placement with an affiliated insurance company is not considered a cancellation, non-renewal, declination, or refusal to issue a policy.

R590-219-7. Enforcement Date.
The commissioner will begin enforcing the provisions of this rule 45 days from the rule's effective date.

R590-219-8. Severability.

If any provision or clause of this rule or its application to any person or situation is held invalid, such invalidity shall not affect any other provision or application of this rule which can be given effect without the invalid provision or application, and to this end the provisions of this rule are declared to be severable.

KEY: insurance, credit scoring
2003
31A-2-201
31A-22-320

Labor Commission, Occupational Safety and Health
R614-1-4
Incorporation of Federal Standards

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 25941
FILED: 01/14/2003, 14:18

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: In order to maintain its status as a State Plan State "as effective as Federal OSHA", Utah is incorporating 67 Fed Reg 57722 - 57736 (09/12/2002), "Safety Standards for Signs, Signals, and Barricades", Final Rule; and 67 Fed Reg 67949 - 67965 (11/07/2002), "Exit Routes, Emergency Action Plans, and Fire Protection Plans", Final Rule. As to the "Safety Standards for Signs" rule, this final rule addresses the types of signs, signals, and barricades that must be used to protect construction employees from traffic hazards. The vast majority of road construction in the United States is funded through Federal transportation grants. As a condition to receiving Federal funding, the U.S. Department of Transportation's (DOT) Federal Highway Administration (FHWA) requires compliance with its Manual on Uniform Traffic Control Devices (MUTCD). In furtherance of OSHA's statutory mandate to protect the health and safety of employees, OSHA currently requires employers within the scope of OSHA authority to comply with the MUTCD. However, OSHA's current standard incorporates the 1971 version of the MUTCD, which FHWA has since updated. The purpose of this final rule is to update OSHA's standard. As to the final rule regarding "Exits", the rule is now more performance-oriented to the extent possible and more concise than the original, with fewer subparagraphs and fewer cross-references to other OSHA standards. Additionally, a table of contents has been added to make the standards easier to use. OSHA is also changing the name of the subpart from "Means of Egress" to "Exit Routes, Emergency Action Plans, and Fire Prevention Plans" to better describe the contents.

SUMMARY OF THE RULE OR CHANGE: OSHA is revising the construction industry safety standards to require traffic control signs, signals, barricades, or devices protecting workers conform to Part VI of either the 1988 edition of the FHWA's MUTCD, with 1993 revisions (Revision 3) or the Millennium Edition of the FHWA's MUTCD, instead of the American National Standards Institute (ANSI) D6.1-1971, Manual on Uniform Traffic Control Devices for Streets and Highways. OSHA has also rewritten its standards for means of egress in clearer language for employers, employees, and others who use them. The revisions reorganize the text, remove inconsistencies, and eliminate duplicative requirements. Also, OSHA has changed the name of the subpart from "Means of Egress" to "Exit Routes, Emergency Action Plans, and Fire Prevention Plans" to better describe the contents. Finally, OSHA has evaluated the National Fire Protection Association's Standard 101, Life Safety Code, 2000 Edition (NFPA 101-2000), and has concluded that the standard provides comparable safety to the Exit Routes Standard. Therefore, employers who wish to comply with the NFPA 101-2000 instead of the OSHA standards for Exit Routes may do so.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 34A-6-202; and 29 CFR 1926 and 29 CFR 1910

THIS RULE OR CHANGE INCORPORATES BY REFERENCE THE FOLLOWING MATERIAL: 67 Fed Reg 67949 - 67965 (11/07/2002), "Exit Routes, Emergency Action Plans, and Fire Protection Plans; Final Rule"; and 67 Fed Reg 57722 - 57736 (09/12/2002), "Safety Standards for Signs, Signals, and Barricades; Final Rule"

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: The proposed rule imposes no additional costs on the state either in enforcement costs or in compliance costs. DOT has estimated that the costs associated with the various versions of the MUTCD and its revisions are minimal. OSHA's comparative analysis of the 1971 ANSI and 1993 MUTCD supports DOT's estimates. In addition, the overwhelming majority of public roads are already covered by DOT regulations and their related State MUTCDs. The other rule amendment does not involve any significant substantive change to the rule and will not result in any cost or savings to the state budget.

❖ LOCAL GOVERNMENTS: DOT has estimated that the costs associated with the various versions of the MUTCD and its revisions are minimal. OSHA's comparative analysis of the 1971 ANSI and 1993 MUTCD supports DOT's estimates. In addition, the overwhelming majority of public roads are already covered by DOT regulations and their related State MUTCDs. The other rule amendment does not involve any significant substantive change to the rule and will not result in any cost or savings to local government.

❖ OTHER PERSONS: DOT has estimated that the costs associated with the various versions of the MUTCD and its revisions are minimal. OSHA's comparative analysis of the 1971 ANSI and 1993 MUTCD supports DOT's estimates. In addition, the overwhelming majority of public roads are already covered by DOT regulations and their related State MUTCDs. The other rule amendment does not involve any significant substantive change to the rule and will not result in any cost or savings to other persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: For the MUTCD change, using data from Census and Dun and Bradstreet, OSHA estimates that at most this regulation will not have a significant economic impact on affected entities. For the "Exits" change, certain provisions of the proposed rule add flexibility and may reduce compliance costs for employers.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: On balance, these changes will have minimal fiscal impact on business. For the most part the standards are already required by existing OSHA regulations or DOT regulations.

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

LABOR COMMISSION
OCCUPATIONAL SAFETY AND HEALTH
HEBER M WELLS BLDG
160 E 300 S
SALT LAKE CITY UT 84111-2316, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
William Adams at the above address, by phone at 801-530-6897, by FAX at 801-530-7606, or by Internet E-mail at wadams@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 03/03/2003.

THIS RULE MAY BECOME EFFECTIVE ON: 03/04/2003

AUTHORIZED BY: R Lee Ellertson, Commissioner

R614. Labor Commission, Occupational Safety and Health.
R614-1. General Provisions.
R614-1-4. Incorporation of Federal Standards.

A. General Industry Standards.

1. Sections 29 CFR 1910.21 to 1910.999 and 1910.1000 through the end of part 1910 of the July 1, 2002, edition are incorporated by reference.

2. 29 CFR 1908, July 1, 2001, is incorporated by reference.

3. 29 CFR 1904, July 1, 2001, is incorporated by reference.

4. FR Vol. 67, No. 126, Monday, July 1, 2002, Pages 44037 to and including 44048, "29 CFR Part 1904 Occupational Injury and Illness Recording and Reporting Requirements; Final Rule" is incorporated by reference.

5. FR Vol. 67, No. 216, Thursday, November 7, 2002, Pages 67949 to and including 67965, "Exit Routes, Emergency Action Plans, and Fire Protection Plans; Final Rule" is incorporated by reference.

B. Construction Standards.

1. Section 29 CFR 1926.20 through the end of part 1926, of the July 1, 2002, edition is incorporated by reference.

2. FR Vol. 67, No. 177, Thursday, September 12, 2002, Pages 57722 to and including 57736, "Safety Standards for Signs, Signals, and Barricades; Final Rule" is incorporated by reference.

KEY: safety
[~~December 17, 2002~~]2003
34A-6

Natural Resources, Administration
R634-1
Americans With Disabilities Complaint Procedure

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 25951
FILED: 01/15/2003, 14:39

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule adopts, defines, and provides procedures for prompt and equitable resolutions to complaints filed with the Department of Natural Resources (DNR) in accordance with Title II of the Americans With Disabilities Act.

SUMMARY OF THE RULE OR CHANGE: Provisions of this rule are being amended to provide an update on the correct citation to the Code of Federal Regulations (CFR). Subsection R634-1-3(1) is being amended to delete the provision that a complaint of discrimination occurring between November 16, 1997, and the effective date of this rule may be filed within 180 days of the effective date of this rule. This provision is no longer necessary since the rule is effective.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 63-46a-3(2)

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: These amendments are for clarification and to ensure correct citations to the CFR. Therefore, DNR determines that these amendments do not create a cost or savings impact to the state budget or DNR'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: These amendments are for clarification and to ensure correct citations to the CFR. 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: None--These amendments are for clarification and to ensure correct citations to the CFR. There are not any 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
ADMINISTRATION
Room 3710
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 or Betty Barela at the above address, by phone at 801-538-4707 or 801-538-7201, by FAX at 801-538-4745 or 801-538-7315, or by Internet E-mail at debbiesundell@utah.gov or bettytbarela@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 03/03/2003.

THIS RULE MAY BECOME EFFECTIVE ON: 03/04/2003

AUTHORIZED BY: Robert Morgan, Executive Director

R634. Natural Resources, Administration.
R634-1. Americans With Disabilities Complaint Procedure.
R634-1-1. Authority and Purpose.

(1) This rule is promulgated pursuant to Section 63-46a-3(2) of the state Administrative Rulemaking Act. The department, pursuant to 28 CFR 35.107, [~~1997~~]2002 ed., adopts, defines and publishes within this rule complaint procedures providing for prompt and equitable resolution of complaints filed in accordance with Title II of the Americans With Disabilities Act.

(2) The provision of 28 CFR 35, [~~1997~~]2002 ed., implements the provisions of Title II of the Americans With Disabilities Act, 42 USC 12201, which provides that no qualified individual with a disability, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs or activities of a public entity, or be subjected to discrimination by this or any such entity.

R634-1-2. Definitions.

(1) "Department" means the state Department of Natural Resources.

(2) "The ADA Coordinator" means the Department of Natural Resources' Coordinator or designee who has responsibility for investigating and providing prompt and equitable resolution of complaints filed by qualified individuals with disabilities.

(3) "The Department of Natural Resources ADA Coordinating Committee" means that committee composed of:

(a) the two assistant directors;

(b) the Human Resource director; and

(c) the administrative assistant to the executive director.

(4) "The ADA State Coordinating Committee" means that committee with representatives designated by the directors of the following agencies:

(a) Office of Planning and Budget;

(b) Department of Human Resource Management;

(c) Division of Risk Management;

(d) Division of Facilities Construction and Management; and

(e) Office of the Attorney General.

(5) "Disability" means with respect to an individual with a disability, a physical or mental impairment that substantially limits one or more of the major life activities of such an individual; a record of such an impairment; or being regarded as having such an impairment.

(6) "Major life activities" means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working.

(7) "Individual with a disability" (hereinafter individual) means a person who has a disability which limits one of his or her major life activities and who meets the essential eligibility requirement for the receipt of services or the participation in programs or activities provided by the department, or who would otherwise be an eligible applicant for vacant department positions, as well as those who are employees of the department.

R634-1-3. Filing of Complaints.

(1) A complaint shall be filed in a timely manner to assure prompt, effective assessment and consideration of the facts, but no later than 180 days from the date of the alleged act of discrimination.[~~However, any complaint alleging an act of discrimination occurring between November 16, 1997, and the effective date of this rule may be filed within 180 days of the effective date of this rule.~~]

(2) The complaint shall be filed with the department's ADA Coordinator, preferably in writing or in another suitable format.

(3) Each complaint should:

(a) include the individual's name and address;

(b) include the nature and extent of the individual's disability;

(c) describe the alleged discriminatory action in sufficient detail to inform the department of the nature and date of the alleged violation;

(d) describe the action and accommodation desired; and

(e) be signed by the individual or by his or her legal representative.

(4) Complaints filed on behalf of classes or third parties shall describe or identify by name, if possible, the alleged victims of discrimination.

R634-1-4. Investigation of Complaint.

(1) The ADA Coordinator shall conduct an investigation of each complaint received. The investigation shall be conducted to the extent necessary to assure all relevant facts are determined and documented. This may include gathering all information listed in Section R634-1-3(c) if it is not made available by the individual.

(2) When conducting the investigation, the ADA Coordinator will consult with the Department of Natural Resources' ADA Coordinating Committee. The ADA Coordinator may also seek assistance from the department's legal staff and the director of the division against which the complaint was filed, in determining what action, if any, shall be taken on the complaint. The ADA Coordinator shall consult with the ADA State Coordinating Committee before making any decision that would involve:

(a) an expenditure of funds which is not absorbable within the department's budget and would require appropriation authority;

(b) facility modifications which are not absorbable within the department's budget and would require appropriation authority; or

(c) a situation which would involve an individual's employment status.

R634-1-5. Issuance of Decision.

A written determination, or in another suitable format, as to the validity of a complaint, along with a description of the resolution, if any, will be issued by the ADA Coordinator, and a copy shall be forwarded to the complainant no later than 10 working days after the complaint has been filed. If more time is needed in the investigation, the ADA Coordinator shall communicate the reason and time frames to the complainant.

R634-1-6. Appeals.

(1) The individual may appeal the decision of the ADA Coordinator by filing an appeal within 10 working days from the receipt of the decision.

(2) The appeal shall be filed, preferably in writing or in another suitable format, with the department's executive director or designee.

(3) The filing of an appeal shall be considered as authorization by the individual to allow review of all information, including information classified as private or controlled, by the department's executive director or designee.

(4) The appeal shall describe in sufficient detail why the ADA Coordinator's decision is in error, is incomplete or ambiguous, is not supported by the evidence, or is otherwise improper.

(5) The executive director or designee shall review the factual findings of the investigation and the individual's statement regarding the ADA Coordinator's decision and arrive at an independent conclusion and recommendation. Additional investigations may be conducted if necessary to clarify questions of fact before arriving at an independent conclusion. The executive director or designee shall also consult with the ADA State Coordinating Committee before making any decision that would involve:

(a) an expenditure of funds which is not absorbable within the department's budget and would require appropriation authority;

(b) facility modifications which are not absorbable within the department's budget and would require appropriation authority; or

(c) a situation that would involve an individual's employment status.

(6) A written determination, or in another suitable format, as to the validity of a complaint, along with a description of the resolution, if any, will be issued by the executive director or designee, and a copy shall be forwarded to the complainant no later than 10 working days after the appeal has been filed. If more time is needed in the investigation, the executive director or designee shall communicate the reason and time frames to the complainant.

R634-1-7. Classification of Records.

(1) The record of each complaint and appeal, and all written records produced or received as part of such actions, shall be classified as protected as defined under Section 63-2-304 until the ADA Coordinator, executive director, or their designees issue the decision at which time any portions of the record which may pertain to the individual's medical condition shall remain classified as private as defined under Section 63-2-302 or controlled as defined in Section 63-2-303.

(2)(a) All other information gathered as part of the complaint record shall be classified as private information.

(b) Only the written decision of the ADA Coordinator, executive director or designees shall be classified as public information.

R634-1-8. Relationship to Other Laws.

This rule does not prohibit or limit the use of remedies available to individuals under:

(a) the state Anti-Discrimination Complaint Procedures, Section 67-19-32;

(b) the Federal ADA Complaint Procedures, 28 CFR Subpart F, beginning with Part 35.170, [~~1997~~]2002 ed.; or

(c) any other Utah state or federal law that provides equal or greater protection for the rights of individuals with disabilities.

KEY: civil rights, liberties
[~~January 15, 1998~~] 2003
63-46a-3(2)

Public Safety, Fire Marshal
R710-1
Concerns Servicing Portable Fire Extinguishers

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 25954
FILED: 01/15/2003, 14:57

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Utah Fire Prevention Board met in a regularly scheduled Board meeting on January 14, 2003, and approved several changes to Rule R710-1. The changes involve inspection procedures, changing the time of license and certification renewal from a specific calendar year basis to a one year schedule per license, and redefining license type requirements to be consistent with the United States Department of Transportation (DOT).

SUMMARY OF THE RULE OR CHANGE: The proposed amendments to the existing rule are as follows: 1) in Subsection R710-1-1(1.1), it is proposed to update the incorporated reference National Fire Protection Association (NFPA), Standard 10, Standard for Portable Fire Extinguishers, 1998 edition, to the 2002 edition; 2) in Subsection R710-1-2(2.10), it is proposed to add the term "authorizing deputy" to the definition of State Fire Marshal; 3) in Subsection R710-1-3(3.6), it is proposed to change the original license from a calendar year basis to the date of application. It is also proposed to add the requirement that a materials, equipment and performance inspection be satisfactorily completed before issuance of the license; 4) in Subsection R710-1-3(3.7), it is proposed to change the renewal of licenses from a calendar year basis to a specific one year period of time. This would be accomplished for a one year period of time by prorating the fees monthly. It is also proposed that a satisfactory completion of an materials, equipment, and performance inspection be completed before

a renewal of license is granted; 5) in Subsections R710-1-3(3.14.2.2) and (3.14.2.3), it is proposed to change the license authorization activity types to be in harmony with and specific to the USDOT federal classifications which changed effective October 1, 2002; 6) in Subsection R710-1-4(4.6), it is proposed to change the original certificate of registration from a calendar year basis to the date of application; and 7) in Subsection R710-1-4(4.7), it is proposed to change the renewal of certificates of registrations from a calendar year basis to a specific one year period of time. This would be accomplished for a one year period of time by prorating the fees monthly.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 53-7-204

THIS RULE OR CHANGE INCORPORATES BY REFERENCE THE FOLLOWING MATERIAL: National Fire Protection Association (NFPA), Standard 10, Standard for Portable Fire Extinguishers, 2002 edition

ANTICIPATED COST OR SAVINGS TO:
❖ THE STATE BUDGET: There would be an anticipated cost of $50 to reprint the newly adopted rule and send to those who cannot access the State Fire Marshal Website.
❖ LOCAL GOVERNMENTS: There would be no anticipated cost or savings to local government to instigate the proposed rule change because the proposed rule change does not effect local government.
❖ OTHER PERSONS: There would be an anticipated cost to those companies that wish to purchase a copy of the new NFPA, Standard 10, 2002 edition of $27 for each copy purchased.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There would be a compliance cost of $27 for the purchase of a 2002 edition of NFPA, Standard 10.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The fiscal impact to businesses is only the $27 for a copy of the newly adopted NFPA, Standard 10 2002 edition, if the company wishes to purchase a copy. There is no other fiscal impact created by the filing of these rule amendments.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
PUBLIC SAFETY
FIRE MARSHAL
Room 302
5272 S COLLEGE DR
MURRAY UT 84123-2611, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Brent Halladay at the above address, by phone at 801-284-6352, by FAX at 801-284-6351, or by Internet E-mail at bhallada@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 03/03/2003.

THIS RULE MAY BECOME EFFECTIVE ON: 03/04/2003

AUTHORIZED BY: Gary A. Wise, State Fire Marshal

R710. Public Safety, Fire Marshal.
R710-1. Concerns Servicing Portable Fire Extinguishers.
R710-1-1. Adoption, Title, Purpose, and Prohibitions.

Pursuant to Section 53-7-204, Utah Code Annotated 1953, the Utah Fire Prevention Board adopts minimum rules to provide regulation to those concerns that service Portable Fire Extinguishers.

There is adopted as part of these rules the following code which is incorporated by reference:

1.1 National Fire Protection Association (NFPA), Standard 10, Standard for Portable Fire Extinguishers, [~~1998~~]2002 edition, except as amended by provisions listed in R710-1-8, et seq.

1.2 A copy of the above mentioned standard is on file in the Office of Administrative Rules and the State Fire Marshal's Office.

1.3 Validity.

If any section, subsection, sentence, clause, or phrase, of these rules is, for any reason, held to be unconstitutional, contrary to statute, or exceeding the authority of the SFM, such decision shall not affect the validity of the remaining portion of these rules.

1.4 Order of Precedence.

In the event of any difference between these rules and any adopted reference material, the text of these rules shall govern. When a specific provision varies from a general provision, the specific provision shall apply.

R710-1-2. Definitions.

2.1 "Annual" means a period of one year or 365 calendar days.

2.2 "Board" means Utah Fire Prevention Board.

2.3 "Branch Office" means any location, other than the primary business location, where business license, telephone, advertising and servicing equipment is utilized.

2.4 "Certificates of Registration" means a written document issued by the SFM to any person for the purpose of granting permission to such person to perform any act or acts for which authorization is required.

2.5 "Concern" means a person, firm, corporation, partnership, or association, licensed by the SFM.

2.6 "Employee" means those persons who work for a licensed concern, and may include, but shall not be limited to, those persons who work on a contractual basis.

2.7 "License" means a written document issued by the SFM authorizing a concern to engage in the business of servicing portable fire extinguishers.

2.8 "NFPA" means National Fire Protection Association.

2.9 "Repair" means any work performed on, or to, any portable fire extinguisher, and not defined as charging, recharging, or hydrostatic testing.

2.10 "SFM" means State Fire Marshal or authorized deputy.

2.11 "UCA" means Utah State Code Annotated 1953 as amended.

2.12 "USDOT" means the United States Department of Transportation.

R710-1-3. Licensing.

3.1 License Required.

No person or concern shall engage in the servicing of portable fire extinguishers without a license issued by the SFM, pursuant to these rules, expressly authorizing such concern to perform such acts.

3.2 Application.

3.2.1 Application for a license to engage in the business of, or perform the servicing of portable fire extinguishers, shall be made in writing to the SFM on forms provided by the SFM. A separate application for license shall be made for each separate place or business location of the applicant (branch office).

3.2.2 The application for a license to engage in the business of, or perform the servicing of portable fire extinguishers, shall be accompanied with proof of public liability insurance. The public liability insurance shall be issued by a public liability insurance carrier showing coverage of at least $100,000 for each incident, and $300,000 in total coverage. The licensee shall notify the SFM within thirty days after the public liability insurance coverage required is no longer in effect for any reason.

3.3 Signature of Application.

The application shall be signed by the applicant. If the application is made by a partnership, it shall be signed by all partners. If the application is made by a corporation or association other than a partnership, it shall be signed by a principal officer.

3.4 Equipment Inspection.

The applicant or licensee shall allow the SFM, and any of his properly authorized deputies to enter, examine, and inspect any premise, building, room, establishment, or vehicle, used by the applicant in servicing portable fire extinguishers to determine compliance with the provisions of these rules. The inspection will be conducted during normal business hours, and the owner or manager will be given a minimum of 24 hours notice before the appointed inspection. The equipment inspection may be conducted on an annual basis, and consent to inspect will be obtained. The applicant, license holder or certified employee of the license holder, may be asked during the inspection by the SFM or any of his deputies, to demonstrate skills or knowledge used in servicing of portable fire extinguishers.

3.5 Issuance.

Following receipt of the properly completed application, and compliance with the provision of the statute and these rules, the SFM shall issue a license.

3.6 Original[~~, Valid Date~~] License and Inspection.

Original licenses shall be valid [~~from the date of issuance through December 31st of the year in which issued~~]for one year from the date of application. Thereafter, each license shall be renewed annually and renewals [~~thereof~~]shall be valid [~~from January 1st through December 31st~~]for one year from issuance. [~~Original licenses purchased after July 1st and up to November 1st can be purchased one time, at a one-half year fee. Licenses issued on or after November 1st will be valid through December 31st of the following year.~~]No original license shall be issued until the satisfactory completion of a materials, equipment and performance inspection by the SFM.

3.7 Renewal[~~, Valid Date~~] License and Inspection.

Application for renewal shall be made [~~before January 1st of each year. Application for renewal shall be made in writing on forms provided~~]as directed by the SFM. The failure to renew the license will cause the license to become invalid. No renewal license will be issued until the satisfactory completion of a materials, equipment and performance inspection by the SFM. Beginning March 4, 2003, through February 29, 2004, renewal dates for licensed concerns will be based upon the inspection date and valid for a one-year period of time. Renewal license fees shall be prorated monthly, and monthly fees already paid in that time period shall be credited towards the renewal license fee.

3.8 Refusal to Renew.

The SFM may refuse to renew any license in the same manner, and for any reason, that he is authorized, pursuant to Section 9 of these rules to deny a license. The applicant shall, upon such refusal, have the same rights as are granted by Section 9 of these rules to an applicant for an original license which has been denied by the SFM.

3.9 Change of Address.

Every licensee shall notify the SFM, in writing, within thirty (30) days, of any change of his address or location.

3.10 Under Another Name.

No licensee shall conduct his licensed business under a name other than the name or names which appears on his license.

3.11 List of Licensed Concerns.

The SFM shall make available, upon request and without cost, to the chief fire official of each local fire authority, the name, address, and license number of each concern that is licensed pursuant to these rules. Upon request, single copies of such list shall be furnished, without cost, to a licensed concern.

3.12 Inspection.

The holder of any license shall submit such license for inspection upon request of the SFM, or any of his properly authorized deputies, or any local fire official.

3.13 SFM Notification and Certification of Registration.

Every licensed concern shall, within thirty (30) days of employment, and within thirty (30) days of termination of any employee, report to the SFM, the name, address, and certificate of registration number, of every person performing any act of servicing portable fire extinguishers for such licensed concern in writing.

3.14 Type.

3.14.1 Every license shall be identified by type. The type of license issued shall be determined on the basis of the act or acts performed by the licensee or by any of the employees. Every licensed concern shall be staffed by qualified personnel, and shall be properly equipped to perform the act or acts for the type of license issued.

3.14.2 Licenses shall authorize any one, or any combination of the following types of activities:

3.14.2.1 Type 1 - Conducting of all activities, as per (2), (3), and (4) below, or

3.14.2.2 Type 2 - Conducting hydrostatic tests of fire extinguisher cylinders [~~that are listed with~~]using the water jacket or ultrasonic test methods after receiving a Retesters Identification Number (RIN) issued by the United States Department of Transportation (USDOT), or

3.14.2.3 Type 3 - Conducting hydrostatic tests of fire extinguisher cylinders [~~which are not listed with~~]using the proof pressure test method after receiving a Retesters Identification Number (RIN) issued by the United States Department of Transportation (USDOT), or

3.14.2.4 Type 4 - Servicing, inspecting, and maintaining all types of extinguishers, excluding hydrostatic testing.

3.14.3 No licensed concern shall be prohibited from taking orders for the performance of any act or acts for which the concern

has not been licensed to perform. Such orders shall be consigned to another licensed concern that is authorized to perform such act or acts.

3.15 Examination.

Every person who performs any act or acts within the scope of the license shall pass an examination in accordance with the provisions of section 4 of these rules.

3.16 Duplicate License.

A duplicate license may be issued by the SFM to replace any previously issued license, which has been lost or destroyed, upon the submission of a written statement from the licensee to the SFM. Such statement shall attest to the fact that the license has been lost or destroyed.

3.17 Employer Responsibility.

Every concern shall be responsible for the acts of its employees insofar as such acts apply to the marketing, sale, distribution, and servicing of any portable fire extinguisher.

3.18 Minimum Age.

No license shall be issued to any person as licensee who is under eighteen (18) years of age.

3.19 Restrictive Use.

3.19.1 No license shall constitute authorization for any licensee, or any of his employees, to enter upon, or into, any property or building other than by consent of the owner or manager.

3.19.2 No license shall constitute authorization for any licensee, or any of his employees, to enforce any provision, or provisions, of this rule, or the International Fire Code.

3.20 Non-Transferable.

No license issued pursuant to this section shall be transferred from one concern to another.

3.21 Registration Number.

3.21.1 Every license shall be identified by a number, delineated as E-(number). Such number may be transferred from one concern to another only when approved by the SFM.

3.22 Minimum Materials and Equipment Required.

At each business location or vehicle of the applicant where servicing work is performed the following minimum material and equipment requirements shall be maintained:

3.22.1 Type 4 license:

3.22.1.1 Nitrogen tank.

3.22.1.2 Nitrogen regulator and hose assembly.

3.22.1.3 Minimum of twelve (12) recharge adapters.

3.22.1.4 Valve cleaning brush.

3.22.1.5 Scoop.

3.22.1.6 Funnel for A:B:C.

3.22.1.7 Funnel for B:C.

3.22.1.8 A closed receptacle for dry chemical.

3.22.1.9 Fifty pound scale.

3.22.1.10 A scale for cartridges.

3.22.1.11 'O' Ring lubricant.

3.22.1.12 Tag hole Punch.

3.22.1.13 Approved seals maximum fourteen (14) pound break strength.

3.22.1.14 A copy of NFPA Standard 10 (1998 Edition), statute, and these rules.

3.22.1.15 Minimum parts:

3.22.1.15.1 A supply of O rings needed for standard service.

3.22.1.15.2 A supply of valve stems for standard service.

3.22.1.15.3 A supply of nozzles and hoses for standard extinguishers.

3.22.1.15.4 Pressure gauges for extinguisher types: 100, 150, 175, 195, 240 lbs.

3.22.1.15.5 Carry handles and replacement handles for extinguishers.

3.22.1.15.6 Rivets or steel roll pins for handles and levers.

3.22.1.15.7 Dry chemical cartridges as required by manufacture specifications, to include 4 lb., 10 lb., 20 lb. and 30 lb.

3.22.1.15.8 Inspection light for cylinders.

3.22.1.15.9 A variety of pull pins to secure handle.

3.22.1.15.10 Carbon Dioxide continuity tester for hoses.

3.22.1.16.11 Halon closed recovery system.

3.22.2 Type 3 License:

3.22.2.1 Approved testing pump with a current calibration certificate for the attached gauges.

3.22.2.2 Test cage or suitable safety barrier.

3.22.2.3 Approved hydro test labels.

3.22.2.4 Hydrostatic test adapters or approved equal.

3.22.2.5 Heater which produces a heated air or dry air for drying cylinders, or other approved dryer not to exceed 150 degrees Far. (66 degrees C).

3.22.3 Type 2 License:

Current registration number from the United States Department of Transportation (USDOT), verifying the concern as a qualified cylinder requalification facility under the provisions of the Code of Federal Regulations, 49 CFR, Section 173.34, shall be maintained for all concerns holding a type 1 or 2 license. A copy of the certification letter must be submitted to the SFM. All equipment required to perform the functions allowed as a qualified cylinder requalification facility, shall be maintained in good working order and available for inspection by the SFM.

3.22.4 Type 1 License:

All of the equipment, provisions, and numbers as required in License types 2, 3, and 4 shall be required for a Type 1 License.

3.23 Records.

Accurate records shall be maintained for five years back by the licensee of all service work performed. These records shall include the name and address of all servicing locations, and the date and name of the person performing the work. These records shall be made available to the SFM, or authorized deputies, upon request.

R710-1-4. Certificates of Registration.

4.1 Required Certificates of Registration.

No person shall service any portable fire extinguisher without a certificate of registration issued by the SFM pursuant to these rules expressly authorizing such person to perform such acts. The provisions of this section apply to the state, universities, a county, city, district, public authority, and any other political subdivision or public corporation in this State.

4.2 Exemptions.

The provisions of this section shall not apply to any person servicing any portable fire extinguisher owned by such person, when the portable fire extinguisher is not required by any statute, rule, or ordinance, to be provided or installed.

4.3 Application.

Application for a certificate of registration to service portable fire extinguishers shall be made in writing to the SFM on forms provided by him. The application shall be signed by the applicant.

4.4 Examination.

The SFM shall require all applicants for a certificate of registration to take and pass a written examination, which may be supplemented by practical tests, when deemed necessary, to

determine the applicant's knowledge of servicing portable fire extinguishers. Picture identification of the applicant for a certificate of registration may be requested by the SFM or his deputies. Examinations will be given according to the following schedule:

4.4.1 On the first and third Tuesdays of each month. When holidays conflict with these days, the day immediately following will be used. An appointment shall be made to take an examination at least 24 hours in advance of the examination date.

4.4.2 Examinations may be given at various field locations as deemed necessary by the SFM. Appointments for field examinations are required.

4.5 Issuance.

Following receipt of the properly completed application, compliance with the provisions of these rules, and the successful completion of the required examination, the SFM shall issue a certificate of registration.

4.6 Original and Renewal Valid Date.

Original certificates of registration shall be valid [~~from the date of issuance through December 31st of the year in which issued~~]for one year from the date of application. Thereafter, each certificate of registration shall be renewed annually and renewals [~~thereof~~]shall be valid [~~from January 1st through December 31st~~]for one year from issuance. [~~Original certificates purchased after July 1st and up to November 1st can be purchased one time, at a one-half year fee. Certificates of registration issued on or after November 1st will be valid through December 31st of the following year.~~]The holder of an invalid certificate of registration shall not perform any work on portable fire extinguishers.

4.7 Renewal Date.

Application for renewal shall be made[~~by January 1st of each year. Application for renewal shall be made in writing on forms provided~~]as directed by the SFM. The failure to renew will cause the certificate of registration to become invalid. Beginning March 4, 2003 through February 29, 2004, renewal dates for certification of registrations will be based upon the license inspection date and valid for a one-year period of time. Renewal certificate of registrations shall be prorated monthly, and monthly fees already paid in that time period shall be credited towards the renewal fee.

4.8 Re-examination.

Every holder of a valid certificate of registration shall take a re-examination every five years, from date of original certificate, to comply with the provisions of Section 4.4 of these rules as follows:

4.8.1 The re-examination to comply with the provisions of Section 4.4 of these rules shall consist of one 25 question open book examination, to be mailed to the certificate holder at least 60 days before the renewal date.

4.8.2 The 25 question re-examination will consist of questions that focus on changes in the last five years to NFPA 10, the statute, or the adopted administrative rules. The re-examination may also consist of questions that focus on practices of concern as noted by the Board or the SFM.

4.8.3 The certificate holder is responsible to complete the re-examination and return it to the SFM in sufficient time to renew.

4.8.4 The certificate holder is responsible to return to the SFM the correct renewal fees to complete that certificate renewal.

4.9 Refusal to Renew.

The SFM may refuse to renew any certificate of registration in the same manner and for any reason that he is authorized, pursuant to Section 10, to deny an original certificate of registration. The applicant shall, upon such refusal, have the same rights as are granted by Section 10 of these rules to an applicant for an original certificate of registration which has been denied by the SFM.

4.10 Inspection.

The holder of a certificate of registration shall submit such certificate for inspection, upon request of the SFM, any of his properly authorized deputies, or any local fire official.

4.11 Type.

4.11.1 Every certificate of registration shall indicate the type of act or acts to be performed and for which the applicant has qualified.

4.11.2 No person holding a valid certificate of registration shall be authorized to perform any act unless he is a licensee or is employed by a licensed concern.

4.12 Change of Address.

Any change in home address of any holder of a valid certificate of registration shall be reported in writing, by the registered person to the SFM within thirty (30) days of such change. Such change shall also be made on the reverse side of the certificate of registration by the holder.

4.13 Duplicate.

A duplicate certificate of registration may be issued by the SFM to replace any previously issued certificate which has been lost or destroyed upon the submission of a written statement to the SFM from the certified person. Such statement shall attest to the certificate having been lost or destroyed.

4.14 Minimum Age.

No certificate of registration shall be issued to any person who is under 18 years of age.

4.15 Restrictive Use.

4.15.1 A certificate of registration may be used for identification purposes only as long as such certificate remains valid and while the holder is employed by a licensed concern.

4.15.2 Regardless of the acts authorized to be performed by a licensed concern, only those acts for which the applicant for a certificate of registration has qualified shall be permissible by such applicant.

4.16 Contents of Examination.

4.16.1 The examination required under the provisions of Section 3.14, shall include a written test of the applicant's knowledge of the provisions of these rules, and may include an actual demonstration of his ability to perform the acts indicated on the application.

4.16.2 Examinations shall, in the opinion of the SFM, be compatible with the type of work to be performed by the applicant and with the equipment with which he will function.

4.16.3 The written portion of the examination shall be divided into the following groups:

4.16.3.1 Provisions relating to these Rules Governing Concerns Servicing Portable Fire Extinguishers.

4.16.3.2 Hydrostatic testing of fire extinguisher cylinders that are listed with the USDOT.

4.16.3.3 Hydrostatic testing of fire extinguisher cylinders which are not listed with the USDOT.

4.16.3.4 Accepted servicing and inspection practices of portable fire extinguishers as required in NFPA, Standard 10.

4.17 Right to Contest.

4.17.1 Every person who takes an examination for a certificate of registration shall have the right to contest the validity of individual questions of such examination.

4.17.2 Every contention as to the validity of individual questions of an examination shall be made in writing within 48

hours after taking said examination. Contentions shall state the reason for the objection.

4.17.3 The decision as to the action to be taken on the submitted contention shall be by the SFM, and such decision shall be final.

4.17.4 The decision made by the SFM, and the action taken, shall be reflected in all future examinations, but shall not affect the grades established in any past examination.

4.18 Passing Grade.

To successfully pass the written examination, the applicant must obtain a minimum grade of seventy percent (70%) in each portion of the examination taken. Each portion of the examination shall be separately graded.

4.19 Non-Transferable.

Certificates of Registration shall not be transferable. Individual certificates of registration shall be carried by the person to whom issued.

4.20 New Employees.

New employees of a licensed concern may perform the various acts while under the direct supervision of persons holding a valid certificate of registration for a period not to exceed forty-five (45) days from the initial date of employment. By the end of such period, new employees shall have taken and passed the required examination.

4.21 Certificate Identification.

Every certificate shall be identified by a number, delineated as EE-(number). Such number shall not be transferred from one person to another.

R710-1-5. Seal of Registration.

5.1 Description.

The official seal of registration of the SFM shall consist of the following:

5.1.1 The image of the State of Utah shall be in the center with an outer ring stating, "Utah State Fire Marshal".

5.1.1.1 The top portion of the outer ring shall have the wording "Utah State".

5.1.1.2 The Bottom portion of the outer ring shall have the wording "Fire Marshal".

5.1.2 Appending above the top portion and in a centered position, shall be a box provided for displaying the type of license.

5.1.3 Appending below the bottom portion and in a centered position, shall be a box provided for the displaying of the license number assigned to the concern.

5.2 Use of Seal.

No person or concern shall produce, reproduce, or use this seal in any manner or for any purpose except as herein provided.

5.3 Permissive Use.

Licensed concerns shall use the Seal of Registration on every service tag conforming to section 10.

5.4 Cease Use Order.

No person or concern shall continue the use of the Seal of Registration in any manner or for any purpose after receipt of a notice in writing from the SFM to that effect, or upon the suspension or revocation of the concern's license.

5.5 Legibility.

Every reproduction of the Seal of Registration and every letter and number placed thereon, shall be of sufficient size to render such seal, letter, and number distinct and clearly legible.

R710-1-6. Service Tags.

6.1 Size and Color.

Tags shall be not more than five and one-half inches (5-1/2") in height, nor less than four and one-half inches (4-1/2") in height, and not more than three inches (3") in width, nor less than two and one-half inches (2-1/2") in width.

6.2 Attaching Tag.

One service tag shall be attached to each portable fire extinguisher in such a position as to be conveniently inspected.

6.3 Tag Information.

6.3.1 Service tags shall bear the following information:

6.3.1.1 Provisions of Section 6.7.

6.3.1.2 Type of license.

6.3.1.3 Approved Seal of Registration of the SFM.

6.3.1.4 License registration "E" number.

6.3.1.5 Certificate of registration "EE" number of individual who performed or supervised the service or services performed.

6.3.1.6 Signature of individual whose certificate of registration number appears on the tag.

6.3.1.7 Concern's name.

6.3.1.8 Concern's address.

6.3.1.9 Type of service performed.

6.3.1.10 Type of extinguisher serviced.

6.3.1.11 Date service is performed.

6.3.2 The above information shall appear on one side of the service tag. All other desired printing or information shall be placed on the reverse side of the tag.

6.4 Legibility.

6.4.1 The certificate of registration number required in Section 6.3(5), and the signature required in Section 6.3(6), shall be printed or written distinctly.

6.4.2 All information pertaining to date, type of servicing, and type of extinguisher serviced shall be indicated on the card by perforations in the appropriate space provided. Each perforation shall clearly indicate the desired information.

6.5 Format.

Subject to the use requirements of Section 6.4, the following format shall be used for all service tags:

EXAMPLE OF SERVICE TAG

Exception: Service tags may be printed or otherwise established for any number of years not in excess of five (5) years. ILLUSTRATION ON FILE IN STATE FIRE MARSHAL'S OFFICE

6.6 New Tag.

A new service tag shall be attached to the extinguisher each time a service is performed.

6.7 Tag Wording.

The following wording shall be placed at the top or reinforced ring end of every tag: "DO NOT REMOVE, BY ORDER OF THE STATE FIRE MARSHAL".

6.8 Removal.

No person or persons shall remove a service tag, hydrostatic test tag or label, 6 year maintenance service tag or label, or verification of service collar, except when further service is performed. At that time the expired tag, label or collar shall be removed and a new tag, label or collar shall replace the expired one. No person or persons shall deface, modify, or alter any service tag, hydrostatic test tag or label, 6 year maintenance service tag or label, or verification of service collar that is required to be attached to any portable fire extinguisher.

6.9 Restrictive Use.

6.9.1 Portable fire extinguishers which do not conform with the minimum rules, shall be permanently removed from service, and shall not be tagged.

6.9.2 Any extinguisher which fails a hydrostatic test shall be condemned, and so stamped or etched into the cylinder or shell.

6.9.3 Extinguishers, other than one which has failed a hydrostatic test, may be provided with a tag stating the extinguisher is "Condemned" or "Rejected". Such tags shall be red in color, and shall be not less, in size, than that of an approved service tag.

6.9.4 Service tags shall only be placed on portable fire extinguishers and wheeled units as allowed in these rules.

R710-1-7. Portable Fire Extinguisher Rated Classification Labels.

7.1 Use of Label.

Any label bearing the rated classification and listing shall not be placed upon any extinguisher unless specifically authorized by the manufacturer. Any extinguisher, other than carbon dioxide, without this manufacturer's label shall not be serviced.

7.2 Labels Prohibited.

Company labels or advertisement stickers other than those required herein shall not be affixed to fire extinguishers.

R710-1-8. Amendments and Additions.

8.1 Restricted Service.

Any extinguisher requiring a hydrostatic test as required, shall not be serviced until such extinguisher has been subjected to, and passed the required hydrostatic test.

8.2 Service.

At the time of installation, and at each annual inspection, all servicing shall be done in accordance with the manufacturer's instructions, adopted statutes, and these rules. Extinguishers shall be placed in an operable condition, free from defects which may cause malfunctions. Nozzles and hoses shall be free of obstructions or substances which may cause an obstruction.

8.3 Seals or Tamper Indicator.

Seals or tamper indicators shall be constructed of approved plastic or non-ferrous wire which can be easily broken, and so arranged that removal cannot be accomplished without breakage. Such seals or tamper indicators shall be used to retain the locking pin in a locked position. Seals or tamper indicators shall be removed annually to ensure that the pull pin is free.

8.4 New Extinguishers

A new extinguisher that has the date of manufacture printed on the label by the manufacturer, or date of manufacture stamped on the extinguisher by the manufacturer, does not require a service tag attached to the extinguisher until one year after the date of manufacture.

8.5 Class K Portable Fire Extinguishers

NFPA, Standard 10, Section 2-3.2 and Section 2-3.2.1, 1998 edition, is deleted and replaced with the following:

8.5.1 Class K labeled portable fire extinguishers shall be provided for the protection of commercial food heat-processing equipment using vegetable or animal oils and fat cooking media. A placard shall be provided and placed above the Class K portable fire extinguisher that states that if a fire protection system exists, it shall be activated prior to use of the Class K portable fire extinguisher.

8.5.2 Those existing sodium or potassium bicarbonate dry-chemical portable fire extinguishers, having a minimum rating of 40-B, and specifically placed for protection of commercial food heat-processing equipment, may remain in the kitchen to be used for other applications, except the protection of commercial food heat-processing equipment using vegetable or animal oils or fat cooking media.

R710-1-9. Adjudicative Proceedings.

9.1 All adjudicative proceedings performed by the agency shall proceed informally as authorized by UCA, Sections 63-46b-4 and 63-46b-5.

9.2 The issuance, renewal, or continued validity of a license or certificate of registration may be denied, suspended, or revoked, if the SFM finds that the applicant, person employed for, or the person having authority and management of a concern servicing portable fire extinguishers commits any of the following violations:

9.2.1 The person or applicant is not the real person in interest.

9.2.2 Material misrepresentation or false statement in the application.

9.2.3 Refusal to allow inspection by the SFM, or his duly authorized deputies.

9.2.4 The person or applicant for a license or certificate of registration does not have the proper facilities and equipment, to conduct the operations for which application is made.

9.2.5 The person or applicant for a certificate of registration does not possess the qualifications of skill or competence to conduct the operations for which application is made, as evidenced by failure to pass the examination and/or practical tests pursuant to Section 4.15 of these rules.

9.2.6 The person or applicant fails to place a verification of service collar when required on the valve assembly of any fire extinguisher when the following occurs:

9.2.6.1 re-charge;

9.2.6.2 required maintenance.

9.2.7 The person or applicant refuses to take the examination required by Section 4.3 and Section 3.14 of these rules.

9.2.8 The person or applicant has been convicted of any of the following:

9.2.8.1 a violation of the provisions of these rules;

9.2.8.2 a crime of violence or theft; or

9.2.8.3 any crime that bears upon the person or applicant's ability to perform their functions and duties.

9.2.9 The person servicing portable fire extinguishers does not maintain adequate facilities, equipment, or knowledge, to conduct operations as required in the manufacturer's instructions, statute, and rules.

9.2.10 The person or applicant is involved in conduct which could be considered criminal, although such conduct did not result in the filing of criminal charges against the person, but where the evidence shows that the criminal act did occur, that the person committed the act, and that the burden by a preponderance of evidence could be established.

9.3 A person whose license or certificate of registration is suspended or revoked by the SFM shall have an opportunity for a hearing before the Board if requested by that person within 20 days after receiving notice.

9.4 All adjudicative proceedings, other than criminal prosecution, taken by the SFM to enforce the Utah Fire Prevention and Safety Act, and these rules, shall commence in accordance with UCA, Section 63-46b-3.

9.5 The Board shall act as the hearing authority, and shall convene after timely notice to all parties involved. The Board shall

be the final authority on the suspension or revocation of a license or certificate of registration.

9.6 The Board shall direct the SFM to issue a signed order to the parties involved giving the decision of the Board within a reasonable time of the hearing pursuant to UCA, Section 63-46b-5(i).

9.7 Reconsideration of the Board decision may be requested in writing within 20 days of the date of the decision pursuant to UCA, Section 63-46b-13.

9.8 After a period of three years from the date of revocation, the Board shall review the submitted written application of a person whose license or certificate of registration has been revoked. After timely notice to all parties involved, the Board shall convene to review the revoked persons application, and that person shall be allowed to present themselves and their case before the Board. After the hearing, the Board shall direct the SFM to allow the person to complete the licensing or certification process or shall direct that the revocation be continued.

9.9 Judicial review of all final Board actions resulting from informal adjudicative proceedings shall be conducted pursuant to UCA, Section 63-46b-15.

R710-1-10. Fees.

10.1 Fee Schedule.

10.1.1 Licenses and Certificates of Registration (new and renewals):

10.1.1.1 License (any type) $300.00
10.1.1.2 Branch office license 150.00
10.1.1.3 Certificate of registration 30.00
10.1.1.4 Duplicate 30.00
10.1.1.5 License Transfer 50.00
10.1.1.6 Application for exemption 100.00
10.1.2 Examinations:
10.1.2.1 Initial examination. 20.00
10.1.2.2 Re-examination 15.00
10.1.2.3 Five year examination. 20.00

10.2 Payment of Fees.

The required fee shall accompany the application for license or certificate of registration. License or certificate of registration fees will be refunded if the application is denied.

10.3 Late Renewal Fees.

10.3.1 Any license or certificate of registration not renewed before January 1st will be subject to an additional fee equal to 10% of the required inspection fee.

10.3.2 When a certificate of registration has expired for more than one year, an application shall be made for an original certificate as if the application was being made for the first time. Examinations will be re-taken with initial examination fees.

KEY: fire prevention, extinguishers
[~~August 15, 2002~~]March 4, 2003
Notice of Continuation June 10, 2002
53-7-204

Public Safety, Fire Marshal
R710-7
Concerns Servicing Automatic Fire Suppression Systems

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 25961
FILED: 01/15/2003, 16:05

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Utah Fire Prevention Board met in a regularly scheduled Board meeting on January 14, 2003, and approved several changes to Rule R710-7. The changes involve definitions, inspection procedures, and changing the time of license and certification renewal from a specific calendar year to a one-year schedule per license.

SUMMARY OF THE RULE OR CHANGE: The proposed amendments to the existing rule are as follows: 1) in Subsection R710-7-2(2.14), it is proposed to add the term "authorizing deputy" to the definition of State Fire Marshal; 2) in Subsection R710-7-3(3.7), it is proposed to change the original license from a calendar year basis to the date of application. It is also proposed to add the requirement that a materials, equipment and performance inspection be satisfactorily completed before issuance of the license; 3) in Subsection R710-7-3(3.8), it is proposed to change the renewal of licenses from a calendar year basis to a specific one-year period of time. This would be accomplished for a one-year period of time by prorating the fees monthly. It is also proposed that a satisfactory completion of a materials, equipment and performance inspection be completed before a renewal license is granted; 4) in Subsection R710-7-4(4.8), it is proposed to change the original certificate of registration from a calendar year basis to the date of application; and 5) in Subsection R710-7-4(4.9), it is proposed to change the renewal of certificates of registration from a calendar year basis to a specific one-year period of time. This would be accomplished for a one-year period of time by prorating the fees monthly.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 53-7-204

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: There would be an anticipated cost of $50 to reprint the newly adopted rule and send to those who cannot access the State Fire Marshal Website.

❖ LOCAL GOVERNMENTS: There would be no anticipated cost or savings to local government to enact the proposed rule change because the proposed rule change does not effect local government.

❖ OTHER PERSONS: There would be no anticipated cost to other persons from the enactment these proposed rule changes.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The only compliance cost for affected persons would be the cost to the state budget (State Fire Marshal) to reprint the rule and send it to those who do not have access to a website address.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There is no fiscal impact to businesses from the enactment of these proposed rule changes.

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

PUBLIC SAFETY
FIRE MARSHAL
Room 302
5272 S COLLEGE DR
MURRAY UT 84123-2611, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Brent Halladay at the above address, by phone at 801-284-6352, by FAX at 801-284-6351, or by Internet E-mail at bhallada@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 03/03/2003.

THIS RULE MAY BECOME EFFECTIVE ON: 03/04/2003

AUTHORIZED BY: Gary A. Wise, State Fire Marshal

R710. Public Safety, Fire Marshal.
R710-7. Concerns Servicing Automatic Fire Suppression Systems.
R710-7-1. Adoption of Codes.

Pursuant to Title 53, Chapter 7, Section 204, Utah Code Annotated 1953, the Utah State Fire Prevention Board adopts rules to provide regulation to those concerns that service Automatic Fire Suppression Systems. These rules do not apply to standpipe systems, deluge systems, or automatic fire sprinkler systems.

There is adopted as part of these rules the following codes which are incorporated by reference:

1.1 National Fire Protection Association, Standard 12, Standard on Carbon Dioxide Extinguishing Systems, 2000 edition; N.F.P.A., Standard 12A, Halon 1301 Fire Extinguishing Systems, 1997 edition; N.F.P.A., Standard 12B, Halon 1211 Fire Extinguishing Systems, 1990 edition; N.F.P.A., Standard 17, Standard for Dry Chemical Extinguishing Systems, 1998 edition; N.F.P.A., Standard 17A, Standard for Wet Chemical Extinguishing Systems, 1998 edition; N.F.P.A., Standard 96, Ventilation Control and Fire Protection of Commercial Cooking Operations, 2001 edition; N.F.P.A., Standard 2001, Clean Agent Fire Extinguishing Systems, 2000 edition. The definitions contained in these pamphlets shall pertain to these regulations.

1.2 Validity

If any section, subsection, sentence, clause, or phrase, of these rules is, for any reason, held to be unconstitutional, contrary to statute, or exceeding the authority of the SFM, such decision shall not affect the validity of the remaining portion of these rules.

1.3 Systems Prohibited

No person shall market, distribute, sell, install or service any automatic fire suppression system in this state, unless:

1.3.1 It complies with these rules.

1.3.2 It has been tested by, and bears the label of a testing laboratory which is accepted by the SFM as qualified to test automatic fire suppression systems.

1.3.3 Automatic fire suppression systems using dry chemical, manufactured before November 1994, shall not be installed where grease laden vapors are produced. Systems in use prior to November 1994, are allowed to remain in service in the original installation.

1.4 Copies of the above listed codes are on file in the Office of Administrative Rules and the Office of the State Fire Marshal.

R710-7-2. Definitions.

2.1 "Annual" means a period of one year or 365 days.

2.2 "Board" means Utah Fire Prevention Board.

2.3 "Branch Office" means any location, other than the primary business location, where business license, telephone, advertising and servicing equipment is utilized.

2.4 "Certificates of Registration" means a written document issued by the SFM to any person for the purpose of granting permission to such person to perform any act or acts for which authorization is required.

2.5 "Concern" means a person, firm, corporation, partnership, or association, licensed by the SFM.

2.6 "Employee" means those persons who work for a licensed concern which may include but are not limited to assigned agents and others who work on a contractual basis with a licensee using service tags of the licensed concern.

2.7 "Hydrostatic Test" means subjecting any cylinders requiring periodic pressure testing procedures specified in these rules.

2.8 "Inspection Authority" means the local fire authority, or the SFM, and their authorized representatives.

2.9 "License" means a written document issued by the SFM authorizing a concern to engage in the business of servicing automatic fire suppression systems.

2.10 "N.F.P.A." means National Fire Protection Association.

2.11 "Recognized Testing Laboratory" means a State Fire Marshal list of acceptable labs.

2.12 "Service" means a complete check of an automatic fire suppression system which includes the required service procedures set forth by a manufacturer of an approved system or the minimum service requirements as provided as set forth in adopted N.F.P.A. standards.

2.13 "System" means an Automatic Fire Suppression System.

2.14 "SFM" means Utah State Fire Marshal or authorized deputy.

2.15 "UCA" means Utah State Code Annotated, 1953 as amended.

R710-7-3. Licensing.

3.1 License Required

No person or concern shall engage in the business of selling, installing, servicing, repairing, testing or modifying any automatic fire suppression system without obtaining a license from the SFM, pursuant to these rules, expressly authorizing such concern to perform such acts.

3.2 Type of License

3.2.1 Every license shall be identified by type. The type of license shall be determined on the basis of the act or acts performed by the licensee or any of the employees. Every licensed concern shall be staffed by qualified personnel and shall be properly equipped to perform the act or acts for the type of license issued.

3.2.2 Licenses shall be any one, or combination of the following:

3.2.2.1 Class H1 - A licensed concern which is engaged in the installation, modification, service, or maintenance of engineered and/or pre-engineered automatic fire suppression systems.

3.2.2.2 Class H2 - A licensed concern which is engaged in service and maintenance only of automatic fire suppression systems to include hydrostatic testing.

3.3 Application

3.3.1 Application for a license to conduct business as an automatic fire suppression system concern, shall be made in writing to the SFM on forms provided by the SFM. A separate application for license shall be made for each separate place or business location of the applicant (branch office).

3.3.2 The application for a license to conduct business as an automatic fire suppression system concern, shall be accompanied with proof of public liability insurance. The public liability insurance shall be issued by a public liability insurance carrier showing coverage of at least $100,000 for each incident, and $300,000 in total coverage. The licensee shall notify the SFM within thirty days after the public liability insurance coverage required is no longer in effect for any reason.

3.4 Signature of Applicant

The application shall be signed by the applicant. If the application is made by a partnership, it shall be signed by all partners. If the application is made by a corporation or association other than a partnership, it shall be signed by a principal officer.

3.5 Equipment Inspection

The applicant or licensee shall allow the SFM and any of his authorized deputies to enter, examine, and inspect any premises, building, room or vehicle used by the applicant in the service of automatic fire suppression systems to determine compliance with the provisions of these rules. The inspection will be conducted during normal business hours, and the owner or manager shall be given a minimum of 24 hours notice before the appointed inspection. The equipment inspection may be conducted on an annual basis, and consent to inspect will be obtained. The applicant, license holder or certified employee of the license holder, may be asked during the inspection by the SFM or any of his deputies, to demonstrate skills or knowledge used in servicing of automatic fire suppression systems.

3.6 Issuance and Posting of License

Following receipt of the properly completed application, and compliance with the provisions of the statute and these rules, the SFM shall issue a license. Every license issued pursuant to the provisions of these rules shall be posted in a conspicuous place on the premises of the licensed concern.

3.7 Original[~~, Valid Date~~] License and Inspection

Original licenses shall be valid [~~from the date of issuance through December 31 of the year in which issued~~]for one year from the date of application. Thereafter, each license shall be renewed annually and renewals shall be valid [~~from January 1 through December 31. Original licenses purchased after July 1 and up to November 1 can be purchased one time, at a one-half year fee. Licenses issued on or after November 1 will be valid through December 31 of the following year~~]for one year from issuance. No original license will be issued until the satisfactory completion of a materials, equipment and performance inspection by the SFM.

3.8 Renewal[~~, Valid Date~~] License and Inspection

Application for renewal shall be made [~~before January 1 of each year on forms provided~~]as directed by the SFM. The failure to renew the license will cause the license to become invalid[~~on January 1 of the next year~~]. No renewal license will be issued until the satisfactory completion of a materials, equipment and performance inspection by the SFM. Beginning March 4, 2003 through February 29, 2004, renewal dates for licensed concerns will be based upon the inspection date and valid for a one-year period of time. Renewal license fees shall be prorated monthly, and monthly fees already paid in that time period shall be credited towards the renewal license fee.

3.9 Duplicate License

A duplicate license may be issued by the SFM to replace any previously issued license, which has been lost or destroyed, upon request.

3.10 Refusal to Renew

SFM may refuse to renew any license that is authorized, pursuant to Section 8 of these rules. The applicant will, upon such refusal, have the same rights as are granted by Section 8 of these rules to an applicant for an original license which has been denied by the SFM.

3.11 Change of Address

Every licensee shall notify the SFM, in writing, within thirty (30) days, of any change of address or location of business.

3.12 Under Another Name

No licensee shall conduct the licensed business under a name other than the name or names which appears on the license.

3.13 Hiring and Termination

Every licensed concern shall, within thirty (30) days of employment or termination of an employee or contracted agent shall notify the SFM of the name, address, and certification number of that person.

3.14 Minimum Age

No license shall be issued to any person as licensee who is under eighteen (18) years of age.

3.15 Employer Responsibility

Every concern is responsible for the acts of its employees or assigned agents relating to installation and servicing of automatic fire suppression systems.

3.16 Restrictive Use

No license shall constitute authorization for any licensee, or any of the employees or contracted agents, to enter upon, or into, any property, building, or machinery without the consent of the owner or manager. No license shall grant authorization to enforce the Uniform Fire Code or these rules.

3.17 Non-Transferable

No license issued pursuant to this section shall be transferred from one concern to another.

3.18 Registration Number

Every license shall be identified by a number, delineated as H-(number). Such number may only be transferred from one concern to another when approved by the SFM.

3.19 Minimum Materials and Equipment Required

At each business location or vehicle of the applicant where servicing work is performed the following minimum material and equipment requirements shall be maintained:

3.19.1 Calibrated scales with ability to:

3.19.1.1 Weigh gas cartridges to within 1/4 ounce of manufacturers specifications.

3.19.1.2 Weigh cylinders accurately for systems being serviced.

3.19.2 Nitrogen Pressure Filling Equipment

3.19.2.1 Nitrogen Supply

3.19.2.2 Pressure Regulator - 750 p.s.i. minimum

3.19.2.3 Filling Adapters

3.19.3 Dry Chemical Systems

3.19.3.1 Extinguishing agents, compatible with systems serviced

3.19.3.2 Fusible links

3.19.3.3 Safety pins

3.19.3.4 An assortment of gaskets and "O" Rings compatible with systems serviced

3.19.3.5 Gas cartridges as required according to manufacture's specifications

3.19.3.6 Current reference manuals, to include manufacture's service manuals

3.19.3.7 Cocking or Lockout Tool

3.19.4 Halon and CO2 Systems

3.19.4.1 Have access to, or meet the requirements for a U.L. approved filling station.

3.19.4.2 Have available in inventory, or have immediate access to, detectors compatible with systems serviced.

3.19.4.3 Calibration equipment such as electrical testers and detector testers.

3.19.4.4 Control panel components

3.19.4.5 Release valves

3.19.4.6 Current reference manuals

This list does not, however, include all items that may be necessary in order to conduct a complete system installation, modification or service.

3.20 Records

Accurate records shall be maintained for five years back by the licensee of all service work performed. These records shall be made available to the SFM, or authorized deputies, upon request. These records shall include the following:

3.20.1 The name and address of all serviced locations

3.20.2 Type of service performed

3.20.3 Date and name of person performing the work

R710-7-4. Certificates of Registration.

4.1 Required Certificates of Registration

No person shall service any automatic fire suppression system without a certificate of registration issued by the SFM pursuant to these rules expressly authorizing such person to perform such acts.

4.2 Application

Application for a certificate of registration to work on automatic fire suppression systems shall be made in writing to the SFM on forms provided by the SFM. The application shall be signed by the applicant.

4.3 Examination

The SFM shall require all applicants for a certificate of registration to take and pass a written examination, which may be supplemented by practical tests to determine the applicant's knowledge to work on automatic fire suppression systems. Pictured identification of the applicant for a certificate of registration may be requested by the SFM or his deputies. Examinations will be given according to the following schedule:

4.3.1 On the first and third Tuesdays of each month. When holidays conflict with these days, the day immediately following will be used. An appointment will be made to take an examination at least 24 hours in advance of the examination date.

4.3.2 Examinations may be given at various field locations as deemed necessary by the SFM. Appointments for field examinations are required.

4.4 Examination - Passing Grade

To successfully pass the written examination, the applicant must obtain a minimum grade of seventy percent (70%) in each portion of the examination taken.

4.5 Contents of Examination

The examination required shall include a written test of the applicant's knowledge of the work to be performed, the provisions of these rules, and may include an actual demonstration of his ability to perform the acts indicated on the application.

4.6 Right to Contest

Every person who takes an examination for a certificate of registration shall have the right to contest the validity of individual questions of such examination. Every contention as to the validity of individual questions of the examination shall be made in writing within 48 hours after taking said examination. The decision of the SFM shall be final.

4.7 Issuance

Following receipt of the completed application, compliance with the provisions of these rules, and the successful completion of the required examination, the SFM shall issue a certificate of registration.

4.8 Original and Renewal Valid Date

Original certificates of registration will be valid [~~from the date of issuance through December 31 of the year in which issued~~]for one year from the date of application. Thereafter, each certificate of registration will be renewed annually and renewals will be valid [~~from January 1 through December 31. Original certificates purchased after July 1 and up to November 1 can be purchased one time, at a one-half year fee~~]for one year from issuance. The failure to renew a certificate of registration will cause the certificate of registration to become invalid[~~of January 1 of the next year~~]. The holder of an invalid certificate of registration shall not perform any work on automatic fire suppression systems.[~~— Original certificates of registration issued on or after November 1 will be valid through December 31 of the following year.~~]

4.9 Renewal Date

Application for renewal will be made [~~before January 1st of each year. Application for renewal will be made in writing on forms provided~~]as directed by the SFM. Beginning March 4, 2003 through February 29, 2004, renewal dates for certification of registrations will be based upon the license inspection date and valid for a one-year period of time. Renewal certificate of registrations shall be prorated monthly, and monthly fees already paid in that time period shall be credited towards the renewal fee.

4.10 Re-examination

Every holder of a valid certificate of registration will take a re-examination every five (5) years, from the date of original certificate, to comply with the provisions of Section 4.3 of these rules as follows:

4.10.1. The re-examination to comply with the provisions of Section 4.3 of these rules shall consist of one 25 question open book examination to be mailed to the certificate holder at least 60 days before the renewal date.

4.10.2 The 25 question re-examination will consist of questions that focus on changes in the last five years to the NFPA standards, the statute, and adopted practices of concerns noted by the Board or SFM,.

4.10.3 The certificate holder is responsible to complete the re-examination and return it to the SFM in sufficient time to renew.

4.10.4 The certificate holder is responsible to return to the SFM the correct renewal fees to complete that certificate renewal.

4.11 Refusal to Renew

The SFM may refuse to renew any certificate of registration for the reasons that is authorized pursuant to Section 8 of these rules. The applicant will, upon such refusal, have the same rights as are granted by Section 8 of these rules to an applicant for an original certificate of registration which has been denied by the SFM.

4.12 Inspection

The holder of a certificate of registration will submit such certificate for inspection, upon request of the SFM, any authorized deputies, or any local fire official.

4.13 Change of Address

Any change of address of any holder of a certificate of registration will be reported by the registered person to the SFM within thirty (30) days of such change. Such change will also be made by the holder of the certificate of registration on the reverse side of the certificate of registration card.

4.14 Duplicate

A duplicate certificate of registration may be issued by the SFM to replace any previously issued certificate which has been lost or destroyed.

4.15 Minimum Age

No certificate of registration shall be issued to any person who is under eighteen (18) years of age.

4.16 Restrictive Use

4.16.1 No certificate of registration will constitute authorization for any person to enter upon or into any property or building.

4.16.2 No certificate of registration will constitute authorization for any person to enforce any provisions of these rules or the Uniform Fire Code.

4.16.3 Regardless of the acts authorized to be performed by the licensed concern, only those acts for which the applicant for a certificate of registration has qualified will be permissible by such applicant.

4.17 Non-Transferable

Certificates of registration will not be transferable. Individual certificates of registration will be carried by the person to whom issued.

4.18 Limited Issuance

No certificate of registration will be issued to any person unless that person is a licensee or an employee of a licensed concern.

4.19 New Employees

New employees of a licensed concern may perform the various acts while under the direct supervision of a person holding a valid certificate of registration for a period not to exceed forty-five (45) days from the initial date of employment.

4.20 Certificate Identification

Every certificate will be identified by a number, delineated as HE-(number).

R710-7-5. Service Tags and Labels.

5.1 Size and Color

Tags shall be not more than five and one-half inches (5-1/2") in height, nor less than four and one-half inches (4-1/2") in height, and not more than three inches (3") in width, nor less than two and one-half inches (2-1/2") in width. Tags may be any color except red.

5.2 Attaching Tag

One service tag will be attached to each automatic fire suppression system in such a position as to be conveniently inspected

5.3 Signature and Certificate Number

5.3.1 The signature and certificate of registration number of the person performing the work shall be signed legibly on the service tag.

5.3.2 All information pertaining to complete date, type of servicing, and type of system will be indicated on the tag by perforations in the appropriate space provided.

5.4 New Tag

A new service tag will be attached to a properly functioning system each time service is performed. A system not in compliance shall not receive a service tag, but shall receive a non-compliance tag as required in Section 5.8.

5.5 Tag Warning

The following wording shall be placed at the top or reinforced ring end of every tag: "DO NOT REMOVE, BY ORDER OF THE STATE FIRE MARSHAL".

5.6 Removal

No person shall deface, modify, alter or remove any active service label or tag attached to or required to be attached to any automatic fire suppression system.

5.7 Service Tag Information

All service tags shall be designed as required by the SFM.

5.8 Six Year Maintenance and Hydrostatic Test Labels

5.8.1 Six year maintenance and hydrostatic test labels will be affixed by a heatless process. The labels will be applied only when the system is recharged or undergoes six year maintenance servicing or hydrostatic testing.

5.8.2 Six year maintenance and hydrostatic test labels shall be durable to withstand the effects of weather and adverse conditions.

5.8.3 Six year maintenance and hydrostatic test labels will be designed as shown below:

EXAMPLE OF SIX YEAR AND HYDROSTATIC TEST LABEL

5.9 Non-Compliance Tags

5.9.1 Non-compliance tags will be affixed to any system failing to meet service specifications and will be placed in a conspicuous location on that system.

5.9.2 Non-compliance tags shall be red in color.

5.9.3 A system shall receive a non-compliance tag, when the system fails to fully comply with manufactures specifications or these rules.

5.9.4 After placing the non-compliance tag on the system, the service person shall notify the local fire chief or his authorized representative. The service person shall also furnish a copy of the service report to the authority having jurisdiction.

5.9.5 Non-compliance tags will be designed as required by the SFM.

R710-7-6. Requirements For All Approved Systems.

6.1 Service

6.1.1 Maintenance will be conducted on extinguishing systems at least every six months or immediately after use or activation.

6.1.2 When fusible links are a required portion of the system, fusible links will be replaced yearly or as required by the manufacturer of the system.

6.1.3 Fusible links will show the date when installed by year only.

6.1.4 Fusible links will not be used after February 1 of the next year showing a previous years date.

6.2 Interchanging of Parts

Interchanging of parts from different manufactured systems is prohibited. Parts shall be specifically listed and compatible for use with the designed system.

6.3 Return of parts

All replaced parts to the system serviced will be returned to the system owner or manager after completion of the service. Parts that are required to be returned to the manufacturer due to warranty are exempt.

6.4 Restricted Service

Any system requiring a hydrostatic test, will not be serviced until such system has been subjected to, and passed, the required test. A non-compliance tag will not be accepted to meet the requirements of this section.

6.5 Service

At the time of installation, and during any service, all servicing will be done in accordance with the manufacturers instructions, adopted statutes, and these rules. Systems will be placed and remain in an operable condition, free from defects which may cause malfunctions. Discharge nozzles and piping will be free of obstructions or substances.

R710-7-7. Adjudicative Proceedings.

7.1 All adjudicative proceedings performed by the agency shall proceed informally as authorized by UCA, Sections 63-46b-4 and 63-46b-5.

7.2 The issuance, renewal, or continued validity of a license or certificate of registration may be denied, suspended, or revoked, if the SFM finds that the applicant, person employed for, or the person having authority and management of a concern servicing automatic fire suppression systems commits any of the following violations:

7.2.1 The person or applicant is not the real person in interest.

7.2.2 Material misrepresentation or false statement on the application.

7.2.3 Refusal to allow inspection by the SFM, his duly authorized deputies.

7.2.4 The person or applicant for a license or certificate of registration does not have the proper facilities and equipment, to conduct the operations for which application is made.

7.2.5 The person or applicant for a certificate of registration does not possess the qualifications of skill or competence to conduct the operations for which application was made, as evidenced by failure to pass the examination and practical tests pursuant to Section 4.2 of these rules.

7.2.6 The person or applicant has been convicted of any of the following:

7.2.6.1 a violation of the provisions of these rules;

7.2.6.2 a crime of violence or theft; or

7.2.6.3 any crime that bears upon the person or applicant's ability to perform their functions and duties.

7.2.7 The person servicing automatic fire suppression systems does not maintain adequate facilities, equipment, or knowledge, to conduct operations as required in the manufacturer's instructions, statute, and rules.

7.2.8 The person or applicant is involved in conduct which could be considered criminal, although such conduct did not result in the filing of criminal charges against the person, but where the evidence shows that the criminal act did occur, that the person committed the act, and that the burden by a preponderance of evidence could be established.

7.3 A person whose license or certificate of registration is suspended or revoked by the SFM shall have an opportunity for a hearing before the Board if requested by that person within 20 days after receiving notice.

7.4 All adjudicative proceedings, other than criminal prosecution, taken by the SFM to enforce the Utah Fire Prevention and Safety Act, and these rules, shall commence in accordance with UCA, Section 63-46b-3.

7.5 The Board shall act as the hearing authority, and shall convene after timely notice to all parties involved. The Board shall be the final authority on the suspension or revocation of a license or certificate of registration.

7.6 The Board shall direct the SFM to issue a signed order to the parties involved giving the decision of the Board within a reasonable time of the hearing pursuant to UCA, Section 63-46b-5(i).

7.7 Reconsideration of the Board decision may be requested in writing within 20 days of the date of the decision pursuant to UCA, Section 63-46b-13.

7.8 After a period of three years from the date of revocation, the Board shall review the submitted written application of a person whose license or certificate of registration has been revoked. After timely notice to all parties involved, the Board shall convene to review the revoked persons application, and that person shall be allowed to present themselves and their case before the Board. After the hearing, the Board shall direct the SFM to allow the person to complete the licensing or certification process or shall direct that the revocation be continued.

7.9 Judicial review of all final Board actions resulting from informal adjudicative proceedings is available pursuant to UCA, Section 63-46b-15.

R710-7-8. Fees.

8.1 Fee Schedule

8.1.1 Licenses (New and Renewals)

8.1.1.1 Type H1 (Marketing and Installation) . . . $300.00

If the concern currently is licensed to service portable fire extinguishers the fee is [~~$100.00~~]$150.00.

8.1.1.2 Type H2 (Service Only) $150.00

If the concern currently is licensed to service portable fire extinguishers the fee is [~~$50.00~~]$75.00.

8.1.1.3 Branch Office License. $150.00

8.1.2 Certificates of Registration (New and Renewals)

8.1.2.1 Certificate of Registration. $30.00

If the individual currently is certified as a portable fire extinguisher technician the fee is $10.00

8.1.3 License Transfer $50.00

8.1.4 Examinations

8.1.4.1 Initial Examination. $20.00

8.1.4.2 Re-Examination $15.00

8.1.4.3 Five (5) Year Examination. $20.00

8.2 Payment of Fees

The required fee will accompany the application for license or certificate of registration. License or certificate of registration fees will be refunded if the application is denied.

8.3 Late Renewal Fees

8.3.1 Any license or certificate of registration not renewed before January 1 will be subject to an additional fee equal to 10% of the required inspection fee.

8.3.2 When a certificate of registration has expired for more than one year, an application will be made for an original certificate as if the application was being made for the first time. Examinations will be re-taken with initial fees.

KEY: fire prevention, systems
[~~August 15, 2002~~] March 4, 2003
Notice of Continuation June 11, 2002
53-7-204

Regents (Board Of), Administration
R765-254
Secure Area Hearing Rooms

NOTICE OF PROPOSED RULE
(New Rule)
DAR FILE NO.: 25906
FILED: 01/03/2003, 09:27

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule provides guidelines for the establishment of institutional policy and standards for secure areas associated with hearing rooms on campuses of the Utah System of Higher Education (USHE).

SUMMARY OF THE RULE OR CHANGE: Under this rule, USHE institutions may establish a secure area to protect a hearing room as prescribed in Utah Code Section 76-8-311.1, and prohibit or control in that area any firearm, ammunition, dangerous weapon, or explosive. Only one area at each institution shall be designated a secure area for the purpose of a hearing room at any given time. The rule also provides for the size of the secure area, the duration of its designation, notice to invitees, notice at each entrance, secure weapons storage, reasonable means to detect violations, criminal penalties, institutional enforcement, and compliance as a defense.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 76-8-311.1

ANTICIPATED COST OR SAVINGS TO:
❖ THE STATE BUDGET: A secure area will be established only if and when needed, after which the space will return to normal use. Any minimal cost associated with this temporary usage will be absorbed within institutional budgets. No new funds will be requested to implement the rule. Thus, there are no state budget cost or savings implications associated with this rule.
❖ LOCAL GOVERNMENTS: There are no local government cost or savings implications associated with this rule. Any costs will be covered by institutional budgets with no affect on local governments.
❖ OTHER PERSONS: There are no costs or savings for other persons associated with this rule. Any costs will be covered by institutional budgets with no affect on other persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There will be no added compliance costs to establish a secure area, which will be developed only if and when needed for a hearing room, after which the space will return to normal use. Any minimal costs for establishing temporary secure areas will be absorbed within institutional budgets, and no new funds will be requested to implement this rule.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Because a secure area hearing room will only be established if and when needed, after which the space will return to normal use, and because no new funds are requested to implement this rule, with any minimal costs to be absorbed within institutional budgets, the Commissioner concurs that this rule will have no fiscal impact on area businesses.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
REGENTS (BOARD OF)
ADMINISTRATION
BOARD OF REGENTS BUILDING, THE GATEWAY
60 SOUTH 400 WEST
SALT LAKE CITY UT 84101-1284, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Don A. Carpenter at the above address, by phone at 801-321-7110, by FAX at 801-321-7199, or by Internet E-mail at dcarpenter@utahsbr.edu

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 03/03/2003.

THIS RULE MAY BECOME EFFECTIVE ON: 03/04/2003

AUTHORIZED BY: Cecelia H. Foxley, Commissioner

R765. Regents (Board of), Administration.
R765-254. Secure Area Hearing Rooms.
R765-254-1. Purpose.
To provide guidelines for the establishment of institutional policy and standards for secure areas associated with hearing rooms on the campuses of the System.

R765-254-2. References.
2.1. Utah Code §53B-2-106 (Duties and Responsibilities of the President).
2.2. Utah Code §53B-3-103 (Power of the Board to Adopt Rules and Enact Regulations).
2.3. Utah Code §76-8-311.1 (Secure Areas -- Items Prohibited -- Penalty).
2.4. Utah Code Title 76, Chapter 8, Part 7 (Criminal Offenses Against Colleges and Universities).
2.5. Utah Code Section 76-10-306 (Explosive, Chemical, or Incendiary Device and Parts -- Definitions -- Persons Exempted -- Penalties).
2.6. Utah Code Section 76-10-523.5 (Compliance with Rules for Secure Areas).
2.7. Policy and Procedures R120, Bylaws of the State Board of Regents; Section 3.3.3.1. (Responsibility of Presidents).
2.8. Policy and Procedures R253, Campus Discipline.

R765-254-3. Policy.

3.1. Secure Area Associated with a Hearing Room - A USHE institution may establish a secure area to protect a hearing room as prescribed in Utah Code Section 76-8-311.1 and prohibit or control in that area any firearm, ammunition, dangerous weapon, or explosive. Only one area at each institution shall be designated a secure area for the purpose of a hearing room at any given time.

3.2. Size of Secure Area - A secure area associated with a hearing room shall be as large as warranted by the number of individuals involved in the hearing.

3.3. Duration of Secure Area Designation - The restriction of firearms, ammunition, dangerous weapons, or explosives in the secure area associated with a hearing room shall be in effect only during the time the secure area hearing room is in use for hearings and for a reasonable time before and after its use.

3.4. Notice to Invitees - An individual required or requested to attend a hearing in a secure area hearing room shall be notified in writing of the requirements related to entering a secured area associated with a hearing room under this rule and Utah Code Section 76-8-311.1.

3.5. Notice at Each Entrance - At least one notice shall be prominently displayed at each entrance to the secure area associated with a hearing room in which a firearm, ammunition, dangerous weapon, or explosive is restricted.

3.6. Secure Weapons Storage - Provisions shall be made to provide a secure weapons storage area so that persons entering the secure area may store their weapons prior to entering the secure area. The institution shall be responsible for weapons while they are stored in the storage area.

3.7. Reasonable Means to Detect Violations - Reasonable means such as mechanical, electronic, x-ray, or similar devices may be used to detect firearms, ammunition, dangerous weapons, or explosives contained in the personal property of or on the person of any individual attempting to enter a secure area associated with a hearing room.

3.8. Criminal Penalties - Any person who knowingly or intentionally transports into a secure area of an institution any firearm, ammunition, or dangerous weapon is guilty of a third degree felony. Any person violates Utah Code Section 76-10-306 who knowingly or intentionally transports, possesses, distributes, or sells any explosive in a secure area of an institution.

3.9. Institutional Enforcement - As provided in Utah Code Section 53B-3-103(3), an institution may enforce these policies by the assessment of fines, the imposition of probation, suspension, or expulsion from the institution, the revocation of privileges, the refusal to issue certificates, degrees, and diplomas, through judicial process, or by any reasonable combination of these alternatives.

3.10. Compliance with Rules a Defense - It is a defense to any prosecution under Utah Code Section 76-8-311.1 and these rules that the accused, in committing the act made criminal by that section, acted in conformity with the Board's and institution's rules or policies established pursuant to that section.

KEY: secure area hearing rooms
2003
76-8-311.1

▼ ▼

School and Institutional Trust Lands, Administration

R850-120

Beneficiary Use of Institutional Trust Land

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 25953
FILED: 01/15/2003, 14:57

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The current rule restricts use of granted trust lands to the University of Utah and Utah State University. This rule amendment modifies the rule so that all non-school beneficiaries can use their granted lands for only the cost incurred by the Administration in administering the lease. The purpose of imposing an administration fee is to minimize the risk of a different beneficiary subsidizing the use made by beneficiaries of their own granted lands.

SUMMARY OF THE RULE OR CHANGE: This rule amendment adds Sections 7 and 12 of the Utah Enabling Act to the authorities allowing use of land granted. It removes the restriction that only the University of Utah and Utah State University can use their respective granted lands, and clarifies the process for establishing an application fee.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Utah Enabling Act of July 16, 1894, Ch 138, 28 Statutes at Large 107; and Subsections 53C-1-302(1)(a)(ii), 53C-2-201(1)(a), and 53C-4-101(1)

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: Although the rule provides for waiving lease payments when a beneficiary seeks to utilize their respective grant lands, there would be little cost savings since the money that the agency would charge for the lease would have been returned to the beneficiary as proceeds from the use of their lands. Essentially, this action would be cost neutral, except for the minor savings to the Trust Land Administration in management costs.

❖ LOCAL GOVERNMENTS: There should be no cost or savings to local government as this rule affects only our non-school beneficiaries, who are state agencies, and who wish to use their granted lands to accomplish their lawful purposes. Essentially, the cost or savings to these beneficiaries is neutral.

❖ OTHER PERSONS: This rule applies only to the non-school beneficiaries of the respective trust lands who wish to use their granted lands to accomplish their lawful purposes. Without this rule amendment, these beneficiaries would pay the normal application fees and yearly rentals for use of their respective trust lands. At fiscal year end, the rentals would be returned to the respective beneficiary as proceeds from use of their lands. Essentially, the cost or savings to these

beneficiaries is neutral and there shouldn't be any cost or savings to any other persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The only compliance costs for affected persons would be the application fee which covers the cost incurred by the Administration in administering the lease if a non-school beneficiary chose to use their granted lands to accomplish their lawful purposes.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: It is not anticipated that this rule would have any fiscal impact on businesses since the only potential applicants under the rule are governmental agencies.

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

SCHOOL AND INSTITUTIONAL TRUST LANDS ADMINISTRATION
Room 500
675 E 500 S
SALT LAKE CITY UT 84102-2818, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Kevin S. Carter at the above address, by phone at 801-538-5101, by FAX at 801-538-5118, or by Internet E-mail at kevincarter@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 03/03/2003.

THIS RULE MAY BECOME EFFECTIVE ON: 03/04/2003

AUTHORIZED BY: Kevin S. Carter, Director

R850. School and Institutional Trust Lands, Administration.
R850-120. Beneficiary Use of Institutional Trust Land.
R850-120-100. Authorities.

This rule implements the Utah Enabling Act to allow use of land granted under [~~Section~~]Sections 7, 8 and 12 of that Act by its beneficiary institution as a direct economic benefit to the institution and specifies application procedures and review criteria under authority of Sections 53C-1-302(1)(a)(ii) and 53C-4-101(1).

R850-120-200. Scope.

This rule applies to applications by [~~the University of Utah and Utah State University~~]those institutions named in Sections 7, 8 and 12 of the Utah Enabling Act for in-kind use of their respective institutional trust lands administered by the agency.

R850-120-300. Application Requirements.

1. A letter of application must be received with a non-refundable application fee. The application fee will be established separately for each application based upon the cost of processing the application. The letter of application must include:

(a) the name and address of contact authority;

(b) a legal description of the land involved;

(c) a statement of the intended in-kind use;

(d) documentation that describes the manner in which the intended in-kind use is consistent with plans and programs approved or under development by the institution, and the institution's statutory mandates.

2. Upon receipt of a letter of application, the agency shall review it for completeness. Institutions submitting deficient letters of application shall be allowed 120 days to provide the required information.

KEY: beneficiaries, land use, administrative procedures
[~~November 1, 2002~~]2003
Notice of Continuation January 15, 2002
53C-1-302(1)(a)(ii)
53C-2-201(1)(a)
53C-4-101(1)

▼ ▼

Tax Commission, Auditing
R865-19S-61
Meals Furnished Pursuant to Utah Code Ann. Section 59-12-104

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 25924
FILED: 01/14/2003, 11:27

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Section 59-12-103 imposes a sales tax on the final sale of tangible personal property. Section 59-12-104 provides a sales tax exemption for meals sold to inpatients at medical and nursing facilities. Section 59-12-104 provides a sales tax exemption for prepaid meals sold pursuant to a student meal plan with an institution of higher education.

SUMMARY OF THE RULE OR CHANGE: The proposed amendment: deletes language indicating that meals sold prepaid pursuant to a room and board contract with an institution of higher education are not taxed because that language was codified in 2001 H.B. 126; defines "student meal plan" for purposes of the sales tax exemption provided by 2001 H.B. 126 for meals prepaid pursuant to a student meal plan with an institution of higher education; defines medical facility and nursing facility for purposes of the sales tax exemption for inpatient meals provided at a medical or nursing facility; deletes language indicating that a sale of a meal occurs only if it is segregated on the invoice, since this language has been invalidated by the Utah Supreme Court in Heritage Convalescent Center v Utah State Tax Commission, 953 P.2d 445 (Utah 1997); indicates what transactions must be segregated on an invoice; and deletes language that appears in statute. (DAR NOTE: H.B. 126 is found at UT L 2001 Ch 170, and was effective July 1, 2001.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 59-12-103 and 59-12-104

ANTICIPATED COST OR SAVINGS TO:
❖ THE STATE BUDGET: Unknown--The Utah Supreme Court decision that underlies one of the amendments to the rule, that a sale of a meal occurs even though that sale is not listed on the invoice, will decrease tax revenues if the final sale is an exempt sale. Previous to the court decision, the Tax Commission collected tax from the vendor of the meal, based on the determination that the final sale of the meal ingredients were to the vendor. The other amendments to the rule are either codifications of rule language into statute, or clarifications of current practice.
❖ LOCAL GOVERNMENTS: Unknown--The Utah Supreme Court decision (Heritage Convalescent Center v Utah State Tax Commission, 953 P.2d 445 (Utah 1997)that underlies one of the amendments to the rule, that a sale of a meal occurs even though that sale is not listed on the invoice, will decrease tax revenues if the final sale is an exempt sale. Previous to the court decision, the Tax Commission collected tax from the vendor of the meal, based on the determination that the final sale of the meal ingredients were to the vendor. The other amendments to the rule are either codifications of rule language into statute, or clarifications of current practice.
❖ OTHER PERSONS: Unknown potential savings in sales tax to an individual who may purchase a meal sales tax exempt. Previously, the preparer of the meal paid sales tax on the ingredients, and passed those taxes on to the consumer. Thus, an exempt consumer paid a transaction price for the meal that included the vendor's taxes.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Unknown potential savings in sales tax to an individual who may purchase a meal sales tax exempt. Previously, the preparer of the meal paid sales tax on the ingredients, and passed those taxes on to the consumer. Thus, an exempt consumer paid a transaction price for the meal that included the vendor's taxes.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There is no known fiscal impact on businesses. The amendment clarifies current statute and gives additional guidance to businesses that prepare and sell meals.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
TAX COMMISSION
AUDITING
210 N 1950 W
SALT LAKE CITY UT 84134, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Cheryl Lee at the above address, by phone at 801-297-3900, by FAX at 801-297-3919, or by Internet E-mail at clee@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 03/03/2003.

THIS RULE MAY BECOME EFFECTIVE ON: 03/04/2003

AUTHORIZED BY: Pam Hendrickson, Commissioner

R865. Tax Commission, Auditing.
R865-19S. Sales and Use Tax.
R865-19S-61. Meals Furnished Pursuant to Utah Code Ann. [~~Section~~]Sections 59-12-103 and 59-12-104.

A. The following definitions apply to the sales and use tax exemption authorized under Section 59-12-104 for inpatient meals provided at a medical facility or nursing facility.

1. "Medical facility" means a facility:

a) described in SIC codes 8062 through 8069 of the 1987 Standard Industrial Classification Manual of the federal Executive Office of the President, Office of Management and Budget; and

b) licensed under Section 26-21-8.

2. "Nursing facility" means a facility:

a) described in SIC codes 8051 through 8059 of the 1987 Standard Industrial Classification Manual of the federal Executive Office of the President, Office of Management and Budget; and

b) licensed under Section 26-21-8.

B. The following definition applies to the sales and use tax exemption authorized under Section 59-12-104 for sales of meals served by an institution of higher education.

1. "Student meal plan" means an arrangement:

a) between an institution of higher education and a student;

b) available only to a student;

c) whose duration is the entire term, semester, or similar unit of study;

d) paid in advance of the term, semester, or similar unit of study; and

e) providing for specified meals at eating facilities of the institution of higher education.

[~~A.~~]C. [~~The~~]Except as provided in Section 59-12-104, sales and use tax is imposed upon the amount paid for meals furnished by any restaurant, cafeteria, eating house, hotel, drug store, diner, private club, boarding house, or other place, regardless of whether meals are regularly served to the public.

[~~1. By specific exemption, the following meal sales are exempt from taxation:~~

~~a. public elementary and secondary school meals, whether sold to students or the public; and~~

~~b. inpatient meals provided at medical or nursing facilities. Tax must be paid on the purchase price of food by nonexempt medical or nursing facilities.~~

~~2.~~]D. Ingredients [~~which~~]that become a component part of meals subject to tax are construed to be purchased for resale, and as such the purchase of those ingredients is exempt from sales and use tax.

[~~B. Where no separate charge or specific amount is paid for meals furnished but is included in the membership dues or board and room charges; the club, boarding house, fraternity, sorority, or other place is considered to be the consumer of the items used in preparing such meals.~~]E. Where a meal is given away on a complementary basis, the provider of the meal is considered to be the consumer of the items used in preparing the meal.

[~~C.~~]F. Meals served by religious or charitable institutions[~~,~~] and institutions of higher education are [~~exempt from taxation only if the meals are~~] not available to the general public[~~. The term "available to the general public" is interpreted broadly so as to include any~~] if:

1. access to the restaurant, cafeteria, or other facility [~~where service~~]is [~~not~~]restricted to:
a) in the case of a religious or charitable institution:
(1) employees of the institution;
(2) volunteers of the institution;
(3) guests of the institution; and
(4) other individuals that constitute a limited class of people; or
b) in the case of an institution of higher education:
(1) students of the institution;
(2) employees of the institution;
(3) guests of the institution; and
(4) other individuals that constitute a limited class of people; and

2. [~~monitored for a limited class of people. The following are guidelines for various types of meal sales:~~]the restricted access is enforced.

[~~1. Exemption status of employee cafeterias is determined in large measure by the availability of access to nonemployee personnel. In order for an exemption to apply, access to either the specific eating area or the overall building in which the eating facility is located must be controlled and monitored. Merely posting signs stating that a cafeteria is for use only by employees is not sufficient.~~

~~2. Meals sold in cafeterias, restaurants, and other facilities at institutions of higher education are subject to taxation if access is made available to the general public. The requirements outlined in C.1. for employee cafeterias apply to facilities operated by institutions of higher education. Meals sold and pre-paid pursuant to a room and board contract are not subject to taxation.~~

~~3.~~]G. [~~Meals sold or furnished~~]Sales of meals at occasional church or charity bazaars or fund raisers, and other similar functions are considered isolated and occasional sales and therefore [~~tax~~]exempt from sales and use tax.

KEY: charities, tax exemptions, religious activities, sales tax
[~~2002~~]2003
59-12-103
59-12-104

Workforce Services, Workforce Information and Payment Services

R994-406-311

Reschedule and Adjournment of Hearings

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 25946
FILED: 01/15/2003, 11:21

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This proposed amendment brings the rule into compliance with the Utah Administrative Procedures Act (UAPA).

SUMMARY OF THE RULE OR CHANGE: The struck-through wording used a "good cause" standard for setting aside a default decision. UAPA uses the standard from the Utah Rules of Civil Procedure Rule 60(b) which is an "excusable neglect" standard. The Department needs to change to the correct standard. This new (underlined) wording changes the standard from good cause to excusable neglect.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsections 35A-4-406(2), 35A-4-406(3), 35A-4-406(4), and 35A-4-406(5)

ANTICIPATED COST OR SAVINGS TO:
❖ THE STATE BUDGET: There will be no costs or savings to the State budget because the Department has been using this new standard and it has not resulted in any costs or savaings. Additionally, this is a federally funded program.
❖ LOCAL GOVERNMENTS: This rule does not affect local government so there will be no costs or savings to local governments.
❖ OTHER PERSONS: There will be no costs or savings to any persons since the Department is merely changing the rule to reflect current law and practice.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs associated with this change. There are no fees associated with this change. It will not cost anyone any sum to comply with these changes.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule change will have no impact on business.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
WORKFORCE SERVICES
WORKFORCE INFORMATION
AND PAYMENT SERVICES
140 E 300 S
SALT LAKE CITY UT 84111-2333, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Suzan Pixton at the above address, by phone at 801-526-9645, by FAX at 801-526-9211, or by Internet E-mail at spixton@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 03/03/2003.

THIS RULE MAY BECOME EFFECTIVE ON: 03/04/2003

AUTHORIZED BY: Raylene G. Ireland, Executive Director

R994. Workforce Services, Workforce Information and Payment Services.
R994-406. Appeal Procedures.
[~~R994-406-311. Reschedule and Adjournment of Hearings.~~

~~(1) The Administrative Law Judge may, at his discretion, adjourn, continue or reopen a hearing on his own motion. The ALJ may also reschedule on his own motion if it appears necessary to~~

~~take continuing jurisdiction based on a mistake as to facts or if the denial of a hearing would be an affront to fairness.~~

~~(2) Prior to the Hearing.~~

~~(a) A hearing before an Administrative Law Judge may be rescheduled or postponed for reasonable cause if the request is made to the Administrative Law Judge orally or in writing before the hearing is concluded. Such a request may be made by any interested party, however, more than one continuance will not normally be granted if it adversely impacts on the other party's rights to benefits or potential liability for benefit costs.~~

~~(b) When a hearing has been canceled at the request of one of the parties a decision will be issued.~~

~~(3) If one of the parties fails to appear at the hearing, the Administrative Law Judge will, unless there is cause for continuance, issue a decision based on the available evidence.~~

~~(4) After the Hearing.~~

~~(a) Any party who fails to participate personally or by authorized representative at a hearing before an Administrative Law Judge may, within seven days after the scheduled date of the hearing, make a written request for reopening of the hearing. Such petition will be granted if good cause is shown for failing to participate. A request for reopening made after the scheduled hearing must be in writing; it must state the reason(s) believed to constitute good cause for failing to participate at the hearing; and it must be delivered or mailed within a seven-day period to the Appeals office or to a Job Service office in any state. If the request for reopening is not filed within seven days, reopening will not be granted unless the party can show good cause for failing to make the request within the seven-day time limitation. If a request for reopening is not allowed, a copy of the decision will be given or mailed to each party, with a clear statement of the right of appeal or judicial review. If a request for reopening is made, a hearing will be scheduled and notice will be given or mailed to each party to the appeal, to determine if there is good cause for reopening the hearing.~~

~~(b) Failure to report as instructed at the time and place of the scheduled hearing is the equivalent of failing to participate even if the party reports at another time or place. In such circumstances, the party must make a written request for rescheduling and show good cause in accordance with these rules before the matter will be rescheduled.~~

~~(c) Good cause for failing to participate in an appeal hearing may not include such things as:~~

~~(i) failure to read and follow instructions on the notice of hearing,~~

~~(ii) failure to arrange personal circumstances such as transportation or child care,~~

~~(iii) failure to arrange for receipt or distribution of mail,~~

~~(iv) failure to delegate responsibility for participation in the hearing, or~~

~~(v) forgetfulness.~~

~~(d) In the event that an appeal has been taken or an application for review has been made to the Workforce Appeals Board before the request for reopening is filed, such request will be referred to the Workforce Appeals Board.~~

]**R994-406-311. Rescheduling, Continuing and Reopening a Hearing and Decisions when a Party Fails to Participate.**

(1) If a party knows in advance of the hearing that they will be unable to participate in the hearing on the date or time scheduled, the party must request that the hearing be rescheduled or continued to another day or time.

(a) The request must be made prior to the hearing. If the request is not made prior to the hearing, the party must show cause for failing to make a timely request.

(b) The request must be made orally or in writing to the ALJ scheduled to hear the case or the ALJ's supervisor.

(c) The party making the request must show cause for the request.

(d) Normally, a party will not be granted more than one request for a continuance.

(2) If a party fails to appear for or participate in the hearing, either personally or through a representative, the ALJ will issue a decision based on the available evidence.

(3) Any party failing to participate, personally or by authorized representative, in a hearing may request that the hearing be reopened.

(a) The request will be granted if the party was prevented from appearing at the hearing due to circumstances beyond the party's control.

(b) The request may be granted upon such terms as are just for any of the following reasons: mistake, inadvertence, surprise, excusable neglect or any other reason justifying relief from the operation of the decision. The determination of what sorts of neglect will be considered excusable is an equitable one, taking into account all of the relevant circumstances including:

(i) the danger that the party not requesting reopening will be harmed by reopening,

(ii) the length of the delay caused by the party's failure to participate including the length of time to request reopening,

(iii) the reason for the request including whether it was within the reasonable control of the party requesting reopening,

(iv) whether the party requesting reopening acted in good faith, and

(v) whether the party was represented by another at the time of the hearing. Attorneys and representatives are held to a higher standard, and

(vi) whether based on the evidence of record and the parties arguments or statements, taking additional evidence might effect the outcome of the case.

(c) Requests to reopen are remedial in nature and thus must be liberally construed in favor of providing parties with an opportunity to be heard and present their case. Any doubt must be resolved in favor of granting reopening.

(d) Excusable neglect is not limited to cases where the failure to act was due to circumstances beyond the party's control.

(e) The request must be in writing, must set forth the reason for the request and must be mailed, faxed or delivered to the Division of Adjudication within ten days of the issuance of the decision made pursuant to paragraph (2) above. If the request is made after the expiration of the time limit, the party requesting reopening must show good cause for not making the request within ten days.

(f) The ALJ has the discretion to schedule a hearing to determine if a party requesting reopening satisfied the requirements of this rule or may, after giving the other party an opportunity to respond to the request, grant or deny the request on the basis of the official record in the case.

(4) The ALJ may, on the ALJs own motion, reschedule, continue or reopen a case if it appears necessary to take continuing jurisdiction based on a mistake as to facts or if the denial of a hearing would be an affront to fairness.

KEY: appellate procedures, jurisdiction, overpayments, unemployment compensation
[~~September 12, 2002~~]2003
Notice of Continuation May 23, 2002
35A-4-406(2)
35A-4-406(3)
35A-4-406(4)
35A-4-406(5)

Workforce Services, Workforce Information and Payment Services
R994-406-315
Finality of Decision

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 25947
FILED: 01/15/2003, 11:34

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This amendment corrects the time limit for filing an appeal from a decision of an Administrative Law Judge (ALJ).

SUMMARY OF THE RULE OR CHANGE: The rule currently provides that decisions of ALJs must be filed within ten days. The Utah Administrative Procedures Act provides 30 days. The Department has always used 30 days so we are correcting the rule to reflect the law and practice.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsections 35A-4-406(2), 35A-4-406(3), 35A-4-406(4), and 35A-4-406(5)

ANTICIPATED COST OR SAVINGS TO:
❖ THE STATE BUDGET: There will be no costs or savings to the State budget because the Department has been using the correct time frame and it has not resulted in any costs or savings. Additionally, this is a federally funded program.
❖ LOCAL GOVERNMENTS: This rule does not affect local government so there will be no costs or savings to local governments.
❖ OTHER PERSONS: There will be no costs or savings to any persons since the Department is merely changing the rule to reflect current law and practice.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs or fees associated with the change and it will not cost anyone any sum to comply with these changes.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule change will have no impact on business.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
WORKFORCE SERVICES
WORKFORCE INFORMATION
AND PAYMENT SERVICES
140 E 300 S
SALT LAKE CITY UT 84111-2333, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Suzan Pixton at the above address, by phone at 801-526-9645, by FAX at 801-526-9211, or by Internet E-mail at spixton@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 03/03/2003.

THIS RULE MAY BECOME EFFECTIVE ON: 03/04/2003

AUTHORIZED BY: Raylene G. Ireland, Executive Director

R994. Workforce Services, Workforce Information and Payment Services.
R994-406. Appeal Procedures.
R994-406-315. Finality of Decision.

Decisions of the Administrative Law Judge are binding on all parties and are the final decision of the Department as provided by Subsection 35A-4-508(7) unless appealed within [~~ten~~]30 days of mailing or delivery of the decision.

KEY: appellate procedures, jurisdiction, overpayments, unemployment compensation
[~~September 12, 2002~~]2003
Notice of Continuation May 23, 2002
35A-4-406(2)
35A-4-406(3)
35A-4-406(4)
35A-4-406(5)

NOTICES OF
CHANGES IN PROPOSED RULES

After an agency has published a PROPOSED RULE in the *Utah State Bulletin*, it may receive public comment that requires the PROPOSED RULE to be altered before it goes into effect. A CHANGE IN PROPOSED RULE allows an agency to respond to comments it receives.

As with a PROPOSED RULE, a CHANGE IN PROPOSED RULE is preceded by a RULE ANALYSIS. This analysis provides summary information about the CHANGE IN PROPOSED RULE including the name of a contact person, anticipated cost impact of the rule, and legal cross-references.

Following the RULE ANALYSIS, the text of the CHANGE IN PROPOSED RULE is usually printed. The text shows only those changes made since the PROPOSED RULE was published in an earlier edition of the *Utah State Bulletin*. Additions made to the rule appear underlined (e.g., example). Deletions made to the rule appear struck out with brackets surrounding them (e.g., [~~example~~]). A row of dots in the text (. . . . .) indicates that unaffected text was removed to conserve space. If a CHANGE IN PROPOSED RULE is too long to print, the Division of Administrative Rules will include only the RULE ANALYSIS. A copy of rules that are too long to print is available from the agency or from the Division of Administrative Rules.

While a CHANGE IN PROPOSED RULE does not have a formal comment period, there is a 30-day waiting period during which interested parties may submit comments. The 30-day waiting period for CHANGES IN PROPOSED RULES published in this issue of the *Utah State Bulletin* ends March 3, 2003. At its option, the agency may hold public hearings.

From the end of the waiting period through June 1, 2003, the agency may notify the Division of Administrative Rules that it wants to make the CHANGE IN PROPOSED RULE effective. When an agency submits a NOTICE OF EFFECTIVE DATE for a CHANGE IN PROPOSED RULE, the PROPOSED RULE as amended by the CHANGE IN PROPOSED RULE becomes the effective rule. The agency sets the effective date. The date may be no fewer than 30 days nor more than 120 days after the publication date of this issue of the *Utah State Bulletin*. Alternatively, the agency may file another CHANGE IN PROPOSED RULE in response to additional comments received. If the Division of Administrative Rules does not receive a NOTICE OF EFFECTIVE DATE or another CHANGE IN PROPOSED RULE, the CHANGE IN PROPOSED RULE filing, along with its associated PROPOSED RULE, lapses and the agency must start the process over.

CHANGES IN PROPOSED RULES are governed by *Utah Code* Section 63-46a-6 (2001); and *Utah Administrative Code* Rule R15-2, and Sections R15-4-3, R15-4-5, R15-4-7, and R15-4-9.

The Changes in Proposed Rules Begin on the Following Page.

Insurance, Administration
R590-199
Plan of Orderly Withdrawal Rule Relating to Health Benefit Plans

NOTICE OF CHANGE IN PROPOSED RULE
DAR File No.: 25628
Filed: 01/14/2003, 11:07

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: As a result of comments the department received during the previous comment period and hearing, additional changes are being made to the rule.

SUMMARY OF THE RULE OR CHANGE: Two code references in Section R590-199-1 are being eliminated because they do not have specific rulemaking authority in them. Section R590-199-3 is being changed to clarify that this rule applies to accident and health insurers. In Section R590-199-5, the wording will remain the same but a code reference is being corrected. (DAR NOTE: This change in proposed rule has been filed to make additional changes to a proposed amendment that was published in the December 1, 2002, issue of the Utah State Bulletin, on page 92. Underlining in the rule below indicates text that has been added since the publication of the proposed rule mentioned above; strike-out indicates text that has been deleted. You must view the change in proposed rule and the proposed amendment together to understand all of the changes that will be enforceable should the agency make this rule effective.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 31A-2-201 and 31A-4-115

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: The changes to this rule will not impact the state's budget. Insurers will not be required to make any filings and the workload on the department will not be changed.

❖ LOCAL GOVERNMENTS: The changes to this rule will have no impact on local government. The rule itself only deals with the relationship between health and accident insurers and the department.

❖ OTHER PERSONS: The change in Section R590-199-3 broadens the scope of who is affected by the rule. Instead of just those insurers that provide health benefit plans, it now applies to all 700 plus health and accident carrier doing business in Utah. All will be required to pay a $50,000 withdrawal fee or be required to replace coverage with another carrier if they withdraw from the health insurance marketplace.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The change in Section R590-199-3 broadens the scope of who is affected by the rule. Instead of just those insurers that provide health benefit plans, it now applies to all 700 plus health and accident carrier doing business in Utah. All will be required to pay a $50,000 withdrawal fee or be required to replace coverage with another carrier if they withdraw from the health insurance marketplace.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The cost to the insurer will depend on whether or not an insurer places their health business with another when they withdraw from the health insurance marketplace in Utah. If they do, then they will not be charged a withdrawal fee of $50,000.

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 03/03/2003.

THIS RULE MAY BECOME EFFECTIVE ON: 03/04/2003

AUTHORIZED BY: Jilene Whitby, Information Specialist

R590. Insurance, Administration.
R590-199. Plan of Orderly Withdrawal Rule Relating to Health Benefit Plans.
R590-199-1. Authority.

This rule is promulgated pursuant to Subsections 31A-2-201(3)[~~,~~] and 31A-4-115(8)[~~ and 31A-30-106(1)(k)(iii) and 31A-30-107~~].

R590-199-3. Applicability and Scope.

This rule applies to [~~any insurer~~]accident and health insurers[~~that provides health benefit plan coverage to individuals or employers~~].

R590-199-5. Plan of Orderly Withdrawal.

(1) A covered carrier and each affiliate of a covered carrier that elects to nonrenew coverage under a health benefit plan in Utah must file a plan of orderly withdrawal with the Utah insurance commissioner explaining the process of nonrenewal. The plan must be filed with the Utah insurance commissioner at the time advance notice is given under Subsection 31A-30-107[~~(1)(f)(i)~~](3)(e) and 31A-30-107.1.(3)(e) and must be accompanied by a $50,000 withdrawal fee or proof of placement or assumption of all business to another carrier. This fee is to be made out to the Utah Comprehensive Health Insurance Pool. The plan of orderly withdrawal is to include the following information:

(a) name and telephone number of company representative to contact regarding the nonrenewal;

(b) list of all policy forms affected by the withdrawal;

(c) number of group or individual policies, or both, that are currently in force;

(d) number of covered lives, include insured, spouse and dependents, under individual health benefit plan policies;

(e) number of covered lives, include insured, spouse and dependents, under small employer health benefit plans;

(f) number of COBRA or state extension policies and the number of covered lives for each;

(g) copy of conversion plan and rates that will be offered in accordance with Section 31A-22-703;

(h) copy of notice required by Subsection 31A-30-107(1)(f)(ii). Such notice must inform the insured of their portability rights and responsibilities;

(i) service or coverage areas within the state, which indicates withdrawal areas;

(j) list of all types of all insurance coverages offered in Utah by line of business and the premium volume generated in the prior year;

(k) any reinsurance ceding arrangements relating to the health benefit plans being nonrenewed;

(l) information relating to any waiver provided under Subsection 31A-30-104(3)(a);

(m) list of all affiliated carriers as described in Subsection 31A-30-104(2);

(n) certification of compliance executed by the president of the company stating that the withdrawing company is in compliance with Sections 31A-30-101 through 31A-30-112 at the time the election to withdraw is filed;

(o) certification executed by the president of the company that its individual enrollment cap has been exceeded, if applicable;

(p) loss ratios for each form issued in Utah and the methodology by which the loss ratio was calculated, including a description of all assumptions made;

(q) certified actuarial analysis from a qualified actuary of the impact that the withdrawal or nonrenewal will have on the individual and small employer market in Utah;

(r) certified actuarial analysis from a qualified actuary of the impact that withdrawal or nonrenewal will have on the Utah Comprehensive Health Insurance Pool;

(s) actuarial certification from a qualified actuary certifying to the level of liability related to the policies;

(t) detailed explanation of all efforts made to place business that is to be nonrenewed with other carriers;

(u) any plans to nonrenew any other line of business in Utah in the future;

(v) copy of the certificate of authority of the company and all affiliates involved in the withdrawal; and

(w) demonstrate that all liabilities relating to the policies that will be nonrenewed are fully satisfied or adequately reserved.

(2) Submit two copies of the plan of orderly withdrawal, one copy to be filed and a second set to be returned to you, and a self addressed return envelope.

(3) If both the written notice and a complete plan of orderly withdrawal are not received, the partial submission will be returned and not considered to have been received by the department.

KEY: health insurance
2003
31A-2-201
31A-4-115
31A-30-106
31A-30-107

End of the Notices of Changes in Proposed Rules Section

NOTICES OF
120-DAY (EMERGENCY) RULES

An agency may file a 120-DAY (EMERGENCY) RULE when it finds that 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 Hospital Payments

NOTICE OF 120-DAY (EMERGENCY) RULE
DAR FILE NO.: 25948
FILED: 01/15/2003, 13:07

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.

SUMMARY OF THE RULE OR CHANGE: This new rule describes how hospital services are reimbursed. Hospital inpatient payments will be affected by this rule. The total reduction in payments will be $4,600,000. (DAR NOTES: A corresponding proposed new rule is under DAR No. 25967 in this issue. All the proposed changes to the Medicaid Program are found under R414-5, Emergency Rule, DAR No. 25948; R414-5, New Rule, DAR No. 25967; R414-21, Emergency Rule, DAR No. 25968; R414-21, Amendment, DAR No. 25973; R414-6, Emergency Rule, DAR No. 25969; R414-6, New Rule, DAR No. 25974; R414-52, Emergency Rule, DAR No. 25970; R414-52, Amendment, DAR No. 25976; R414-53, Emergency Rule, DAR No. 25971; and R414-53, Amendment, DAR No. 25972 in this Bulletin.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 26-18-7 and 26-1-5

ANTICIPATED COST OR SAVINGS TO:
❖ THE STATE BUDGET: Annually, the state will save $1,380,000 in General Fund and will lose $3,220,000 in federal matching funds.
❖ LOCAL GOVERNMENTS: Some local governments will experience funding reduction totaling approximately $120,000 due to the fact that some small rural hospitals are county owned.
❖ OTHER PERSONS: Hospitals that are not operated by local governments will lose approximately $4,480,000 in inpatient payments.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Other than the loss of significant revenue and this direct impact on all hospital providers, no other compliance costs are anticipated on the part of the providers or any other affected persons.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This change 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. place the agency in violation of federal or state law.

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: 01/15/2003

AUTHORIZED BY: Rod L. Betit, Executive Director

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.
R414-5. Reduction in Hospital Payments.
R414-5-1. Introduction and Authority.

This rule describes the Utah Medicaid Program's uniform reduction in hospital inpatient payments. This rule is authorized by Title 26, Chapter 18, Section 7, UCA.

R414-5-2. Hospital Reimbursements.

The Utah Medicaid Program reimburses hospital services based upon diagnosis for urban hospitals and based upon a percent-of-charges for rural hospitals as described in the UTAH STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT MEDICAL ASSISTANCE PROGRAM attachment 4:19A, Section 190.

R414-5-3. Inpatient Hospital Payments Reduced.

For payment claims related to discharges occurring after January 15, 2003, the following reductions will be applied:

(1) For state fiscal year 2003, which ends June 30, 2003, a pro-rata reduction shall be applied to all claims at a percentage that will generate a $4.6 million reduction in the amount that would otherwise be paid to hospitals for claims that apply during the state fiscal year 2003.

(2) For subsequent state fiscal years, the pro-rata reduction will be reduced to a level that will generate a $4.6 million reduction for claims that apply during the subsequent state fiscal year.

(3) The executive director, after consultation with hospital providers, shall set the percentage at the level that is predicted to generate the requisite savings. The executive director may adjust the percentage as necessary, after consultation with hospital providers.

KEY: Medicaid, hospital
January 15, 2003
26-18

▼ ▼

Health, Health Care Financing, Coverage and Reimbursement Policy

R414-6

Reduction in Certain Targeted Case Management Services

NOTICE OF 120-DAY (EMERGENCY) RULE
DAR FILE NO.: 25969
FILED: 01/15/2003, 19:00

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.

SUMMARY OF THE RULE OR CHANGE: This new rule defines targeted case management services and eliminates services for the homeless, those with HIV/AIDS and recipients exposed to tuberculosis. (DAR NOTES: A corresponding proposed new rule is under DAR No. 25974 in this issue. All the proposed changes to the Medicaid Program are found under R414-5, Emergency Rule, DAR No. 25948; R414-5, New Rule, DAR No. 25967; R414-21, Emergency Rule, DAR No. 25968; R414-21, Amendment, DAR No. 25973; R414-6, Emergency Rule, DAR No. 25969; R414-6, New Rule, DAR No. 25974; R414-52, Emergency Rule, DAR No. 25970; R414-52, Amendment, DAR No. 25976; R414-53, Emergency Rule, DAR No. 25971; and R414-53, Amendment, DAR No. 25972 in this Bulletin.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 26-18-2.3 and 26-1-5

ANTICIPATED COST OR SAVINGS TO:
❖ THE STATE BUDGET: Annually, the state will save $76,700 in General Fund and will lose $187,300 in federal matching funds.
❖ LOCAL GOVERNMENTS: No cost--Local governments do not provide these specific case management services.
❖ OTHER PERSONS: Case managers will lose up to $264,000 in reimbursements.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Some adjustments in various computer systems to allow reconciliation of billings with medical payments received may be required. The costs should be minimal.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This change will have a negative impact on providers of targeted case management services, 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. place the agency in violation of federal or state law.

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: 01/15/2003

AUTHORIZED BY: Rod L. Betit, Executive Director

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

R414-6. Reduction in Certain Targeted Case Management Services.

R414-6-1. Introduction and Authority.

This rule describes the Utah Medicaid Program's reduction in certain targeted case management services. Utilization of cost-containment methods is authorized by Title 26, Chapter 18, Section 2.3, UCA.

R414-6-2. Definition.

"Targeted Case Management Services" are a set of planning, coordinating and monitoring activities that assist Medicaid recipients in the target group to access needed housing, employment, medical, nutritional, social, education, and other services to promote independent living and functioning in the community.

R414-6-3. Targeted Case Management Services for Homeless Recipients.

Upon the effective date of this rule, targeted case management services for homeless recipients are not available.

R414-6-4. Targeted Case Management Services for Recipients with HIV/AIDS.

Upon the effective date of this rule, targeted case management services for recipients with HIV/AIDS are not available.

R414-6-5. Targeted Case Management Services for Recipients Exposed to Tuberculosis.

Upon the effective date of this rule, targeted case management services for recipients exposed to tuberculosis are not available.

KEY: Medicaid, case management
January 15, 2003
26-18

▼ ▼

Health, Health Care Financing, Coverage and Reimbursement Policy
R414-21
Physical Therapy

NOTICE OF 120-DAY (EMERGENCY) RULE
DAR FILE NO.: 25968
FILED: 01/15/2003, 18:52

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.

SUMMARY OF THE RULE OR CHANGE: In Section R414-21-4, the phrases "and occupational therapy" and "except for non-pregnant adult recipients ages 21 and older" are added to exclude occupational therapy and physical therapy from that group. In Section R414-21-5, the phrases "and occupational therapy" and "except for non-pregnant adult recipients ages 21 and older" are added to exclude physical and occupational therapy from that group. (DAR NOTES: A corresponding proposed amendment is under DAR No. 25973 in this issue. All the proposed changes to the Medicaid Program are found under R414-5, Emergency Rule, DAR No. 25948; R414-5, New Rule, DAR No. 25967; R414-21, Emergency Rule, DAR No. 25968; R414-21, Amendment, DAR No. 25973; R414-6, Emergency Rule, DAR No. 25969; R414-6, New Rule, DAR No. 25974; R414-52, Emergency Rule, DAR No. 25970; R414-52, Amendment, DAR No. 25976; R414-53, Emergency Rule, DAR No. 25971; and R414-53, Amendment, DAR No. 25972 in this Bulletin.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Title 26, Chapter 18; and Section 26-1-5

ANTICIPATED COST OR SAVINGS TO:
❖ THE STATE BUDGET: The state will save $93,000 in General Fund and will lose $226,900 in federal matching funds.
❖ LOCAL GOVERNMENTS: There is no impact on local governments because none are Medicaid providers of physical or occupational therapy services.
❖ OTHER PERSONS: Physical and occupational therapy providers will lose a total of $319,900 in reimbursements.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There may be some minimal data entry costs involved in complying with this rulemaking.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This change will have a negative impact on physical and occupational therapists, 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. place the agency in violation of federal or state law.

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.

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THIS RULE IS EFFECTIVE ON: 01/15/2003

AUTHORIZED BY: Rod L. Betit, Executive Director

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.
R414-21. Physical and Occupational Therapy.
R414-21-1. Policy Statement.

(1) "Qualified" physical therapists may provide services for Medicaid eligible individuals upon the order of a doctor of medicine, osteopathy, dentistry or podiatry.

(2) Non-licensed therapists, although they may have received the required academic training, may not provide services for Medicaid eligible recipients with the expectation of reimbursement from Medicaid.

R414-21-2. Authority and Purpose.

(1) Authority

(a) The provision of physical therapy evaluation and treatment is authorized under the authority of the 42 CFR in the following Sections:

(i) 405.1718a Medicare Standard, Nursing Home patients;

(ii) 405.1718b Medicare Standard, Nursing Home equipment;

(iii) 405.1718c Medicare Standard, Nursing Home personnel;

(iv) 440.70(b)(4) Home health provisions of service;

(v) 440.110(a)(1)(2) Physical Therapy definition and qualifications;

(vi) 442.486 Physical Therapy services, ICF/MR;

(vii) 442.487 ICF/MR records and evaluation.

(2) Purpose

(a) The purpose of the physical therapy program is to increase the functioning ability of each handicapped Medicaid recipient whether the handicap is temporary or permanent.

(b) The rehabilitation goals must include evaluation of the potential of each individual patient, the factual statement of the level of functions present, the identification of the goal that may reasonably be achieved, and the predetermined space of time and concentration of services that would achieve the goal.

(c) The Medicaid program is designed to provide services within financial limitations. A desired level of function must be balanced with an achievable level of function within a defined length of time. The objectives of the program are to provide a scope of service, supplementary information, limitations, and instructions concerning prior authorizations, billing, and utilization which clearly direct the provider to accomplish the goals he has identified for the patient.

(d) The goal of the physical therapist is to improve the ability of the patient, through the rehabilitative process, to function at a maximum level.

(e) The objectives of the provider must include:

(i) The evaluation and identification of the existing problem, not an anticipated problem;

(ii) The evaluation of the potential level of function actually achievable;

(iii) The restoration, to the level reasonably possible, of functions which have been lost due to accident or illness;

(iv) The establishment, to the level reasonably possible, of functions which are lacking due to defects of birth.

(v) The eventual termination or transfer of the responsibility for identified procedures to family, guardians, or other care-givers.

R414-21-3. Definitions.

(1) Physical Therapy: means the treatment of a human being by the use of exercise, massage, heat or cold, air, light, water, electricity, or sound for the purpose of correcting or alleviating any physical or mental condition or preventing the development of any physical or mental disability, or the performance of tests of neuromuscular function as an aid to the diagnosis or treatment of any human condition, provided, however, that physical therapy shall not include radiology or electrosurgery.

(2) Physical Therapist: means a person who practices physical therapy. "Physical therapist," "physiotherapist" and "physical therapy technician" are equivalent terms and reference to any one of them in this rule shall include the others.

(3) Qualified Physical Therapist: means an individual who is:

(a) a graduate of a program of physical therapy approved by both the Council on Medical Education of the American Medical Association and the American Physical Therapy Association, or its equivalent;

(b) licensed by the State of Utah; and

(c) a provider for Medicaid.

(4) Rehabilitation: means the process of treatment that leads the disabled individual to attainment of maximum function.

(5) Rehabilitation Services: means the delivery of rehabilitative medical or remedial services recommended by a physician or other licensed practitioner of the healing arts, within the scope of his practice under state law, for maximum reduction of physical or mental disability and restoration of a recipient to his best possible functional level. (42 CFR 440.130 (d).)

R414-21-4. Eligibility Requirements/Coverage.

[~~The service is~~]Physical and occupational therapy services are available to categorically and medically needy individuals under Medicaid except for non-pregnant adult recipients ages 21 and older.

R414-21-5. Program Access Requirements.

[~~The service is~~]Physical and occupational therapy services are available to categorically and medically needy individuals under Medicaid except for non-pregnant adult recipients ages 21 and older.

R414-21-6. Service Coverage.

(1) Providers of physical therapy shall offer an adequate program that provides services which utilize therapeutic exercise and the modalities of heat, cold, water, air, sound, massage and electricity; recipient evaluations and tests; and measurements of strength, balance, endurance, range of motion, and activities.

(a) Patients in need of physical therapy services are accepted for evaluation with a referral or recommendation by a physician, dentist, podiatrist or osteopath.

(b) Provision of services is with the expectation that the condition under treatment will improve in a reasonable and predictable time. Continuation of treatment beyond the maximum rehabilitative potential within a specified time will not be approved. Length of time and number of treatments will be predicated by Physical Therapy Association guidelines.

(c) Physical therapy treatments are limited to one per day.

(d) All therapy services after the first ten sessions per client per provider per calendar year require prior authorization.

(2) ICF/MR Residents. Where residents require physical therapy as part of their plan of care, the facility is legally bound to provide and pay for this need.

(a) To clarify this requirement, the following Federal Register (42 CFR) requirements are listed:

Intermediate Care Facilities for Mentally Retarded (42 CFR 442.486) ICF/MR. Evaluation and therapy (treatment) for residents of ICF/MR facilities are no longer Medicaid benefits. These services are components of the "active treatment" concept and are the responsibility of the facility. In the event that services are ordered by the facility or by the physician for a resident in an ICF/MR facility, said services must be billed to and paid by the facility.

R414-21-7. Standards of Care.

(1) The services must be considered under accepted standards of medical practice to be a specific and effective treatment for the recipient's conditions.

(2) The services must be of a level of complexity and sophistication, or the condition of the recipient must be such, that services required can be safely and effectively performed only by a qualified physical therapist. To constitute physical therapy, a service must, among other things, be reasonable and necessary to the treatment of the individual's illness. If an individual's expected rehabilitative potential would be insignificant in relation to the extent and duration of the physical therapy, it would not be considered reasonable and necessary. There must be an expectation that the recipient's condition will improve significantly in a reasonable (and generally predictable) period of time. If, at any point in the treatment of an illness, it is determined that the expectation will not materialize, the services will no longer be considered reasonable and necessary.

(3) The amount, frequency, and duration of the services must be reasonable. Requests will be reviewed and a determination made by Health Care Financing, Utilization Management Staff using guidelines provided by the American Physical Therapy Association.

R414-21-8. Limitations.

(1) General Limitations

(a) More than ten services per calendar year per client per provider are not reimbursable without prior approval following the evaluation. All other services by the same billing provider require prior authorization.

(b) The following services are not covered:

(i) Treatment for social or educational needs;

(ii) Treatment for patients who have stable chronic conditions which cannot benefit from physical therapy services;

(iii) Treatment for recipients where there is no documented potential for improvement;

(iv) Treatment for recipients who have reached maximum potential for improvement;

(v) Treatment for recipients who have achieved stated goals;

(vi) Treatment for non-diagnostic, non-therapeutic, routine, repetitive or reinforced procedures;

(vii) Treatment for CVA which begins more than 60 days after onset of the CVA;

(viii) Treatment for residents of ICF/MR;

(ix) Treatment in excess of one session or service per day.

(2) Specific Specifications. Various physical therapy modalities are included in the therapy procedure code. There are no specific procedure codes in the Medicaid program for such procedures as heat, cold, whirlpool, massage, air and sound therapy. Any modality the therapist chooses is acceptable under the one procedure code.

(a) The following specific limitations apply:

(i) Clinics. Physical therapists associated with a professional practice group in a hospital or clinic are required to use the Medicaid physical therapy guidelines, service definitions and codes for their services when their license number is identified in box H of the HCFA invoice. All limitations apply including prior approval for all services after the first ten sessions, except evaluation. CPT4 codes for physical medicine are to be used only when the physician directly performs the service and bills Medicaid with his provider number.

(ii) Hot Pack, Hydrocollator, Infra-Red Treatments, Parafinn Baths and Whirlpool Baths. Heat treatments of this type, including whirlpool baths, do not ordinarily require the skills of a qualified physical therapist. However, in a particular case, the skills, knowledge, and judgment of a qualified physical therapist might be required for such treatments as baths where the recipient's condition is complicated by circulatory deficiency, areas of desensitization, open wounds, or other complications. Also, if such treatments are given prior to, but as an integral part of, a skilled physical therapy procedure, they would be considered part of the physical therapy service.

(iii) Gait Training. Gait evaluation and training furnished a recipient whose ability to walk has been impaired by neurological, muscular, or skeletal abnormality, require the skills of a qualified physical therapist. However, if gait evaluation and training cannot reasonably be expected to improve significantly the patient's ability to walk, such services would not be considered reasonable or medically necessary. Repetitious exercises to improve gait or maintain strength and endurance and assist in walking are appropriately provided by supportive personnel such as aides or nursing personnel and do not require the skills of a qualified physical therapist.

(iv) Ultrasound, shortwave, and microwave treatments. These modalities must always be performed by a qualified physical therapist.

(v) Range of Motion Tests. Therapeutic exercises which must be performed by or under the supervision of a qualified physical therapist, due either to the type of exercise employed or condition of the recipient, would constitute physical therapy. Range of motion exercises require the skills of a qualified physical therapist only when they are part of active treatment of a specific disease which has resulted in the loss or restriction of mobility (as evidenced by physical therapy notes showing the degree of motion lost and the degree to be restored). Such exercises, either because of their nature or condition of the recipient, may be performed safely and effectively by a qualified physical therapist briefly. Generally, range of motion exercises related to the maintenance of function do not require the skills of a qualified physical therapist and are not reimbursable.

(3) Home Health Limitations

(a) In a home health agency where the therapist is an employee of the agency or where there is a contractual arrangement with the therapist, the home health agency must follow the Medicaid guidelines.

(b) All therapy services, including the evaluation, require prior authorization.

R414-21-9. Prior Authorization.

(1) Ten services per calendar year per client are reimbursable without prior approval following the evaluation.

(a) All other services by the same provider require prior authorization.

(b) All physical therapy treatment, therapies, or sessions require a prior approval beginning after the first ten services per client per calendar year per billing provider.

(2) Process. The evaluation does not require prior approval. The first ten services per patient per billing provider per calendar year do not require prior approval. Prior approval for therapy services after the first ten services per provider per calendar year require prior approval before the services begin. The request for prior approval for treatment should include a copy of the plan of treatment for the patient or a document which includes:

(a) the diagnosis, and the severity of the condition;

(b) the prognosis for progress;

(c) the expected goals and objectives for the recipient to attain;

(d) the detail of the method(s) of treatment;

(e) the frequency of treatment sessions, length of each session, and duration of the program.

(3) Prior Approval Procedure

(a) Prior approval requests will be evaluated for the number, frequency, and duration of treatments.

(i) The number of services approved will be based on the documented diagnosis, history and goals.

(ii) The frequency of services will be determined by the provider not to exceed one treatment per day.

(b) Reauthorization will require review by the patient's primary physician and will be dependent upon the medical necessity of the patient. Medicaid physician consultants will review and evaluate requests for continued service.

(4) Prior Approval Criteria

(a) Prior approval requests for treatment will be reviewed and approved or denied based on the following criteria:

(i) Services are for treatment of medically oriented disorders and disabilities.

(ii) Services are professionally appropriate under standards in the field, utilizing professionally appropriate methods and materials, in a professionally appropriate environment.

(iii) Services are provided with the expectation that the condition under treatment will improve in a reasonable and predictable time to the identified level.

(iv) Services are provided with a plan that explicitly states the methods to be used and the termination conditions.

(v) Services are requested for a patient suffering from CVA within 60 days of the CVA.

(5) Reauthorization

(a) When a reauthorization is necessary after the initial prior-approved sessions, a medical evaluation and documentation from the physician, as well as the therapist, must be attached to the prior authorization request. A new treatment plan is necessary defining the new goals. A new medical summary from the physician must also be attached. Additional requests should also include any supplemental data such as past treatment, progress made, family problems that may hinder progress, and a definite termination date. Medicaid physician consultants will review and evaluate requests for continued service in accordance with the process and criteria set forth in R414-21.

R414-21-10. Reimbursement for Services.

Physical therapy reimbursement procedure codes and instructions are found in the Physical Therapy Provider Manual.

KEY: [~~m~~]Medicaid
January 15, 2003
Notice of Continuation May 6, 2002
26-1-4.1
26-1-5
26-18-3

Health, Health Care Financing, Coverage and Reimbursement Policy

R414-52

Optometry Services

NOTICE OF 120-DAY (EMERGENCY) RULE
DAR FILE NO.: 25970
FILED: 01/15/2003, 19:05

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. The savings generated by eliminating optometry services to this group will enable the state to remain within budget while maintaining the integrity of the overall Medicaid program.

SUMMARY OF THE RULE OR CHANGE: In Subsection R414-52-2(2), the location of the definition of "Client" is changed to accurately reflect where it is located. The same change is made in Section R414-52-3. Also in Section R414-52-3, the phrase "except for non-pregnant adult recipients ages 21 and older" is added to exclude that group from optometry services. (DAR NOTES: A corresponding proposed amendment is under DAR No. 25976 in this issue. All the proposed changes to the Medicaid Program are found under R414-5, Emergency Rule, DAR No. 25948; R414-5, New Rule, DAR No. 25967; R414-21, Emergency Rule, DAR No. 25968; R414-21, Amendment, DAR No. 25973; R414-6, Emergency Rule, DAR No. 25969; R414-6, New Rule, DAR No. 25974; R414-52, Emergency Rule, DAR No. 25970; R414-52, Amendment, DAR No. 25976; R414-53, Emergency Rule, DAR No. 25971; and R414-53, Amendment, DAR No. 25972 in this Bulletin.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Title 58, Chapter 16a; Section 26-1-5; and Title 26, Chapter 18

ANTICIPATED COST OR SAVINGS TO:
❖ THE STATE BUDGET: Annually, the state will save $755,900 in General Fund and will lose $1,844,300 in federal matching funds.
❖ LOCAL GOVERNMENTS: No local governments are involved in dispensing optometry services.
❖ OTHER PERSONS: Annually, optometrists will lose a total of $2,600,200 in reimbursements.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Compliance costs involved with this rulemaking may involve data entry costs that should be minimal.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This change will have a negative impact on optometrists, 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. place the agency in violation of federal or state law.

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.

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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: 01/15/2003

AUTHORIZED BY: Rod L. Betit, Executive Director

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.
R414-52. Optometry Services.
R414-52-1. Authority and Purpose.

Optometry services are authorized by 42 CFR, section 440.60, October 1992 edition, which addresses medical services provided by licensed practitioners. The Optometry Program provides optometry services to meet the optometry needs of Medicaid clients.

R414-52-2. Definitions.

(1) The definitions in the Utah Optometry Practice Act, Title 58, Chapter 16(a), apply to this rule.

(2) For the purposes of this rule, "Client" has the same meaning defined in R414-1-[~~1~~]2.

R414-52-3. Client Eligibility Requirements.

Optometry services are available to Categorically and Medically Needy individuals except for non-pregnant adult recipients ages 21 and older. Definitions of Categorically and Medically Needy individuals are found in R414-1-[~~1~~]2.

R414-52-4. Service Coverage.

(1) Optometry services include the examination, evaluation, diagnosis, and treatment of visual deficiency; removal of a foreign body; and prescription of corrective lenses.

(2) The optometrist must document in the patient record that the eye examination is medically necessary.

KEY: M[~~m~~]edicaid
January 15, 2003
Notice of Continuation June 22, 1998
26-1-5
26-18-3

Health, Health Care Financing, Coverage and Reimbursement Policy
R414-53
Eyeglasses Services

NOTICE OF 120-DAY (EMERGENCY) RULE
DAR FILE NO.: 25971
FILED: 01/15/2003, 19:11

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.

SUMMARY OF THE RULE OR CHANGE: In Section R414-53-3, the location of the definitions of Categorically and Medically Needy individuals is changed to accurately reflect where they are located. Also in Section R414-53-3, the phrase "except for non-pregnant adult recipients ages 21 and older" is added to exclude eyeglasses services from that group. (DAR NOTES: A corresponding proposed amendment is DAR No. 25972 in this issue. All the proposed changes to the Medicaid Program are found under R414-5, Emergency Rule, DAR No. 25948; R414-5, New Rule, DAR No. 25967; R414-21, Emergency Rule, DAR No. 25968; R414-21, Amendment, DAR No. 25973; R414-6, Emergency Rule, DAR No. 25969; R414-6, New Rule, DAR No. 25974; R414-52, Emergency Rule, DAR No. 25970; R414-52, Amendment, DAR No. 25976; R414-53, Emergency Rule, DAR No. 25971; and R414-53, Amendment, DAR No. 25972 in this Bulletin.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Title 58, Chapter 16a; Section 26-1-5; and Title 26, Chapter 18

ANTICIPATED COST OR SAVINGS TO:
❖ THE STATE BUDGET: The state will save $69,800 in General Fund and will lose $170,200 in federal matching funds.
❖ LOCAL GOVERNMENTS: No local governments are involved in dispensing eyeglasses services.
❖ OTHER PERSONS: Eyeglasses providers will lose a total of $240,000 in reimbursements.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Compliance costs involved with this rulemaking may involve data entry costs that should be minimal.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This change will have a negative impact on providers of eyeglass services, 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. place the agency in violation of federal or state law.

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.

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THIS RULE IS EFFECTIVE ON: 01/15/2003

AUTHORIZED BY: Rod L. Betit, Executive Director

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.
R414-53. Eyeglasses Services.
R414-53-1. Authority and Purpose.

Eyeglasses are authorized by 42 CFR, 440.120(d), October 1992 edition. The Eyeglasses Program provides eyeglasses services to meet the basic vision care needs of Medicaid recipients.

R414-53-2. Definitions.

"Eyeglasses" means lenses, including frames, contact lenses, and other aids to vision that are prescribed by a physician skilled in diseases of the eye or by an optometrist.

R414-53-3. Client Eligibility Requirements.

Eyeglasses are available to Categorically and Medically Needy individuals except for non-pregnant adult recipients ages 21 and older. Definitions of Categorically and Medically Needy individuals are found in R414-1-[~~1~~]2.

R414-53-4. Service Coverage.

(1) Corrective lenses and frames may be provided based on medical need. Medical need includes a change in prescription or replacement as a result of normal lens or frame wear. Frames must be those in which lenses can be replaced readily without having to provide a new frame. Corrective lenses must be suitable for indoor and outdoor use, and for day and night use.

(2) Single vision, bifocal, or trifocal lenses, with or without slab-off prism, in clear glass or plastic, may be provided.

(3) Only the least expensive frame practicable for use, either plastic or metal, may be provided.

(4) Replacements for existing lenses or frames may be provided if the prescribing physician or optometrist declares them to be medically necessary. Eyeglasses may not be replaced more often than every two years unless the prescribing physician or optometrist declares an earlier replacement to be medically necessary. Circumstances which would warrant providing new eyeglasses or contact lenses, are a diopter change of .75 or more, or disease or damage to the eye. Eyeglasses or contact lenses may not be replaced if they were damaged through client negligence or abuse.

(5) Frames which have hearing aids placed in the earpieces may be provided by the audiologist or hearing aid provider. Lenses for these frames must be dispensed by the prescribing physician or optometrist.

(6) The following may be provided if the prescribing physician or optometrist declares them to be medically necessary:

(a) Contact lenses;

(b) Soft contact lenses;

(c) Gas permeable contact lenses;

(d) Tints for eyeglasses or contact lenses where diseases or conditions are present which render the client unusually light-sensitive;

(e) Low vision aids.

(7) The following are not provided:

(a) Additional eyeglasses such as reading glasses, distance glasses, or a "spare";

(b) Extended wear contact lenses or disposable contact lenses.

KEY: M[~~m~~]edicaid
January 15, 2003
Notice of Continuation June 22, 1998
26-1-5
26-18-3

Tax Commission, Property Tax

R884-24P-60

Age-Based Uniform Fee on Tangible Personal Property Required to be Registered with the State Pursuant to Utah Code Ann. Section 59-2-405.1

NOTICE OF 120-DAY (EMERGENCY) RULE
DAR FILE NO.: 25917
FILED: 01/06/2003, 17:08

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This section indicates how the age-based uniform fee shall be calculated, and the vehicles to which this fee applies.

SUMMARY OF THE RULE OR CHANGE: Proposed amendment changes the date on which the age-based uniform fee is calculated from the date on which the actual renewal of registration occurs to the date on which the registration period for which the individual is registering commenced.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 41-1a-216 and 59-2-407

ANTICIPATED COST OR SAVINGS TO:
❖ THE STATE BUDGET: None--Age-based uniform fees are county revenues.
❖ LOCAL GOVERNMENTS: None--The amendment will leave local government in the position it is in now.
❖ OTHER PERSONS: None--Individuals will pay the fee in effect at the beginning of the registration period for which they are registering.

COMPLIANCE COSTS FOR AFFECTED PERSONS: None--Individuals will pay the fee in effect at the beginning of the registration period for which they are registering.

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

EMERGENCY RULE REASON AND JUSTIFICATION: REGULAR RULEMAKING PROCEDURES WOULD place the agency in violation of federal or state law.

While the current rule language is a reasonable interpretation of the statute, the Tax Commission believes that proposed amendment is a better way to interpret the statute. This is because the current language will actually reward individuals that register their vehicles late (since the age-based uniform fee declines with the vehicle's age). Since a vehicle's age is determined on January 1, if the rule language is not changed immediately to reflect back to the beginning of the registration period, a taxpayer with a vehicle whose registration period expired on November 31, 2002, and whose vehicle's age reached a lower fee on January 1, 2003, will pay a lower age-based uniform fee if that taxpayer delays renewing his registration until January 2003. This will lead to lower revenues collected for county property tax purposes.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
TAX COMMISSION
PROPERTY TAX
210 N 1950 W
SALT LAKE CITY UT 84134, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Cheryl Lee at the above address, by phone at 801-297-3900, by FAX at 801-297-3919, or by Internet E-mail at clee@utah.gov

THIS RULE IS EFFECTIVE ON: 01/06/2003

AUTHORIZED BY: Pam Hendrickson, Commissioner

R884. Tax Commission, Property Tax.
R884-24P. Property Tax.
R884-24P-60. Age-Based Uniform Fee on Tangible Personal Property Required to be Registered with the State Pursuant to Utah Code Ann. Section 59-2-405.1.

A. For purposes of Section 59-2-405.1, "motor vehicle" is as defined in Section 41-1a-102, except that motor vehicle does not include motorcycles as defined in Section 41-1a-102.

B. The uniform fee established in Section 59-2-405.1 is levied against motor vehicles and state-assessed commercial vehicles classified under Class 22 - Passenger Cars, Light Trucks/Utility Vehicles, and Vans, in Tax Commission rule R884-24P- 33.

C. Personal property subject to the uniform fee imposed in Section 59-2-405 is not subject to the Section 59-2-405.1 uniform fee.

D. The following classes of personal property are not subject to the Section 59-2-405.1 uniform fee, but remain subject to the ad valorem property tax:

1. vintage vehicles;

2. state-assessed commercial vehicles not classified under Class 22 - Passenger Cars, Light Trucks/Utility Vehicles, and Vans;

3. any personal property that is neither required to be registered nor exempt from the ad valorem property tax;

4. mobile and manufactured homes;

5. machinery or equipment that can function only when attached to or used in conjunction with motor vehicles or state- assessed commercial vehicles.

E. The age of a motor vehicle or state-assessed commercial vehicle, for purposes of Section 59-2-405.1, shall be determined by subtracting the vehicle model year from the current calendar year.

F. The only Section 59-2-405.1 uniform fee due upon registration or renewal of registration is the uniform fee calculated based on the current [~~calendar year~~]registration period.

G. Centrally assessed taxpayers shall use the following formula to determine the value of locally assessed motor vehicles that may be deducted from the allocated unit valuation:

1. Divide the system value by the book value to determine the market to book ratio.

2. Multiply the market to book ratio by the book value of motor vehicles registered in Utah and subject to Section 59-2-405.1 to determine the value of motor vehicles that may be subtracted from the allocated unit value.

H. The motor vehicle of a nonresident member of the armed forces stationed in Utah may be registered in Utah without payment of the Section 59-2-405.1 uniform fee.

I. A motor vehicle belonging to a Utah resident member of the armed forces stationed in another state is not subject to the Section 59-2-405.1 uniform fee at the time of registration or renewal of registration as long as the motor vehicle is kept in the other state.

J. The situs of a motor vehicle or state-assessed commercial vehicle subject to the Section 59-2-405.1 uniform fee is determined in accordance with Section 59-2-104. Situs of purchased motor vehicles or state-assessed commercial vehicles shall be the tax area of the purchaser's domicile, unless the motor vehicle or state-assessed commercial vehicle will be kept in a tax area other than the tax area of the purchaser's domicile for more than six months of the year.

1. If an assessor discovers a motor vehicle or state-assessed commercial vehicle that is kept in the assessor's county but registered in another, the assessor may submit an affidavit along with evidence that the vehicle is kept in that county to the assessor of the county in which the vehicle is registered. Upon agreement, the assessor of the county of registration shall forward the fee collected to the county of situs within 30 working days.

2. If the owner of a motor vehicle or state-assessed commercial vehicle registered in Utah is domiciled outside of Utah, the taxable situs of the vehicle is presumed to be the county in which the uniform fee was paid, unless an assessor's affidavit establishes otherwise.

3. The Tax Commission shall, on an annual basis, provide each county assessor information indicating all motor vehicles and state-assessed commercial vehicles subject to state registration and their corresponding taxable situs.

4. Section 59-2-405.1 uniform fees received by a county that require distribution to a purchaser's domicile outside of that county shall be deposited into an account established by the Commission, pursuant to procedures prescribed by the Commission.

5. Section 59-2-405.1 uniform fees received by the Commission pursuant to J.4. shall be distributed to the appropriate county at least monthly.

K. The blind exemption provided in Section 59-2-1106 is applicable to the Section 59-2-405.1 uniform fee.

L. The veteran's exemption provided in Section 59-2-1104 is applicable to the Section 59-2-405.1 uniform fee.

M. The value of motor vehicles and state-assessed commercial vehicles to be considered part of the tax base for purposes of determining debt limitations pursuant to Article XIII, Section 14 of the Utah Constitution, shall be determined by dividing the Section 59-2-405.1 uniform fee collected by .015.

N. The provisions of this rule shall be implemented and become binding on taxpayers beginning January 1, 1999.

KEY: taxation, personal property, property tax, appraisal
January 6, 2003
59-2-405.1

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).

Administrative Services, Facilities Construction and Management
R23-4
Contract Performance Review Committee and Suspension/Debarment From Consideration for Award of State Contracts

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 25964
FILED: 01/15/2003, 16:32

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: General authority for enacting this rule is contained in Subsection 63A-5-103(1)(e) which directs the Building Board to make rules necessary to discharge its duties and those of the Division of Facilities Construction and Management. Subsection 63-56-14(2) directs the Building Board to make rules governing the procurement by the Division of construction, architect-engineer services, and leases of real property. The provisions relating to the Contract Performance Review Committee implement the authority given to create this committee by Subsection 63A-5-206(6). The provisions relating to Suspension/Debarment implement the provisions of Section 63-56-48 of the State Procurement Code.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The continuation of the rule is necessary to comply with and implement the statutory provisions referenced above. The rule provides procedures for the conduct of the Contract Performance Review Committee and the suspension and debarment of vendors.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
ADMINISTRATIVE SERVICES
FACILITIES CONSTRUCTION AND MANAGEMENT
Room 4110 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:
Kenneth Nye at the above address, by phone at 801-538-3284, by FAX at 801-538-3378, or by Internet E-mail at knye@utah.gov

AUTHORIZED BY: Joseph A. Jenkins, Director

EFFECTIVE: 01/15/2003

Administrative Services, Facilities Construction and Management
R23-5
Contingency Funds

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 25955
FILED: 01/15/2003, 14:59

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: Authority for enacting this rule is contained in Subsection 63A-5-103(1)(e) which directs the Building Board to make rules necessary for the discharge of its duties and those of the Division of Facilities Construction and Management. The contingency funds consist of the

Statewide Contingency Reserve and the Project Reserve which are governed by Subsections 63A-5-209(1)(c) and 63A-5-209(2), respectively.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The continuation of this rule is necessary to provide requirements and procedures for the funding and use of these reserve accounts and to provide requirements for reporting to the Building Board.

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

ADMINISTRATIVE SERVICES
FACILITIES CONSTRUCTION AND MANAGEMENT
Room 4110 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:
Kenneth Nye at the above address, by phone at 801-538-3284, by FAX at 801-538-3378, or by Internet E-mail at knye@utah.gov

AUTHORIZED BY: Joseph A. Jenkins, Director

EFFECTIVE: 01/15/2003

Administrative Services, Facilities Construction and Management
R23-6
Value Engineering and Life Cycle Costing of State-Owned Facilities Rules and Regulations

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 25956
FILED: 01/15/2003, 15:14

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: General authority for enacting this rule is contained in Subsection 63A-5-103(1)(e) which directs the Building Board to make rules necessary for the discharge of its duties and those of the Division of Facilities Construction and Management. In addition, Subsection 63A-5-103(1)(f) requires the Building Board to establish requirements for the life-cycle costing of state buildings. Additional provisions regarding the life-cycle costing of state buildings are contained in Subsection 63A-5-206(8) which also directs the Building Board to make rules to implement this subsection.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The continuation of this rule is required in order to comply with Subsection 63A-5-103(1)(f) which requires the Building Board to establish requirements for the life-cycle costing of state buildings. The rule is also necessary to provide procedures for meeting the statutory requirements.

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

ADMINISTRATIVE SERVICES
FACILITIES CONSTRUCTION AND MANAGEMENT
Room 4110 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:
Kenneth Nye at the above address, by phone at 801-538-3284, by FAX at 801-538-3378, or by Internet E-mail at knye@utah.gov

AUTHORIZED BY: Joseph A. Jenkins, Director

EFFECTIVE: 01/15/2003

Administrative Services, Facilities Construction and Management
R23-9
Building Board State/Local Cooperation Policy

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 25957
FILED: 01/15/2003, 15:29

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: Authority for enacting this rule is contained in Subsection 63A-5-103(1)(e) which directs the Building Board to make rules necessary for the discharge of its duties and those of the Division of Facilities Construction

and Management. This rule implements statutory provisions in Section 63A-5-206 regarding the relative roles of the Division and local governments for construction taking place on state property.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The continuation of this rule is necessary to provide guidance and procedures to the Division and local governments to achieve the coordination called for in the statute.

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

ADMINISTRATIVE SERVICES
FACILITIES CONSTRUCTION AND MANAGEMENT
Room 4110 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:
Kenneth Nye at the above address, by phone at 801-538-3284, by FAX at 801-538-3378, or by Internet E-mail at knye@utah.gov

AUTHORIZED BY: Joseph A. Jenkins, Director

EFFECTIVE: 01/15/2003

Administrative Services, Facilities Construction and Management

R23-10

Naming of State Buildings

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 25962
FILED: 01/15/2003, 16:15

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: Authority for enacting this rule is contained in Subsection 63A-5-103(1)(e) which directs the Building Board to make rules necessary for the discharge of its duties and those of the Division of Facilities Construction and Management.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The continuation of this rule is necessary to provide guidance and procedures to the Division and other state entities regarding the naming of state buildings.

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

ADMINISTRATIVE SERVICES
FACILITIES CONSTRUCTION AND MANAGEMENT
Room 4110 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:
Kenneth Nye at the above address, by phone at 801-538-3284, by FAX at 801-538-3378, or by Internet E-mail at knye@utah.gov

AUTHORIZED BY: Joseph A. Jenkins, Director

EFFECTIVE: 01/15/2003

Administrative Services, Facilities Construction and Management

R23-21

Division of Facilities Construction and Management Lease Procedures

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 25959
FILED: 01/15/2003, 15:42

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: General authority for enacting this rule is contained in Subsection 63A-5-103(1)(e) which directs the Building Board to make rules necessary to discharge its duties and those of the Division of Facilities Construction and Management. Subsection 63-56-14(2) directs the Building Board to make rules governing the procurement of leased real property by the Division. Statutes governing the Division's leasing authority are contained in Title 63A, Chapter 5, Part 3, Division of Facilities Construction

and Management Leasing. Subsection 63A-5-302(1) requires the Division to comply with the provisions of the Utah Procurement Code in leasing real property.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The continuation of this rule is necessary to provide additional details, procedures, and dollar limits to the framework of the Procurement Code in order to fully address procurement procedures and requirements. The Procurement Code contains a number of provisions requiring that rules be enacted to establish dollar limits and procedures in the implementation of various procurement practices.

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

ADMINISTRATIVE SERVICES
FACILITIES CONSTRUCTION AND MANAGEMENT
Room 4110 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:
Kenneth Nye at the above address, by phone at 801-538-3284, by FAX at 801-538-3378, or by Internet E-mail at knye@utah.gov

AUTHORIZED BY: Joseph A. Jenkins, Director

EFFECTIVE: 01/15/2003

Administrative Services, Facilities Construction and Management
R23-24
Capital Projects Utilizing Non-appropriated Funds

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 25960
FILED: 01/15/2003, 15:47

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: Authority for enacting this rule is contained in Subsection 63A-5-103(1)(e) which directs the Building Board to make rules necessary to discharge its duties and those of the Division of Facilities Construction and Management (DFCM). Subsection 63A-5-206(2) requires DFCM to manage facility construction projects regardless of funding source. This rule provides financial requirements for those projects with funding coming from sources other than appropriations to DFCM.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The continuation of this rule is necessary to provide financial requirements for those projects with funding coming from sources other than appropriations to DFCM.

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

ADMINISTRATIVE SERVICES
FACILITIES CONSTRUCTION AND MANAGEMENT
Room 4110 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:
Kenneth Nye at the above address, by phone at 801-538-3284, by FAX at 801-538-3378, or by Internet E-mail at knye@utah.gov

AUTHORIZED BY: Joseph A. Jenkins, Director

EFFECTIVE: 01/15/2003

Commerce, Occupational and Professional Licensing
R156-22
Professional Engineers and Professional Land Surveyors Licensing Act Rules

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 25922
FILED: 01/13/2003, 12:14

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: Title 58, Chapter 22, provides for the licensure of professional engineers and professional land surveyors. Subsection 58-1-106(1) provides that the Division may adopt and enforce rules to administer

Title 58. Subsection 58-22-201(3) provides that the Professional Engineers and Professional Land Surveyors Licensing Board's duties and responsibilities shall be in accordance with Section 58-1-202. Subsection 58-1-202(1)(a) provides that one of the duties of each board is to recommend appropriate rules to the division director. This rule was enacted to clarify the provisions of Title 58, Chapter 22, with respect to professional engineers and professional land surveyors.

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 this rule was last reviewed in 1998, it has been amended four times. In early 1998, the rule was amended based on amendments requested by the Administrative Rules Review Committee concerning unlicensed employees. An April 21, 1998, hearing was held regarding the proposed amendments. As a result of the rule hearing and further Division and Board review, the Division filed a change in proposed rule with the amendments being made effective on July 16, 1998. The Division received no written comments with respect to the rule filing. In March 2001, the rule was amended regarding foreign educated applicants upon advice the Division received from the Attorney General's Office. A March 20, 2001, hearing was held regarding the proposed amendments. The Division received a January 23, 2001, letter from Ed McDonald, an individual who would be directly affected by the proposed amendments regarding examinations. As a result of the public hearing and Mr. McDonald's letter, the Division filed a change in proposed rule which delayed the implementation of the amendments affecting examinations for one year. These amendments were made effective on May 17, 2001. The Division filed two additional amendment filings which were made effective on December 4, 2001, and August 1, 2002. The Division received no written comments with respect to those two filings.

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 as it clarifies the provisions of Title 58, Chapter 22, with respect to professional engineers and professional land surveyors.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:
Douglas Vilnius at the above address, by phone at 801-530-6621, by FAX at 801-530-6511, or by Internet E-mail at dvilnius@utah.gov

AUTHORIZED BY: J. Craig Jackson, Director

EFFECTIVE: 01/13/2003

Commerce, Occupational and Professional Licensing
R156-59
Professional Employer Organization Act Rules

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 25920
FILED: 01/09/2003, 13:19

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 58, Chapter 59, provides for the licensure of professional employer organizations. Subsection 58-1-106(1) provides that the Division may adopt and enforce rules to administer Title 58. Subsection 58-59-201(3)(a) provides that the Professional Employer Organization Board's duties and responsibilities shall be in accordance with Section 58-1-202. Subsection 58-1-202(1)(a) provides that one of the duties of each board is to recommend appropriate rules to the division director. This rule was enacted to clarify the provisions of Title 58, Chapter 59, with respect to professional employer organizations.

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 this rule was last reviewed in 1998, it has been amended five times. In February 1998, the rule was substantially amended to put the rule into the Division's standard rule format. A February 24, 1998, hearing was held regarding the proposed amendments. Following the public hearing and further Division and Board review, the Division filed a change in proposed rule filing which was made effective on May 4, 1998. The Division received a letter April 29, 1998, from Michael A. Wozniak with TTC Illinois. Some of Mr. Wozniak's comments in his letter were directed to sections of the rule that were not being amended in the filing. The Division replied to Mr. Wozniak informing him that all amendments, including the change in proposed rule filing changes, had been made effective on May 4, 1998. The Division filed amendments which were made effective on April 17, 2000; July 10, 2000; September 18, 2000; and August 1, 2002. The Division received no written comments with respect to these rule filings.

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 as it clarifies the provisions of Title 58, Chapter 59, with respect to professional employer organizations.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
COMMERCE
OCCUPATIONAL AND PROFESSIONAL LICENSING
HEBER M WELLS BLDG
160 E 300 S
SALT LAKE CITY UT 84111-2316, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Dan S. Jones at the above address, by phone at 801-530-6720, by FAX at 801-530-6511, or by Internet E-mail at dsjones@utah.gov

AUTHORIZED BY: J. Craig Jackson, Director

EFFECTIVE: 01/09/2003

▼ ▼

Education, Administration
R277-516
Library Media Certificates and Programs

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 25925
FILED: 01/14/2003, 13:03

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: Subsection 53A-1-402(1)(a) directs the State Board of Education to make rules regarding the licensing of educators and ancillary personnel who provide direct student 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: 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 still necessary under the law to provide rules for licensing and endorsement of educators in specific fields and ancillary personnel who provide direct student services so this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
EDUCATION
ADMINISTRATION
250 E 500 S
SALT LAKE CITY UT 84111-3272, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Carol Lear at the above address, by phone at 801-538-7835, by FAX at 801-538-7768, or by Internet E-mail at clear@usoe.k12.ut.us

AUTHORIZED BY: Carol Lear, Coordinator School Law and Legislation

EFFECTIVE: 01/14/2003

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Education, Administration
R277-518
Vocational-Technical Certificates

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 25926
FILED: 01/14/2003, 13:04

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 53A-1-402(1)(a) directs the State Board of Education to make rules regarding the licensing of educators and ancillary personnel who provide direct student 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: 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 still necessary under the law to provide rules for licensing of educators and ancillary personnel who provide direct student services so this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
EDUCATION
ADMINISTRATION
250 E 500 S
SALT LAKE CITY UT 84111-3272, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Carol Lear at the above address, by phone at 801-538-7835, by FAX at 801-538-7768, or by Internet E-mail at clear@usoe.k12.ut.us

AUTHORIZED BY: Carol Lear, Coordinator School Law and Legislation

EFFECTIVE: 01/14/2003

Education, Administration
R277-600
Student Transportation Standards and Procedures

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 25928
FILED: 01/14/2003, 13:06

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: Subsection 53A-1-402(1)(d) requires the State Board of Education to make rules and minimum standards regarding state reimbursed bus routes, bus safety and operational requirements, and other transportation needs.

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 still necessary under the law to provide rules regarding state reimbursed bus routes, bus safety and operational requirements, and other transportation needs so this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
EDUCATION
ADMINISTRATION
250 E 500 S
SALT LAKE CITY UT 84111-3272, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Carol Lear at the above address, by phone at 801-538-7835, by FAX at 801-538-7768, or by Internet E-mail at clear@usoe.k12.ut.us

AUTHORIZED BY: Carol Lear, Coordinator School Law and Legislation

EFFECTIVE: 01/14/2003

Education, Administration
R277-605
Coaching Standards and Athletic Clinics

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 25931
FILED: 01/14/2003, 13:13

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 53A-1-401(3) allows the State Board of Education to adopt rules in accordance with its responsibilities.

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 continues to be necessary because schools and educators who also coach and para-educators who coach must follow state and district mandated rules and procedures to provide the greatest safety possible for student athletes and protect local school boards from unnecessary liability for student injuries.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
EDUCATION
ADMINISTRATION
250 E 500 S
SALT LAKE CITY UT 84111-3272, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Carol Lear at the above address, by phone at 801-538-7835, by FAX at 801-538-7768, or by Internet E-mail at clear@usoe.k12.ut.us

AUTHORIZED BY: Carol Lear, Coordinator School Law and Legislation

EFFECTIVE: 01/14/2003

Education, Administration
R277-610
Released-Time Classes for Religious Instruction

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 25932
FILED: 01/14/2003, 13:21

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 53A-1-402(1) directs the State Board of Education to adopt minimum standards for public schools.

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 is necessary to give school districts and schools specific directives consistent with changing interpretations of the First Amendment.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
EDUCATION
ADMINISTRATION
250 E 500 S
SALT LAKE CITY UT 84111-3272, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Carol Lear at the above address, by phone at 801-538-7835, by FAX at 801-538-7768, or by Internet E-mail at clear@usoe.k12.ut.us

AUTHORIZED BY: Carol Lear, Coordinator School Law and Legislation

EFFECTIVE: 01/14/2003

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Education, Administration
R277-615
Foreign Exchange Students

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 25933
FILED: 01/14/2003, 13:22

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: Section 53A-1-401(3) which allows the State Board of Education to adopt rules in accordance with its responsibilities, and Section 53A-2-206 which provides that the State Board of Education approve agencies sponsoring exchange students.

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 law continues to provide for an exchange student program where rules are necessary and until the current supervision and funding process is changed by the Legislature, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
EDUCATION
ADMINISTRATION
250 E 500 S
SALT LAKE CITY UT 84111-3272, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Carol Lear at the above address, by phone at 801-538-7835, by FAX at 801-538-7768, or by Internet E-mail at clear@usoe.k12.ut.us

AUTHORIZED BY: Carol Lear, Coordinator School Law and Legislation

EFFECTIVE: 01/14/2003

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Education, Administration
R277-700
The Elementary and Secondary School Core Curriculum

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 25935
FILED: 01/14/2003, 13:22

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: Subsections 53A-1-401(1)(b) and (c) direct the State Board of Education to make rules regarding competency levels, graduation requirements, curriculum, and instructional requirements.

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 law continues to require the State Board of Education to have rules regarding competency levels, graduation requirements, curriculum and instructional requirements so this rule should be continued.

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

EDUCATION
ADMINISTRATION
250 E 500 S
SALT LAKE CITY UT 84111-3272, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Carol Lear at the above address, by phone at 801-538-7835, by FAX at 801-538-7768, or by Internet E-mail at clear@usoe.k12.ut.us

AUTHORIZED BY: Carol Lear, Coordinator School Law and Legislation

EFFECTIVE: 01/14/2003

Education, Administration
R277-702
Procedures for the Utah General Educational Development Certificate

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 25936
FILED: 01/14/2003, 13:24

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 53A-1-401(1)(b) directs the State Board of Education to adopt rules regarding access to programs, competency levels, and graduation requirements.

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 law continues to require the State Board of Education to adopt rules regarding access to programs, competency levels, and graduation requirements so this rule should be continued.

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

EDUCATION
ADMINISTRATION
250 E 500 S
SALT LAKE CITY UT 84111-3272, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Carol Lear at the above address, by phone at 801-538-7835, by FAX at 801-538-7768, or by Internet E-mail at clear@usoe.k12.ut.us

AUTHORIZED BY: Carol Lear, Coordinator School Law and Legislation

EFFECTIVE: 01/14/2003

Education, Administration
R277-709
Education Programs Serving Youth in Custody

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 25937
FILED: 01/14/2003, 13:25

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: Subsection 53A-1-401(3) allows the State Board of Education to adopt rules in accordance with its responsibilities, and Subsection 53A-1-403(1) makes the State Board of Education directly responsible for the education of youth in custody.

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: Under Subsection 53A-1-4-1(3), the State Board of Education has authority to adopt rules in accordance with its responsibilities and continues to need this rule as it is responsible for the education of youth in custody.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
EDUCATION
ADMINISTRATION
250 E 500 S
SALT LAKE CITY UT 84111-3272, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Carol Lear at the above address, by phone at 801-538-7835, by FAX at 801-538-7768, or by Internet E-mail at clear@usoe.k12.ut.us

AUTHORIZED BY: Carol Lear, Coordinator School Law and Legislation

EFFECTIVE: 01/14/2003

Education, Administration
R277-718
Utah Career Teaching Scholarship Program

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 25938
FILED: 01/14/2003, 13:26

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 53B-10-103 directs the State Board of Education and State Board of Regents to have criteria, policies, and procedures in place for the State Board of Regents to administer the Terrill H. Bell Teaching Incentive Loans Fund.

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: A rule continues to be necessary because the Program continues to exist and requires criteria, policies, and procedures be in place for distribution of funds. The law requires collaboration between the Board of Regents and the State Board of Education.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
EDUCATION
ADMINISTRATION
250 E 500 S
SALT LAKE CITY UT 84111-3272, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Carol Lear at the above address, by phone at 801-538-7835, by FAX at 801-538-7768, or by Internet E-mail at clear@usoe.k12.ut.us

AUTHORIZED BY: Carol Lear, Coordinator School Law and Legislation

EFFECTIVE: 01/14/2003

Education, Administration
R277-721
Deadline for CACFP Sponsor Participation in Food Distribution Program

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 25929
FILED: 01/14/2003, 13:08

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: Subsection 53A-1-401(3) allows the State Board of Education to adopt rules in accordance with its responsibilities, and Subsection 53A-1-402(3) allows the State Board of Education to administer funds made available through programs of the federal government.

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 State Board of Education continues to distribute funds under this program and needs a rule to establish deadlines for CACFP sponsors to choose between receiving commodities or cash in-lieu-of commodities so this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
EDUCATION
ADMINISTRATION
250 E 500 S
SALT LAKE CITY UT 84111-3272, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Carol Lear at the above address, by phone at 801-538-7835, by FAX at 801-538-7768, or by Internet E-mail at clear@usoe.k12.ut.us

AUTHORIZED BY: Carol Lear, Coordinator School Law and Legislation

EFFECTIVE: 01/14/2003

Education, Administration
R277-722
Withholding Payments and Commodities in the CACFP

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 25930
FILED: 01/14/2003, 13:09

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 53A-1-401(3) allows the State Board of Education to adopt rules in accordance with its responsibilities, and Subsection 53A-1-402(3) permits the State Board of Education to administer funds made available through programs of the federal government.

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 State Board of Education continues to distribute funds for the CACFP program and needs a rule in place with criteria and procedures for CACFP participants who are delinquent with required payments so this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
EDUCATION
ADMINISTRATION
250 E 500 S
SALT LAKE CITY UT 84111-3272, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Carol Lear at the above address, by phone at 801-538-7835, by FAX at 801-538-7768, or by Internet E-mail at clear@usoe.k12.ut.us

AUTHORIZED BY: Carol Lear, Coordinator School Law and Legislation

EFFECTIVE: 01/14/2003

Education, Administration
R277-730
Alternative High School Curriculum

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 25939
FILED: 01/14/2003, 13:28

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: Subsection 53A-1-402(1) directs the State Board of Education to adopt minimum standards for public schools to include curriculum and instruction requirements. Alternative high schools are specialized public schools.

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 law continues to require the State Board of Education to adopt minimum standards for public schools to include curriculum and instruction requirements. Alternative high schools are specialized public schools so this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
EDUCATION
ADMINISTRATION
250 E 500 S
SALT LAKE CITY UT 84111-3272, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Carol Lear at the above address, by phone at 801-538-7835, by FAX at 801-538-7768, or by Internet E-mail at clear@usoe.k12.ut.us

AUTHORIZED BY: Carol Lear, Coordinator School Law and Legislation

EFFECTIVE: 01/14/2003

Environmental Quality, Radiation Control
R313-15
Standards for Protection Against Radiation

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 25943
FILED: 01/14/2003, 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: Subsection 19-1-106(1) created the Radiation Control Board within the Department of Environmental Quality. Subsection 19-3-104(3) provided that the Board may make rules necessary for controlling exposure to sources of radiation that constitute a significant health hazard and to meet the requirements of federal law relating to radiation control.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: Several comments have been received from interested persons since the last five-year review. The comments related to the following subsection and sections: R313-15-1201(1), R313-15-502, and R313-15-208. Comments related to the proposed changes to Subsection R313-15-1201(1), Reports of Stolen, Lost, or Missing Licensed or Registered Sources of Radiation, were brought before the Radiation Control Board meeting on January 16, 1998. The comment received was that Section R313-15-1201 should not be changed but that it should stay as it is currently written because it provides flexibility for determining when a report is required and establishes circumstances when a report should not be submitted. The Division of Radiation Control staff supported the comments and recommended that the original rule be retained as the regulatory requirement. After reviewing comments on the proposed changes, it was also noted that a citation listed in Subsection R313-15-208(3)(b)(i) was incorrect. The action taken by the Board resolved both of these issues. Nine separate registrants of x-ray systems petitioned the Utah Radiation Control Board in 2001 for exemptions from the requirements of Section R313-15-502, Conditions Requiring Individual Monitoring of External and Internal Occupational Dose. As a result of these requests, a provision has been added to allow registrants, who use medical fluoroscopic equipment, an alternative way of demonstrating compliance with this rule. The provision states that the registrant does not need to supply and require the use of personnel monitoring devices if the registrant had conducted tests of the radiation environment in accordance with the provisions of Section R313-15-501. The registrant must demonstrate that the working environment an individual encounters will not likely result in a dose in excess of ten percent of the limits in Subsection R313-15-201(1). Comments were received in a letter dated November 16, 2001, from the Nuclear Regulatory Commission (NRC) related to Section R313-15-208, Dose to an Embryo/Fetus. Proposed changes to Section R313-15-208 were sent to the NRC on June 6, 2001, for NRC comment. During a telephone conversation with the Division's management, the NRC representative indicated that there were no comments related to the proposed changes in Section R313-15-208. The proposed rule was approved at the September Board meeting and became effective on September 14, 2001. The NRC comment received in the November 16, 2001, letter, after the rule had been adopted, stated that Section R313-15-208 adds the phrase "mother's lower torso region" to the instructions for calculating the dose to the fetus. The NRC letter stated that this amount could be different from the amount calculated by 10 CFR 20.1208. The NRC stated that Subsection R313-15-208(3)(b) needs to be revised to reflect 10 CFR 20.1208(c)(1) and (2) to meet compatibility. Section R313-15-208 is based on the Suggested State Regulations (SSR) of the Conference of Radiation Control Program Directors (CRCPD). The NRC determined that Section R313-15-208 was not compatible with NRC requirements in 10 CFR 20.1208. The NRC had contacted the Chair of the CRCPD SR-2 SSR Working Group and determined that the section of the SSR, which was found to be incompatible, is presently under revision. Rulemaking to amend Section R313-15-208 will commence upon completion of the revision of the SSR's and review and approval of the SSR's revision by the NRC.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule must be continued because it establishes the standards for protection against ionizing radiation. The requirements are necessary to control the receipt, possession, use, transfer, and disposal of sources of radiation by any licensee or registrant so that the total radiation dose to an individual, including doses resulting from all sources of radiation other than background radiation, do not exceed established standards for protection against radiation. The rule is also needed to meet the requirements of federal law relating to radiation control.

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

ENVIRONMENTAL QUALITY
RADIATION CONTROL
Room 212
168 N 1950 W
SALT LAKE CITY UT 84116-3085, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Susan Giddings at the above address, by phone at 801-536-4259, by FAX at 801-533-4097, or by Internet E-mail at sgiddings@utah.gov

AUTHORIZED BY: William Sinclair, Director

EFFECTIVE: 01/14/2003

Health, Health Care Financing, Coverage and Reimbursement Policy
R414-13
Psychology Services

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 25907
FILED: 01/03/2003, 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: The psychology program is an optional Medicaid service authorized by 42 USC, 1396d(a)(6), 1994 ed.; and 42 CFR 440.60(a), October 1993 ed., which are adopted and incorporated by reference.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: During the review process, it was determined that this rule is no longer necessary because its provisions are fully contained in the Medicaid Provider Manuals. Therefore, it is the department's intention to repeal this rule in the near future. In the meantime, we support continuing this rule.

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

DIRECT QUESTIONS REGARDING THIS RULE TO:
Ross Martin or Karen Ford at the above address, by phone at 801-538-6592 or 801-538-6637, by FAX at 801-538-6099 or 801-538-6099, or by Internet E-mail at rmartin@utah.gov or kford@utah.gov

AUTHORIZED BY: Rod L. Betit, Executive Director

EFFECTIVE: 01/03/2003

Health, Health Systems Improvement, Child Care Licensing
R430-6
Criminal Background Screening

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 25921
FILED: 01/10/2003, 08:38

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: Title 26, Chapter 39, creates the Child Care Licensing Act and requires the Department to make and enforce rules. Section 26-39-107 requires the following rulemaking: (3) An owner, director, member of the governing body, employee, or other provider of care who has been convicted of a misdemeanor may not provide child care or operate a residential certificate or licensed child care program, except that: (a) the department may, by rule, exclude specified misdemeanors that do not disqualify an individual under this section; and (b) the executive director may consider and approve individual cases in accordance with criteria established by 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: This rule became effective November 14, 1997. In August 1998, the rule was amended based on the S.B. 168 Child Abuse Database Amendments and S.B. 68 Child Care Licensing Amendments which added the requirement to screen residential certified providers and amended the access to the management information system to determine substantiated findings of child abuse and neglect. In July 2000, the Legislature's Administrative Rules Review Committee provided comments to the rule filing made on May 1, 2000. Representative Stevens expressed concerns that not allowing volunteers to count in the staff to child ratios may cause barriers to increasing access to child care programs. The committee requested the department and its advisory committee to examine differences between programs aimed at infants as opposed to older children; consider ways to decrease annual costs to those who work in the profession; and report back by October 2000. The rule filing for May 1, 2000, was allowed to lapse, and after receiving public comments, a new rule was filed September 18, 2000. No other comments have been received since that filing. However, with the passage of Second Substitute S.B. 17 in 2002, rulemaking actions have been filed to coordinate the language with the "supported finding" definition and licensing information system maintained by the Department of Human

Services. (DAR NOTE: A proposed amendment to Rule R430-6, DAR No. 25865, appears in the January 15, 2003, issue of the Bulletin. S.B. 17 is found at UT L 2002 Ch 283, and was effective May 6, 2002.)

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Rule R430-6 is the rule establishing the criteria for excluding individuals from providing child care if they fail the criminal background screening or have a supported finding on the licensing database. Continuation of the rule is required to ensure that the public and providers know which circumstances may be cause for a denial of employment or to be a volunteer in a licensed or certified child care program.

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: 01/10/2003

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Health, Health Systems Improvement, Child Care Licensing

R430-100

Child Care Center

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 25944
FILED: 01/15/2003, 09:09

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. Subsection 26-39-104 requires the following rulemaking: (1) With regard to child care programs licensed pursuant to this chapter, the department may: (a) make and enforce rules to implement the provisions of this chapter and, as necessary to protect children's common needs for a safe and healthy environment, to provide for: (i) adequate facilities and equipment; and (ii) competent caregivers considering the age of the children and the type of program offered by the licensee.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: This rule became effective November 14, 1997. In 1997, H.B. 113 transferred the authority to license child care programs from the Department of Human Services to the Utah Department of Health, Bureau of Licensing. There have been five amendments to the rule since that time. On January 27, 1998, new rules defined standards for administration, personnel records, staffing, ratios, child health, parent notification and security activities, and medication management. No comments were received. In 1998, seven hearings were held statewide between November 29, 1998, and August 19, 1998, to receive public comment on the rule after passage of S.B. 26 created a new residential certificate category. The major amendments included separating out the standards that apply to Family Licensed providers into a separate rule and adding clarifying language to Rule R430-100. In February 1999, the rule was amended to include the requirement to post diapering procedures, which was omitted in the August 1998 rule change. No comments were received. In February 2000, the Utah Private Child Care Association presented nine rule changes to the center rules. In May 2000, proposed rule changes were circulated to interested parties. By June 2000, 55 comments were received supporting and opposing rule changes to the Child Care Center rules. In October and November, third and fourth drafts of the rule changes were circulated to interested parties and a general consensus was reached on the content. One comment was received during the filing period opposing the elimination of the physical exam requirement and supporting the group size requirement. The final rule amendment was February 15, 2002, when the Administrative Rule Review Committee and the Attorney General's Office issued an opinion, which requires Child Care Centers to comply with the Section 53-5-701 Concealed Weapons permit. No written comments were received.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Rule R430-100 establishes the minimum health and safety standards for operating a child care center. Continuation of the rule is required to ensure that the public is able to understand the minimum standards to expect in a licensed child care center to provide a safe environment for children. The Department replied to public comments by letter to ensure that the providers and public understand the limits to the authority to regulate providers. In licensing and regulating child care programs, the department shall reasonably balance the benefits and burdens of each regulation and, by rule, provide for a range of licensure, depending upon the needs and different levels and types of child care provided.

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: 01/15/2003

Natural Resources, Administration

R634-1

Americans With Disabilities Complaint Procedure

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 25950
FILED: 01/15/2003, 14:15

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 the authority of Section 63-46a-3 and is administered in accordance with 28 CFR 35.107, whereby the Department of Natural Resources (DNR) adopts, defines, and publishes within this rule complaint procedures providing for prompt and equitable resolution of complaints filed in accordance with Title II of the Americans With Disabilities 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: DNR has not received any written comments, either in support or opposition to Rule R634-1. To date, DNR has not received any complaints filed in accordance with this rule and Title II of the Americans With Disabilities Act. However, the complaint procedures adopted therein will provide the procedures for the prompt and equitable resolution of complaints.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: As stated above, DNR has not received any complaints filed in accordance with this rule and Title II of the Americans With Disabilities Act. However, the complaint procedures adopted therein will provide the procedures for the prompt and equitable resolution of complaints in accordance with 28 CFR 35.107. Continuation of this rule is necessary to provide complaint procedures for prompt and equitable resolutions of complaints filed in accordance with Title II of the Americans With Disabilities Act.

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

NATURAL RESOURCES
ADMINISTRATION
Room 3710
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 or Betty Barela at the above address, by phone at 801-538-4707 or 801-538-7201, by FAX at 801-538-4745 or 801-538-7315, or by Internet E-mail at debbiesundell@utah.gov or bettytbarela@utah.gov

AUTHORIZED BY: Robert Morgan, Executive Director

EFFECTIVE: 01/15/2003

End of the Five-Year Notices of Review and Statements of Continuation Section

NOTICES OF EXPIRED RULES

Rulewriting agencies are required by law to review each of their administrative rules within five years of the date of the rule's original enactment or the date of last review (*Utah Code* Section 63-46a-9 (1996)). If the agency finds that it will not meet the deadline for review of the rule (the five-year anniversary date), it may file an extension with the Division of Administrative Rules (Division). However, if the agency fails to file either the review or the extension by the five-year anniversary date of the rule, the rule expires. Upon expiration of the rule, the Division is required to remove the rule from the *Utah Administrative Code*. The agency may no longer enforce the rule, and it must follow regular rulemaking procedures to replace the rule if necessary.

The rules listed below were *not* reviewed in accordance with Section 63-46a-9 (1996). These rules have expired and have been removed from the *Utah Administrative Code*. The expiration of administrative rules for failure to comply with the five-year review requirement is governed by *Utah Code* Subsection 63-46a-9(8) (1996).

Community and Economic Development

Community Development, Energy Services

No. 25909: R203-1. Utah Clean Fuels Loan Program.
Enacted or Last Five-Year Review: 12/30/97 (No. 19770, Filed 08/12/97 at 2:35 p.m., Published 09/01/97)
Expired: 12/31/2002

Insurance

Administration

No. 25908: R590-183. Title Plant Rule.
Enacted or Last Five-Year Review: 01/01/98 (No. 19778 (CPR), Filed 10/30/97 at 4:21 p.m., Published 11/15/97)
Expired: 01/02/2003

(**DAR Note:** Insurance, Administration will reenact this rule, see the proposed new rule filed under DAR No. 25942 in this *Bulletin*.)

End of the Notices of Expired Rules 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
Facilities Construction and Management
No. 25639 (R&R): R23-3. Authorization of Programs for Capital Development Projects.
Published: December 1, 2002
Effective: January 2, 2003

No. 25640 (REP): R23-8. Planning Fund Use.
Published: December 1, 2002
Effective: January 2, 2003

Commerce
Administration
No. 25624 (AMD): R151-14. New Automobile Franchise Act Rules.
Published: December 1, 2002
Effective: January 2, 2003

No. 25649 (AMD): R151-33. Pete Suazo Utah Athletic Commission Act Rule.
Published: December 15, 2002
Effective: January 15, 2003

No. 25724 (NEW): R151-35. Powersport Vehicle Franchise Act Rule.
Published: December 15, 2002
Effective: January 15, 2003

Occupational and Professional Licensing
No. 25629 (AMD): R156-60a. Social Worker Licensing Act Rules.
Published: December 1, 2002
Effective: January 2, 2003

Community and Economic Development
Community Development, History
No. 25630 (AMD): R212-1. Adjudicative Proceedings.
Published: December 1, 2002
Effective: January 6, 2003

No. 25570 (AMD): R212-1. Adjudicative Proceedings.
Published: November 15, 2002
Effective: January 6, 2003

Education
Administration
No. 25726 (AMD): R277-470. Charter Schools.
Published: December 15, 2002
Effective: January 15, 2003

No. 25647 (NEW): R277-611. Medical Recommendations by School Personnel to Parents.
Published: December 1, 2002
Effective: January 3, 2003

No. 25648 (AMD): R277-705. Secondary School Completion and Diplomas.
Published: December 1, 2002
Effective: January 3, 2003

Applied Technology Education (Board for), Rehabilitation
No. 25646 (AMD): R280-203. Certification Requirements for Interpreters for the Hearing Impaired.
Published: December 1, 2002
Effective: January 3, 2003

Environmental Quality
Air Quality
No. 25495 (AMD): R307-121. General Requirements: Eligibility of Vehicles That Use Cleaner Burning Fuels or Conversion of Vehicles and Special Fuel Mobile Equipment To Use Cleaner Burning Fuels for Corporate and Individual Income Tax Credits..
Published: November 1, 2002
Effective: January 9, 2003

Environmental Response and Remediation
No. 25116 (AMD): R311-401-2. Hazardous Substances Priority List.
Published: August 15, 2002
Effective: October 1, 2002
(DAR NOTE: Due to a computer error, this notice was not published after it became effective (see Editor's Note in this *Bulletin*.))

.Water Quality
No. 25203 (AMD): R317-4-3. Onsite Wastewater Systems General Requirements.
Published: September 15, 2002
Effective: January 10, 2003

Health
Health Systems Improvement, Licensing
No. 25452 (AMD): R432-5. Nursing Facility Construction.
Published: November 1, 2002
Effective: January 15, 2003

Insurance
Administration
No. 25643 (AMD): R590-160. Administrative Proceedings.
Published: December 1, 2002
Effective: January 9, 2003

No. 25626 (AMD): R590-172. Notice to Uninsurable Applicants for Health Insurance.
Published: December 1, 2002
Effective: January 9, 2003

No. 25093 (CPR): R590-215. Permissible Arbitration Provisions for Individual and Group Health Insurance.
Published: December 1, 2002
Effective: January 9, 2003

Natural Resources
Wildlife Resources
No. 25720 (AMD): R657-5. Taking Big Game.
Published: December 15, 2002
Effective: January 15, 2003

No. 25360 (AMD): R657-13. Taking Fish and Crayfish.
Published: October 15, 2002
Effective: January 1, 2003

No. 25721 (AMD): R657-17. Lifetime Hunting and Fishing License.
Published: December 15, 2002
Effective: January 15, 2003

No. 25722 (AMD): R657-38. Dedicated Hunter Program.
Published: December 15, 2002
Effective: January 15, 2003

No. 25723 (AMD): R657-42. Accepted Payment of Fees, Late Fees, Exchanges, Surrenders, Refunds and Reallocation of Licenses, Certificates of Registration and Permits.
Published: December 15, 2002
Effective: January 15, 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, 2003, including notices of effective date received through January 15, 2003, the effective dates of which are no later than February 1, 2003. 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).