

# UTAH STATE BULLETIN

OFFICIAL NOTICES OF UTAH STATE GOVERNMENT  
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Nancy L. Lancaster, Editor

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## EDITOR'S NOTES

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### THE UTAH STATE BULLETIN TRANSITIONS TO AN ELECTRONIC PUBLICATION

In January, the Division of Administrative Rules announced plans to discontinue its publication of the paper edition of the *Utah State Bulletin*. This change will primarily affect the Division, the Legislature's Administrative Rules Review Committee, and the State Depository Library System. The final paper edition printed under the Division's contract will be dated April 1, 2003. The Division will continue to publish the *Bulletin* electronically and make it available on the Internet.

The termination of the contract should have little effect on other subscribers. The Office of Legislative Printing, the current printer, will continue to make the *Bulletin* available as a paper publication. Current paid subscribers will see no change in service.

The *Utah State Bulletin*, issued on the 1st and 15th of each month, has been available since September 1, 1973. It is an authoritative source for state administrative rules. State law requires that administrative rules - state agencies' written statements that have the effect of law - be published in the *Bulletin*. The *Bulletin* contains proposed rules open for a minimum of 30 days of public comment, emergency rules which go into effect immediately, and other types of rulemaking and executive branch notices.

While this transition to an electronic publication has been anticipated for some time, the actual schedule of the transition was moved up in response to reductions in the Division of Administrative Rules' fiscal year 2003 budget.

Electronic versions of the *Utah State Bulletin* have been available on the Internet since 1996. The *Bulletin* will continue to be available at <http://www.rules.utah.gov/publicat/bulletin.htm>. A summary of the *Bulletin*, called the *Utah State Digest*, is available free of charge by E-mail. To subscribe to the *Utah State Digest* ListServ, send a blank E-mail message to: [join-admin\\_rules\\_digest@list.utah.gov](mailto:join-admin_rules_digest@list.utah.gov).

Persons interested in subscribing to the paper copy of the *Utah State Bulletin* may contact Terry Lake at the Office of Legislative Printing at 801-538-1103.

**End of the Editor's Notes Section**

# SPECIAL NOTICES

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## INSURANCE ADMINISTRATION

### **PUBLIC HEARING ON PROPOSED FEES FOR SERVICES PROVIDED AND COSTS INCURRED BY THE DEPARTMENT OF INSURANCE DURING FISCAL YEAR 2003**

The Department of Insurance will hold a hearing on Monday, February 24, 2003, at 9:00 a.m. in Room 1112 of the State Office Building (behind the State Capitol), Salt Lake City, Utah.

The purpose of the hearing is to obtain public comment on proposed fees to be assessed for services provided and costs incurred by the Department during Fiscal Year 2003. Subsection 63-38-3.2(2)(b) of the Budgetary Procedures Act provides that an agency shall conduct a public hearing on any proposed regulatory fee.

Background: Various divisions of the Department assess fees for licensure, registration, or certification of individuals, agencies, and companies to engage in the business of insurance. The proposed fee is a \$5 fee for processing non-electronic producer appointments (initial or termination). This fee will be charged for each non-electronic appointment processed. The other change to the fee schedule corrects the period for the reinstatement fee for individual and agency licenses from 2 - 12 months to 2 - 24 months. The proposed fee schedule has been prepared for the 2003 General Session of the Utah Legislature. The fee schedule will be distributed at the February 24 hearing and can be found on the web at: <http://www.insurance.utah.gov/ruleindex.html>.

*Questions regarding the proposed changes can be addressed to: John E. 'Mickey' Braun, Jr., assistant commissioner, at 801-538-3865, or [jbrown@utah.gov](mailto:jbrown@utah.gov).*

**End of the Special Notices Section**



## NOTICES OF PROPOSED RULES

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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 16, 2003, 12:00 a.m., and January 31, 2003, 11:59 p.m. are included in this, the February 15, 2003, issue of the *Utah State Bulletin*.

In this publication, each PROPOSED RULE is preceded by a RULE ANALYSIS. This analysis provides summary information about the PROPOSED RULE including the name of a contact person, anticipated cost impact of the rule, and legal cross-references.

Following the RULE ANALYSIS, the text of the PROPOSED RULE is usually printed. New rules or additions made to existing rules are underlined (e.g., example). Deletions made to existing rules are struck out with brackets surrounding them (e.g., [~~example~~]). Rules being repealed are completely struck out. A row of dots in the text (· · · · ·) indicates that unaffected text was removed to conserve space. If a PROPOSED RULE is too long to print, the Division of Administrative Rules will include only the RULE ANALYSIS. A copy of each rule that is too long to print is available from the filing agency or from the Division of Administrative Rules.

The law requires that an agency accept public comment on PROPOSED RULES published in this issue of the *Utah State Bulletin* until at least March 17, 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 15, 2003, the agency may notify the Division of Administrative Rules that it wants to make the PROPOSED RULE effective. The agency sets the effective date. The date may be no fewer than 31 days nor more than 120 days after the publication date of this issue of the *Utah State Bulletin*. Alternatively, the agency may file a CHANGE IN PROPOSED RULE in response to comments received. If the Division of Administrative Rules does not receive a NOTICE OF EFFECTIVE DATE or a CHANGE IN PROPOSED RULE, the PROPOSED RULE filing lapses and the agency must start the process over.

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

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

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**The Proposed Rules Begin on the Following Page.**

**Administrative Services, Facilities  
Construction and Management**  
**R23-3**  
**Planning and Programming for Capital  
Projects**

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 25989

FILED: 01/23/2003, 16:39

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The amendment incorporates requirements for the development and approval of master plans of state buildings. Requirements for master plans were previously addressed in Rule R23-7 which is currently in the repeal process.

**SUMMARY OF THE RULE OR CHANGE:** The amendment requires that a master plan be developed and maintained for each major campus of state owned buildings. The initial master plan and substantial modifications thereafter must be presented to the State Building Board for approval.

**STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 63A-5-103

**ANTICIPATED COST OR SAVINGS TO:**

❖ **THE STATE BUDGET:** The amendment does not change the costs of developing master plans as it does not require the replacement of existing master plans and it will continue the current practice of funding master plans through a combination of the division planning or project funds and nonstate funding from higher education institutions.

❖ **LOCAL GOVERNMENTS:** This rule only applies to state agencies and institutions so it has no fiscal impact on local government. Local government may benefit from improved planning of state facilities.

❖ **OTHER PERSONS:** This rule only applies to state agencies and institutions so it has no fiscal impact on other persons.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** This rule only applies to state agencies and institutions so there are no compliance costs for other persons.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** This rule only applies to state agencies and institutions so it does not have a direct fiscal impact on businesses.

**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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 03/17/2003.

THIS RULE MAY BECOME EFFECTIVE ON: 03/18/2003

AUTHORIZED BY: Joseph A. Jenkins, Director

**R23. Administrative Services, Facilities Construction and Management.****R23-3. Planning and Programming for Capital Projects.****R23-3-1. Purpose and Authority.**

(1) This rule establishes policies and procedures for the authorization, funding, and development of programs for capital development and capital improvement projects and the use and administration of the Planning Fund.

(2) The Board's authority to administer the planning process for state facilities is contained in Section 63A-5-103.

(3) The statutes governing the Planning Fund are contained in Section 63A-5-211.

(4) The Board's authority to make rules for its duties and those of the Division is set forth in Subsection 63A-5-103(1).

**R23-3-2. Definitions.**

(1) "Agency" means each department, agency, institution, commission, board, or other administrative unit of the State of Utah.

(2) "Board" means the State Building Board established pursuant to Section 63A-5-101.

(3) "Capital Development" is defined in Section 63A-5-104.

(4) "Capital Improvement" is defined in Section 63A-5-104.

(5) "Director" means the Director of the Division, including, unless otherwise stated, his duly authorized designee.

(6) "Division" means the Division of Facilities Construction and Management established pursuant to Section 63A-5-201.

(7) "Planning Fund" means the revolving fund created pursuant to Section 63A-5-211 for the purposes outlined therein.

(8) "Program" means a document containing a detailed description of the scope, the required areas and their relationships, and the estimated cost of a construction project.

(a) "Program" typically refers to an architectural program but, as used in this rule, the term "program" includes studies that approximate an architectural program in purpose and detail.

(b) "Program" does not mean feasibility studies, building evaluations, master plans, or general project descriptions prepared for purposes of soliciting funding through donations or grants.

**R23-3-3. When Programs Are Required.**

(1) For capital development projects, a program must be developed before the design may begin unless the Director determines that a program is not needed for that specific project. Examples of capital development projects that may not require a program include land purchases, building purchases requiring little or no remodeling, and projects repeating a previously used design.

(2) For capital improvement projects, the Director shall

determine whether the nature of the project requires that a program be prepared.

**R23-3-4. Authorization of Programs.**

(1) The initiation of a program for a capital development project must be approved by the Legislature or the Board if it is anticipated that state funds will be requested for the design or construction of the project.

(2) When requesting Board approval, the agency shall justify the need for initiating the programming process at that point in time and also address the level of support for funding the project soon after the program will be completed.

**R23-3-5. Funding of Programs.**

Programs may be funded from one of the following sources.

(1) Funds appropriated for that purpose by the Legislature.

(2) Funds provided by the agency.

(a) This would typically be the funding source for the development of programs before the Legislature funds the project.

(b) Funds advanced by agencies for programming costs may be included in the project budget request but no assurance can be given that project funds will be available to reimburse the agency.

(c) Agencies that advance funds for programming that would otherwise lapse may not be reimbursed in a subsequent fiscal year.

(3) If an agency is able to demonstrate to the Board that there is no other funding source for programming for a project that is likely to be funded in the upcoming legislative session, it may request to borrow funds from the Planning Fund as provided for in Section R23-3-8.

**R23-3-6. Administration of Programming.**

(1) The development of programs shall be administered by the Division in cooperation with the requesting agency unless the Director authorizes the requesting agency to administer the programming.

(2) This Section R23-3-6 does not apply to projects that are exempt from the Division's administration pursuant to Subsection 63A-5-206(3).

**R23-3-7. Restrictions of Programming Firm.**

(1) A firm that prepares a program for a project may not be selected as the lead design firm or be a subconsultant to the lead design firm or contractor of that project.

(2) The restriction contained in subsection (1) does not apply to:

(a) a subconsultant to the firm preparing the program unless the procurement documents for the selection of the programming firm state otherwise;

(b) a single selection of a firm to provide both the programming and design services for a project;

(c) the selection of a design firm if the scope and cost of the design services are small enough to be procured under the small purchase of architect/engineer services contained in Section R23-2-19;

(d) firms entering into contracts for programming services prior to the effective date of this rule in which case the programming firm will be subject to any restrictions contained in the solicitation or contract for those programming services; or

(e) projects where the Director makes a determination that it is in the best interests of the State to waive the requirements of this Section.

**R23-3-8. Use and Reimbursement of Planning Fund.**

(1) The Planning Fund may be used for the purposes stated in Section 63A-5-211 including the development of:

(a) facility master plans;

(b) programs; and

(c) building evaluations or studies to determine the feasibility, scope and cost of capital development and capital improvement requests.

(2) Expenditures from the Planning Fund must be approved by the Director.

(3) Expenditures in excess of \$25,000 for a single planning or programming purpose must also be approved in advance by the Board.

(4) The Planning Fund shall be reimbursed from the next funded or authorized project for that agency that is related to the purposes for which the expenditure was made from the Planning Fund.

(5) The Division shall report changes in the status of the Planning Fund to the Board.

**R23-3-9. Development and Approval of Master Plans.**

(1) For each major campus of state-owned buildings, the agency with primary responsibility for operations occurring at the campus shall, in cooperation with the Division, develop and maintain a master plan that reflects the current and projected development of the campus.

(2) The purpose of the master plan is to encourage long term planning and to guide future development.

(3) Master plans for campuses and facilities not covered by Subsection (1) may be developed upon the request of the Board or when the Division and the agency determine that a master plan is necessary or appropriate.

(4) The initial master plan for a campus, and any substantial modifications thereafter, shall be presented to the Board for approval.

**KEY: planning, public buildings, design, procurement  
2003**

**63A-5-103**

**63A-5-211**



**Administrative Services, Facilities  
Construction and Management**

**R23-9**

**Building Board State/Local Cooperation  
Policy**

**NOTICE OF PROPOSED RULE**

(Repeal and Reenact)

DAR FILE NO.: 25988

FILED: 01/23/2003, 16:31

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this rule is to set forth the role of local governments regarding construction on state property. The rule is being

reenacted to clarify the relationship between local governments and the state.

**SUMMARY OF THE RULE OR CHANGE:** The existing rule is repealed as it does not clearly address the respective roles and responsibilities of local governments and the Division of Facilities Construction and Management (DFCM) regarding construction on state property. The reenacted rule: 1) reflects statutory provisions that state that construction on state property is not subject to local planning and zoning requirements, 2) clarifies that this exemption does not apply to the business regulation authority of local governments, and 3) requires DFCM to consider input from local governments and provides methods in which this may be accomplished.

**STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Subsection 63A-5-103(1) and Section 63A-5-206

**ANTICIPATED COST OR SAVINGS TO:**

- ❖ **THE STATE BUDGET:** The reenacted rule will not affect the state budget as it just brings the rule in line with current statutory requirements and practices that are already in place.
- ❖ **LOCAL GOVERNMENTS:** There are no costs or savings to local government as the reenacted rule does not substantively revise the state's exemption from local planning and zoning requirements.
- ❖ **OTHER PERSONS:** There are no costs or savings to other persons as the rule only addresses the relationship of the state and local governments relative to construction on state property.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** There are no compliance costs as the rule does not create any requirements that other entities would be required to comply with.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** This rule will not have a fiscal impact on businesses as it only addresses the relationship between local governments and the state regarding construction on state property. The reenacted rule does not change any requirements or procedures for businesses.

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 03/17/2003.

THIS RULE MAY BECOME EFFECTIVE ON: 03/18/2003

AUTHORIZED BY: Joseph A. Jenkins, Director

**R23. Administrative Services, Facilities Construction and Management.**

**~~[R23-9. Building Board State/Local Cooperation Policy.~~**

**~~R23-9-1. Purpose.~~**

~~—This rule provides for cooperation with local zoning ordinances when siting, designing, or constructing state facilities, and provides procedures in the event this is not possible.~~

**~~R23-9-2. Authority.~~**

~~—This rule is authorized under Subsection 63A-5-103(1)(e), which directs the Building Board to make rules necessary for the discharge of the duties of the Division of Facilities Construction and Management.~~

**~~R23-9-3. Policy.~~**

~~—In the siting, design, or construction of state facilities, the fee architect/engineer and Division of Facilities Construction and Management staff should cooperate with local zoning ordinances. Particular effort will be made to consider local ordinances dealing with fire protection, ingress, egress, parking, landscaping, fencing, buffering, traffic circulation, pedestrian circulation, storm water and flood control, and connection to public improvements such as sewer, water, electricity, and gas. If it is not possible to comply with local zoning ordinances, the Division of Facilities Construction and Management Director will investigate the circumstances in an effort to mitigate any negative effects. At the discretion of the Director, the issue may be brought before the Board for review.~~

**KEY: zoning**

1994

Notice of Continuation January 28, 1998

63A-5-103]

**R23-9 Cooperation with Local Government Planning.**

**R23-9-1. Purpose and Authority.**

(1) This rule provides for cooperation with local government planning efforts when siting, designing, and constructing facilities on state property.

(2) This rule is authorized under Section 63A-5-103 which directs the Building Board to make rules necessary for the discharge of its duties and those of the division.

(3) The statutory provisions that set forth the relationship between the planning and zoning authority of local governments and the construction of facilities on state property are contained in Section 63A-5-206.

**R23-9-2. Definitions.**

(1) "Director" means the director of the division, including, unless otherwise stated, his duly authorized designee.

(2) "Division" means the Division of Facilities Construction and Management established pursuant to Section 63A-5-201.

(3) "Local government" means a "municipality" as defined in Section 10-9-103 or a "county" as defined in Section 17-27-103.

(4) "State property" means land owned by the State of Utah and any department, division, agency, institution, commission, board, or other administrative unit of the State of Utah; including but not limited to, the division, the State Building Ownership Authority, and state institutions of higher education.

**R23-9-3. Exemption from Local Government Planning and Zoning Authority.**

(1) As provided for in Section 63A-5-206, Section 10-9-105, and Section 17-27-104.5, construction on state property is not subject to the planning and zoning authority of local governments regardless of what entity will own or occupy the resulting facility. Construction on state property is not subject to local government building permit requirements, or plan reviews.

(2) This exemption does not apply to the business regulation authority of local governments except as follows.

(a) Any requirement to comply with the local government's planning or zoning ordinance in order to receive a business license or similar business permit shall be deemed to have been met through the division's determination of siting and design requirements.

(b) As otherwise provided by law.

**R23-9-4. Consideration of Local Government Planning.**

(1) When determining the location and design of facilities to be constructed on state property, the division shall consider input received from local governments and, as appropriate, local government planning and zoning requirements that would apply if the property were not owned by the state. This may include discussions with local government planning officials and/or a review of some or all of the following local government documents:

(a) master plan;

(b) zoning ordinance; and

(c) requirements for ingress, egress, parking, landscaping, fencing, buffering, traffic circulation, and pedestrian circulation.

(2) In any dispute regarding departures from local government requirements, the final determination shall be made by the director.

**R23-9-5. Additional Requirements for Secured Facilities.**

In addition to the requirements of this rule, the director shall comply with the requirements of Subsection 63A-5-206(12) regarding notice and hearings for projects involving diagnostic, treatment, parole, probation, or other secured facilities.

**KEY: construction, planning, zoning**  
**2003**

**Notice of Continuation January 28, 1998**  
**63A-5-103**



Commerce, Occupational and  
Professional Licensing  
**R156-46a**  
Hearing Instrument Specialist Licensing  
Act Rules

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 25987

FILED: 01/23/2003, 13:23

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: As a result of legislative amendments made during the 2002 legislative session to Title 58, Chapter 46a (H.B. 266), the Division needs to make some changes to this rule. (DAR NOTE: H.B. 266 is found at UT L 2002 Ch 50, and was effective July 1, 2002.)

SUMMARY OF THE RULE OR CHANGE: In Section R156-46a-102, added definitions for the following: "analog", "digital", and "programmable". These definitions are being added to clarify the type of hearing instruments used by a hearing instrument specialist. In Section R156-46a-302b, changed that a hearing instrument specialist intern must complete 4,000 hours of acceptable practice rather than the previous requirement of 2,000 hours. This section is being amended to coincide with the statute requirement, which requires 4,000 hours of experience as a hearing instrument intern. Section R156-46a-302c is being deleted in its entirety since the requirements in this section are now in the statute at Subsection 58-46a-302.5(2)(b). Section R156-46a-302d is renumbered as Section R156-46a-302c. Subsection R156-46a-303(3) is being deleted in its entirety since the time period identified expired on September 30, 1996. In Subsection R156-46a-304(4), deleted the requirement that four hours of continuing education training be in the area of Utah state laws and rules and ethical practice. This mandatory requirement is being deleted as it was placing a hardship on licensed hearing instrument specialists who live out of state and are having a hard time finding an educational institution that taught a Utah laws and rule course on a regular basis. In Section R156-46a-502a, amendments are added to make misleading or deceptive advertisement and false price quotes unprofessional conduct and to require that a digital hearing aid only be advertised as a digital hearing aid if its components are 100% digital.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 58-46a-101, and Subsections 58-1-106(1) and 58-1-202(1)(a)

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: The Division will incur costs of approximately \$50 to reprint the rule once the proposed amendments are made effective. Any costs incurred will be absorbed in the Division's current budget.

❖ LOCAL GOVERNMENTS: Proposed amendments do not apply to local governments. Therefore, there is no anticipated impact to local government.

❖ OTHER PERSONS: The Division anticipates minimal savings to licensed hearing instrument specialists may be realized in that the licensee will no longer be required to attend a continuing education course regarding Utah laws, rules and ethics as a portion of their continuing education requirements. The Division is unable to determine an exact amount of savings due to a wide range of varying circumstances with licensees.

If a licensed hearing instrument specialist were charged with unprofessional conduct, including the newly added definitions, there may be costs associated with defending himself against any possible disciplinary action if the licensee chose to be represented by an attorney. Again, the Division is unable to determine any exact cost to the licensee due to a wide range of varying circumstances and the costs would only apply if a licensee is being charged with unprofessional conduct.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** The Division anticipates minimal savings to licensed hearing instrument specialists may be realized in that the licensee will no longer be required to attend a continuing education course regarding Utah laws, rules and ethics as a portion of their continuing education requirements. The Division is unable to determine an exact amount of savings due to a wide range of varying circumstances with licensees. If a licensed hearing instrument specialist were charged with unprofessional conduct, including the newly added definitions, there may be costs associated with defending himself against any possible disciplinary action if the licensee chose to be represented by an attorney. Again, the Division is unable to determine any exact cost to the licensee due to a wide range of varying circumstances and the costs would only apply if a licensee is being charged with unprofessional conduct.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** This rule change removes outdated and unnecessary provisions, defines terms, removes a mandatory continuing education course requirement and clarifies industry standards regarding the advertising of products and services. No fiscal impact to businesses is anticipated from these changes, other than some cost savings resulting to regulated individuals who find it more convenient to take a different continuing education course than the previously mandatory law and rules course. The cost savings are difficult to ascertain, because it is a subjective cost, based on convenience. Ted Boyer, Executive Director

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:**  
Clyde Ormond at the above address, by phone at 801-530-6254, by FAX at 801-530-6511, or by Internet E-mail at [cormond@utah.gov](mailto:cormond@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 03/17/2003

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE: 3/11/2003 at 9:00 AM, Heber Wells Building, 160 East 300 South, Room 457 (fourth floor), Salt Lake City, UT.

THIS RULE MAY BECOME EFFECTIVE ON: 03/18/2003

AUTHORIZED BY: J. Craig Jackson, Director

**R156. Commerce, Occupational and Professional Licensing. R156-46a. Hearing Instrument Specialist Licensing Act Rules. R156-46a-102. Definitions.**

In addition to the definitions in Title 58, Chapters 1 and 46a, as used in Title 58, Chapters 1 and 46a or these rules:

- (1) "Analog" means a continuous variable physical signal.
- (2) "Digital" means using or involving numerical digits, expressed in a scale of notation to represent discreetly all variables occurring.
- (3) "Programmable" means the electronic technology in the hearing instrument can be modified independently.
- (4) "Unprofessional conduct," as defined in Title 58 Chapters 1 and 46a, is further defined, in accordance with Subsection 58-1-203(5), in Section R156-46a-502.

**R156-46a-302b. Qualifications for Licensure - Hearing Instrument Specialist Experience Requirement.**

In accordance with Subsections 58-1-203(2) and 58-1-301(3), the experience requirement for licensure as a hearing instrument specialist in Subsection 58-46a-302(1)(d) is defined and clarified as follows.

An applicant shall document successful completion of [2]4000 hours of acceptable practice as a hearing instrument intern by submitting a notarized Completion of Internship form provided by the division.

~~**[R156-46a-302c. Qualifications for Licensure - Hearing Instrument Intern Education and Examination Requirement.**~~

~~In accordance with Subsections 58-1-203(2) and 58-1-301(3), the education and examination requirement for licensure as a hearing instrument intern in Subsection 58-46a-302(2)(d) is defined and clarified as follows.~~

~~An applicant shall document successful completion of the National Institute for Hearing Instruments Studies (NIHIS) Training Manual for Professionals in the Field of Hearing Instrument Sciences by passing the final examination with a passing score as determined by the NIHIS. An applicant shall document passing the final examination by submitting an official letter from the National Assessment Institute or the Utah Hearing Aid Society, both of which are designated as official proctors of the examination.~~

**R156-46a-302[d]c. Qualifications for Licensure - Passing Score for Utah Law and Rules Examination.**

In order to pass the Utah Law and Rules Examination for Hearing Instrument Specialists, an applicant as a hearing instrument specialist or hearing instrument intern shall achieve a score of at least 75%.

**R156-46a-303. Renewal Cycle - Procedures.**

- (1) In accordance with Subsection 58-1-308(1), the renewal date for the two-year renewal cycle applicable to licensees under Title 58, Chapter 46a is established by rule in Section R156-1-308.
- (2) Renewal procedures shall be in accordance with Section R156-1-308.[

~~(3) An individual who is a licensed Utah hearing aid specialist prior to July 1, 1994, may document 2000 hours of practice as a licensed Utah hearing instrument specialist for the 2000 hours of practice as a hearing instrument intern required by Subsections 58-46a-306(1) and 58-46a-302(1) in order to renew his license on September 30, 1996.]~~

#### **R156-46a-304. Continuing Education.**

In accordance with Subsection 58-46a-304, the continuing education requirement for renewal of licensure as a hearing instrument specialist is defined and clarified as follows:

(1) Continuing education courses shall be offered in the following areas:

- (a) acoustics;
- (b) nature of the ear (normal ear, hearing process, disorders of hearing);
- (c) hearing measurement;
- (d) hearing aid technology;
- (e) selection of hearing aids;
- (f) marketing and customer relations;
- (g) client counseling;
- (h) ethical practice;
- (i) state laws and regulations regarding the dispensing of hearing aids; and
- (j) other areas deemed appropriate by the Division in collaboration with the Board.

(2) Only contact hours from the American Speech-Language-Hearing Association (ASHA) or the International Hearing Society (IHS) shall be applied towards meeting the minimum requirements set forth in Subsection R156-46a-304(4).

(3) As verification of contact hours earned, the Division will accept copies of transcripts or certificates of completion from continuing education courses approved by ASHA or IHS.

(4) A minimum of 20 contact hours shall be obtained by a hearing instrument specialist in order to have the license renewed every two years. ~~[-The 20 contact hours shall contain four hours of training in the areas of Utah state laws and rules and ethical practice.]~~

#### **R156-46a-502a. Unprofessional Conduct.**

"Unprofessional conduct" includes:

- (1) violating any state or federal law applicable to persons practicing as a hearing instrument specialist or hearing instrument intern;
- (2) failure to perform the minimum components of an evaluation for a hearing aid as set forth in Section R156-46a-502b;
- (3) aiding or abetting any person other than a Utah licensed hearing instrument specialist, a licensed hearing instrument intern, a licensed audiologist, or a licensed physician to perform a hearing aid examination;
- (4) dispensing a hearing aid without the purchaser having:
  - (a) received a medical evaluation by a licensed physician within the preceding six months prior to the purchase of a hearing aid; or
  - (b) a document signed by the purchaser being a fully informed adult waiving the medical evaluation in accordance with Food and Drug Administration (FDA) required disclosures, except a person under the age of 18 years may not waive the medical evaluation;

~~(5) using or causing or promoting the use of any advertising matter, promotional literature, testimonial, guarantee, warranty, label, brand, insignia, or other representation, however disseminated or published, which is misleading, deceiving, or untruthful;~~

~~(6) quoting prices of competitive hearing instruments or devices without disclosing that they are not the current prices or to show, demonstrate, or represent competitive models as being current when such is not the fact;~~

~~(7) using the word digital in any advertising matter, promotional literature, testimonial, guarantee, warranty, label, brand, insignia or other representation when the hearing instrument circuit is less than 100% digital, unless the word digital is accompanied by the word analog, as in "digitally programmable analog hearing aid";[-]~~

~~([5]8) failure to perform a prepurchase hearing evaluation; or~~  
~~([6]9) supervising more than two hearing instrument interns at one time.~~

**KEY: licensing, hearing aids**

~~[October 16, 2001]2003~~

**Notice of Continuation August 26, 1999**

**58-1-106(1)**

**58-1-202(1)(a)**

**58-46a-101**

## Corrections, Administration R251-110 Sex Offender Notification

### NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 25991

FILED: 01/24/2003, 12:59

### RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is being amended to provide: an address change for the Department of Corrections; a new process for accessing registration information; and a new requirement for the registration process to ensure accuracy and knowledge of the information.

SUMMARY OF THE RULE OR CHANGE: Because the sex offender registry is now available on the Internet, the Department no longer requires a petitioner to meet certain criteria before requesting information. For those who do not have access to the Internet, access to the information may be by phone or in writing to the Department. The new address for requesting information is Utah Department of Corrections, 14717 S. Minuteman Drive, Draper, UT 84020. Requestors are instructed regarding the use of the information. Sex offenders are required to sign Department form(s) each time the Department makes the request.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 77-27-21.5

ANTICIPATED COST OR SAVINGS TO:

- ❖ THE STATE BUDGET: The Department of Corrections will experience a cost savings in postage and employee time that formerly was used to process information requests.
- ❖ LOCAL GOVERNMENTS: None--The amendments to this rule do not apply to local government.
- ❖ OTHER PERSONS: None--The amendments to this rule will make it easier for the public to access information.

COMPLIANCE COSTS FOR AFFECTED PERSONS: None--The revisions in this rule will make it easier for persons to access and request information. Persons and registrants will have no additional costs.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The amendments to this rule will make it easier for the public to access the information and will be a cost savings to the Department in postage and employee time. The amendments will have no fiscal impact on businesses.

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

CORRECTIONS  
ADMINISTRATION  
14717 S MINUTEMAN DR  
DRAPER UT 84020-9549, or  
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Ginny L Duncan at the above address, by phone at 801-545-5722, by FAX at 801-545-5523, or by Internet E-mail at gduncan@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 03/17/2003.

THIS RULE MAY BECOME EFFECTIVE ON: 03/18/2003

AUTHORIZED BY: Michael P. Chabries, Executive Director

**R251. Corrections, Administration.**

**R251-110. Sex Offender ~~Notification~~ Registration Program.**

**R251-110-1. Authority and Purpose.**

- (1) This rule is authorized under Section 77-27-21.5.
- (2) The purpose of the rule is to define the registrant requirement and process for providing obtaining sex offender information ~~[notification to petitioners and authorized individuals] registration information.~~

**R251-110-2. Definitions.**

- (1) As used in this section:
  - ~~—(a) "authorized individual" means an employee of the Department or a law enforcement officer, in the performance of their duties;~~

~~] (b) the terms~~(a) "Department" means Utah Department of Corrections; ~~and "Notification" are as defined in Section 77-27-21.5;~~

~~(c) "petitioner" means a member of the public who submits a request for information regarding sex offenders; and~~

~~(b) "registrant" means any individual who is registered under UCA 77-27-21.5; and~~

~~(d)(c) "Sex Offender Registration Unit" means the unit of the [Adult Probation and Parole Division]Department assigned to manage the state's sex offender registration [files]program, sex offender information files and disseminate information on sex offenders [to authorized agencies/individuals and members of the public].~~

**R251-110-3. Registrant Requirements.**

(1) A sex offender as defined under Section 77-27-21.5 shall adhere to the provisions in stated code.

(2) Registrants shall sign the Utah Sex Offender Registration Form and the Sex Offender Address Form upon each request.

**R251-110-~~3~~4. [Information Request Process]Public Access to Sex Offender Registry.**

~~—(1) Authorized individuals are not required to petition the Department for information regarding sex offenders, but may submit a request on a need-to-know basis.~~

~~]~~ ~~(2)(1) If [M]members of the public do not have access to the sex offender registry website, they may [submit a petition for sex offender]request sex offender registration information from the Department's Sex Offender Registration Unit.~~

~~(a) Requests [shall]may be in writing with [include]a return address and telephone number.~~

~~(b) Requests shall be sent to the Utah Department of Corrections, Sex Offender Registration Unit, [155 E. 6100 S. #301, Murray, Utah 84107]14717 S. Minuteman Drive, Draper, Utah 84020.~~

~~(c) If a [petitioner]requestor changes his residence after having submitted a request, but prior to receiving a response from the Department, it is the [petitioner's]requestor's obligation to file another [petition]request with a current return address and telephone number.~~

~~(d) [Petitioners]Members of the public may [not obtain]request information by telephone.~~

~~—(e) Members of the public may submit a petition for information regarding sex offenders in two postal zip code areas.~~

**R251-110-4. Criteria for Approval.**

~~—(1) A petitioner shall provide the necessary information.~~

~~—(2) Authorized individuals shall:~~

~~—(a) make the request as part of the performance of their duties; and~~

~~—(b) provide the necessary information.~~

~~—(3) Petitioners may be denied by the Department for insufficient information.~~

**R251-110-5. Instructions for Use of the Information.**

(1) Information compiled for this registry may not be used to harass or threaten sex offenders or their families.

(2) Harassment, stalking, or threats are prohibited and doing so may violate Utah criminal law.



**KEY: sex crimes, notification**  
~~August 9, 2001~~ **2003**  
 Notice of Continuation March 27, 2001  
 64-13-10  
 77-27-21.5

▼ ————— ▼

## Health, Health Care Financing, Coverage and Reimbursement Policy

# R414-10

## Physician Services

**NOTICE OF PROPOSED RULE**  
 (Amendment)  
 DAR FILE NO.: 26008  
 FILED: 01/31/2003, 23:24

### RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule, along with other proposed changes to the Medicaid program, is needed to keep expenditures within appropriations authorized by the 2002 Legislature. Utilization and enrollment have increased above projected levels and expenditures must be reduced accordingly. (DAR NOTE: The proposed changes to the Medicaid Program are found under R414-10, Amendment, DAR No. 26008; R414-60, Amendment, DAR No. 26009; R414-10, Emergency Rule, DAR No. 26010; and R414-60, Emergency Rule, DAR No. 26011 in this issue. The other changes were published in the January 15, 2003, and February 1, 2003, issues.)

SUMMARY OF THE RULE OR CHANGE: In Subsections R414-10-6(1) and R414-10-6(2) are amended to replace the \$2 copayment with the \$3 copayment up to a maximum of \$100 per year. The \$15 per year copayment limit is removed. In all instances in the rule, "co-payment" is changed to "copayment." (DAR NOTE: A corresponding 120-day (emergency) rule that is effective February 1, 2003, is under DAR No. 26010 in this issue.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Title 58, Chapter 12; and Sections 26-1-5 and 26-18-3

#### ANTICIPATED COST OR SAVINGS TO:

- ❖ THE STATE BUDGET: This will save the General Fund \$36,300 but \$88,571 in federal matching funds will be lost.
- ❖ LOCAL GOVERNMENTS: If local government physicians choose to serve Medicaid clients that are able, but unwilling to pay the copayment, their reimbursement will drop by \$1 per encounter. The recipient's Medicaid card clearly identifies which recipients are deemed able to pay the copayment. State reimbursement to local government physician/clinics will drop by a percentage of \$124,871.
- ❖ OTHER PERSONS: If private physicians choose to serve Medicaid clients that are able, but unwilling to pay the copayment, their reimbursement will drop by \$1 per encounter. The recipient's Medicaid card clearly identifies which recipients are deemed able to pay the copayment.

State reimbursement to local government physician/clinics will drop by a percentage of \$124,871.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There may be some minimal modifications to provider data systems in order to incorporate the changed copayment. Medicaid recipients will incur an additional cost of \$1 per doctor visit.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This change will increase the contribution that a Medicaid recipient will be required to contribute toward the cost of care and may have a negative impact on providers if they choose to provide the service without collecting the copayment, 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 03/17/2003.

THIS RULE MAY BECOME EFFECTIVE ON: 03/18/2003

AUTHORIZED BY: Rod L. Betit, Executive Director

### **R414. Health, Health Care Financing, Coverage and Reimbursement Policy.**

#### **R414-10. Physician Services.**

##### **R414-10-1. Introduction and Authority.**

(1) The Physician Services Program provides a scope of physician services to meet the basic medical needs of eligible Medicaid recipients. It encompasses the art and science of caring for those who are ill through the practice of medicine or osteopathy defined in Title 58, Chapter 12, UCA.

(2) Physician services are a mandatory Medicaid, Title XIX, program authorized by Sections 1901 and 1905(a)(1) of the Social Security Act, 42 CFR 440.50, October 1996 edition, and Sections 26-1-5 and 26-18-3, UCA.

##### **R414-10-2. Definitions.**

In addition to the definitions in R414-1, the following definitions apply to this rule:

(1) "Childhood health evaluation and care" (CHEC) means the Utah-specific term for the federally mandated program of early and

periodic screening, diagnosis, and treatment for children under the age of 21.

(2) "Client" means an individual eligible to receive covered Medicaid services from an enrolled Medicaid provider.

(3) "Clinical Laboratory Improvement Amendments" (CLIA) means the federal Health Care Financing Administration program that limits reimbursement for laboratory services based on the equipment and capability of the physician or laboratory to provide an appropriate, competent level of laboratory service.

(4) "Cognitive services" means non-invasive diagnostic, therapeutic, or preventive office visits, hospital visits, therapy, and related nonsurgical services.

(5) "Covered Medicaid service" means service available to the eligible Medicaid client within the constraints of Medicaid policy and criteria for approval of service.

(6) "Current Procedural Terminology" (CPT) means the manual published by the American Medical Association that provides a systematic listing and coding of procedures and services performed by physicians and simplifies the reporting of services, which is adopted and incorporated by reference. Some limitations are addressed in R414-26.

(7) "Early and periodic screening, diagnosis, and treatment" (EPSDT) means the federally mandated program for children under the age of 21.

(8) "Family planning" means diagnosis, treatment, medications, supplies, devices, and related counseling in family planning methods to prevent or delay pregnancy.

(9) "Health Common Procedures Coding System" (HCPCS) means a system mandated by the Health Care Financing Administration to code procedures and services. This system utilizes the CPT Manual for physicians, and individually developed service codes and definitions for nonphysician providers. The coding system is used to provide consistency in determining payment for services provided by physicians and noninstitutional providers.

(10) "Intensive, inpatient hospital rehabilitation service" means an intense rehabilitation program provided in an acute care general hospital through the services of a multidisciplinary, coordinated, team approach directed toward improving the ability of the patient to function.

(11) "Package surgical procedures" means preoperative office visits and preparation, the operation, local infiltration, topical or regional anesthesia when used, and the normal, uncomplicated follow-up care extending up to six weeks post-surgery.

(12) "Patient" means an individual who is receiving covered professional services provided or directed by a licensed practitioner of the healing arts enrolled as a Medicaid provider.

(13) "Personal supervision" means the critical observation and guidance of medical services by a physician of a nonphysician's activities within that nonphysician's licensed scope of practice.

(14) "Physician services," whether furnished in the office, the recipient's home, a hospital, a skilled nursing facility, or elsewhere, means services provided:

- (a) within the scope of practice of medicine or osteopathy; and
- (b) by or under the personal supervision of an individual licensed to practice medicine or osteopathy.

(15) "Prior authorization" means the required approval for provision of a service, that the provider must obtain from the Department before providing that service.

(16) "Professional component" means that part of laboratory or radiology service that may be provided only by a physician capable of

analyzing a procedure or service and providing a written report of findings.

(17) "Provider" means an entity or a licensed practitioner of the healing arts providing approved Medicaid services to patients under a provider agreement with the Department.

(18) "Services" means the types of medical assistance specified in Sections 1905(a)(1) through (25) of the Social Security Act and interpreted in 42 CFR 440, October 1996 edition, which are adopted and incorporated by reference.

(19) "Technical component" means that part of laboratory or radiology service necessary to secure a specimen and prepare it for analysis, or to take an x-ray and prepare it for reading and interpretation.

#### **R414-10-3. Client Eligibility Requirements.**

Physician services are available to categorically and medically needy eligible individuals.

#### **R414-10-4. Program Access Requirements.**

(1) Physician services are available only from a physician who meets all requirements necessary to participate in the Utah Medicaid Program and who has signed a provider agreement.

(2) Physician services are available only from a physician who renders medically necessary physician services in accordance with his specific provider agreement and with Department rules.

(3) An eligible Medicaid client may seek physician services from:

- (a) a physician in private practice who is an enrolled Medicaid provider;

- (b) a Health Maintenance Organization (HMO) that has a contract with the Department;

- (c) a federally qualified community health center; or

- (d) any other organized practice setting recognized by the Department for providing physician services.

#### **R414-10-5. Service Coverage.**

(1) Physician services involve direct patient care and securing and supervising appropriate diagnostic ancillary tests or services in order to diagnose the existence, nature, or extent of illness, injury, or disability. In addition, physician services involve establishing a course of medically necessary treatment designed to prevent or minimize the adverse effects of human disease, pain, illness, injury, infirmity, deformity, or other impairments to a client's physical or mental health.

(2) Physician services may be provided only within the parameters of accepted medical practice and are subject to limitations and exclusions established by the Department on the basis of medical necessity, appropriateness, and utilization control considerations.

(3) Program limitations and noncovered services are established by specific program policy maintained in the Physician Provider Manual and updated by notification through Medicaid Information Bulletins. Following is a general list of medical and health care services excluded from coverage:

- (a) Services rendered during a period the recipient was ineligible for Medicaid;

- (b) Services medically unnecessary or unreasonable;

- (c) Services which fail to meet existing standards of professional practice, or which are currently professionally unacceptable;

- (d) Services requiring prior authorization, but for which such authorization was not received;

- (e) Services, elective in nature, based on patient request or individual preference rather than medical necessity;

(f) Services fraudulently claimed;  
 (g) Services which represent abuse or overuse;  
 (h) Services rejected or disallowed by Medicare when the rejection was based upon any of the reasons listed above.

(i) Services for which third party payors are primarily responsible, e.g., Medicare, private health insurance, liability insurance. Medicaid may make a partial payment up to the Medicaid maximum if the limit has not been reached by a third party.

(j) If a procedure or service is not covered for any of the above reasons or because of specific policy exclusion, all related services and supplies, including institutional costs, are excluded for the standard post operative recovery period.

(4) Experimental or medically unproven physician services or procedures are excluded from coverage. Criteria established and approved by the Department staff and physician consultants are used to identify noncovered services and procedures. Policy statements developed by the Department of Health and Human Services, Health Care Financing Administration, Coverage Issues Bureau, are also used to determine Department policy for noncovered services.

(5) Certain services are excluded from coverage because medical necessity, appropriate utilization, and cost effectiveness of the services cannot be assured. A variety of lifestyle factors contribute to the "syndromes" associated with such services, and there is no specific therapy or treatment identified except for those that border on behavior modification, experimental, or unproven practices. Services include:

- (a) Sleep apnea or sleep studies, or both;
- (b) pain clinics; and
- (c) Eating disorders clinics.

(6) When a service or procedure does not qualify for coverage under the Medicaid program because it is an elective cosmetic, reconstructive, or plastic surgery, all related services, supplies, and institutional costs are excluded from coverage.

(7) Medications for appetite suppression, surgical procedures, unproven or experimental treatments, or educational, nutritional support programs for the treatment of obesity or weight control, are excluded from coverage.

(8) Cognitive or Office Services:

(a) Cognitive services by a provider are limited to one service per client per day. These services are defined as office visits, hospital visits except for those following a package surgical procedure, therapy visits, and other types of nonsurgical services. When a second office visit for the same problem or a hospital admission occurs on the same date as another service, the physician shall combine the services as one service and select a procedure code that indicates the overall care given.

(b) Routine physical examinations, not part of an otherwise medically necessary service, are excluded from coverage, except in the following circumstances:

(i) Preschool and school age children, including those who are EPSDT (CHEC) eligible, participating in the ongoing CHEC program of scheduled services and follow-up care.

(ii) New patients seeing a physician for the first time with an initial complaint where a comprehensive physical examination, including a medical and social history, is necessary.

(iii) Medically necessary examinations associated with birth control medication, devices, and instructions.

(c) Family planning services may be provided only by or under the supervision of a physician and only to individuals of childbearing age, including sexually active minors. The following services are excluded from coverage as family planning services:

(i) Experimental or unproven medical procedures, practices, or medication.

(ii) Surgical procedures for the reversal of previous elective sterilization, both male and female.

(iii) Infertility studies.

(iv) In-vitro fertilization.

(v) Artificial insemination.

(vi) Surrogate motherhood, including all services, tests, and related charges.

(vii) Abortion, except where the life of the mother would be endangered if the fetus were carried to term, or where pregnancy is the result of rape or incest.

(d) After-hours service codes may be used only by a private physician, primary care provider, who responds to treat a patient in the physician's private office for a medical emergency, accident, or injury after regular office hours. Only one of the after hours CPT codes may be used per visit.

(e) Laboratory services provided by a physician in his office are limited to the waived tests or those types of laboratory tests identified by the federal Health Care Financing Administration for which each individual physician is CLIA certified to provide, bill, and receive Medicaid payment.

(f) A specimen collection fee is covered for service in a physician's office only when a specimen is to be sent to an outside laboratory, and the physician or one of his office staff under his personal supervision actually extracts the specimen from a patient, and only by one of the following tasks:

(i) Drawing a blood sample through venipuncture, i.e., inserting into a vein a needle with syringe or vacutainer to draw the specimen; or

(ii) Collecting a urine sample by catheterization.

(iii) A drawing fee for finger, heel, or ear sticks is limited to only infants under the age of two years.

(g) Eye examinations are covered, but only once each calendar year.

(h) Contact lenses are covered only for aphakia, nystagmus, keratoconus, severe corneal distortion, cataract surgery, and in those cases where visual acuity cannot be corrected to at least 20/70 in the better eye.

(9) Psychiatric Services:

(a) Psychiatric services or psychosocial diagnosis and counseling are specialty medical services. Psychiatric services, whether in a private office, a group practice, or private clinic setting, may only be provided directly and documented and billed to the Department by the private physician. Charting and documentation must clearly reflect the private physician's direct provision of care.

(b) Nonphysician psychosocial counseling services are excluded from coverage as a Medicaid benefit. The personal supervision policy, R414-45, may not be applied to psychiatric services.

(c) Admission to a general hospital for psychiatric care by a physician requires prior authorization and is limited to those cases determined by established criteria and utilization review standards to be of a severity that appropriate intensity of service cannot be provided in any alternate setting.

(d) Coverage for treatment of organic brain disease is limited to that provided by the primary care provider.

(10) Laboratory and Radiology Services:

(a) Physicians prepared in a highly specialized field of practice, e.g., neurology or neurosurgery, who provide consultation and diagnostic radiology services in an independent setting at the request of a private physician may bill for both the technical and professional component of the radiology service.

(b) Dermatologists with specialized preparation in pathology services specifically for the skin may provide and bill for those services.

(11) Hospital Services:

(a) A patient hospitalized for nonsurgical services may require more than one visit per day because of the patient's condition and treatment needs. Since physician visits are limited to one per day, the physician shall select one procedure code to define the overall care given. If intensive care services are provided, or critical care service codes are used to define service provided, the Department requires additional documentation from the physician. The medical record must show documentation of medical necessity and result of the additional service.

(b) If, for the convenience of the physician and not for medical necessity, a patient is transferred between physicians within the same hospital or from one hospital to another hospital, both physicians may only use subsequent hospital care service codes to define and bill for services provided. Under this policy limitation, services associated with the following codes are excluded from coverage as a Medicaid benefit:

(i) Consultation; and

(ii) Initial hospital care services.

(c) Treatment of alcoholism or drug dependency in an inpatient setting is limited to acute care for detoxification only.

(d) Services for pregnant women who do not meet United States residency requirements (undocumented aliens) are limited to only hospital admission for labor and delivery. Medicaid does not cover prenatal services.

(12) Abortion, Sterilization and Hysterectomy:

(a) Abortion procedures are limited to:

(i) those where the pregnancy is the result of rape or incest; or

(ii) a case with medical certification of necessity where a woman suffers from a physical disorder, physical injury, or physical illness, including a life-endangering physical condition caused by or arising from the pregnancy itself that would, as certified by a physician, place the woman in danger of death unless an abortion is performed.

(b) Sterilization and hysterectomy procedures are limited to those which meet the requirements of 42 CFR 441, Subpart F, October 1996 edition, which is adopted and incorporated by reference.

(13) Cosmetic, Plastic, or Reconstructive Services:

(a) Cosmetic, plastic, or reconstructive surgery procedures may only be covered when medically necessary to:

(i) correct a congenital anomaly;

(ii) restore body form or function following an accidental injury;

or

(iii) revise severe disfiguring and extensive scarring resulting from neoplastic surgery.

(14) Surgical Services:

(a) Surgical procedures defined and coded in the CPT Manual are limited by Utah Medicaid policy to prior authorization, or are excluded from coverage. Limitations are documented on the Medical and Surgical Procedures Prior Authorization List, reviewed and revised yearly and maintained in the Physician Provider Manual through notification by Provider Bulletins.

(b) Surgical procedures are "package" services. The package service includes:

(i) the preoperative examination, initiation of the hospital record, and development of a treatment program either in the physician's office on the day before admission, or in the hospital or the physician's office on the same day as admission to the hospital;

(ii) the operation;

(iii) any topical, local, or regional anesthesia; and

(iv) the normal, uncomplicated follow-up care covering the period of hospitalization and office follow-up for progress checks or any service directly related to the surgical procedure for up to six weeks post surgery.

(c) Interpretation of "package" services:

(i) A physician may not bill for an office visit the day prior to surgery, for preadmission or admission workup, or for subsequent hospital care while the patient is being prepared, hospitalized, or under care for a "package" surgical service.

(ii) Consultation services may be billed by the consulting physician only when consultation and no other service is provided. When a consulting physician admits and follows a patient, independently or concurrently with the primary physician, only admission codes and subsequent care codes may be used.

(iii) Office visits for up to six weeks following the hospitalization which relate to the same diagnosis are part of the "package" service. The only exception to either inpatient or office service is for service related to complications, exacerbations, or recurrence of other diseases or problems requiring additional or separate service.

(d) Procedures exempt from the "package" definition are identified in the CPT Manual by an asterisk. The CPT Manual outlines the surgical guidelines which apply to documentation and billing of procedures marked by an asterisk.

(e) Complications, exacerbations, recurrence, or the presence of other diseases or injuries requiring services concurrent with the initial surgical procedure during the listed period of normal follow-up care, may warrant additional charges only when the record shows extensive documentation and justification of additional services.

(f) When an additional surgical procedure is carried out within the listed period of follow-up care for a previous surgery, the follow-up periods continue concurrently to their normal terminations.

(g) Preoperative examination and planning are covered as separate services only in the following circumstances:

(i) When the preoperative visit is the initial visit for the physician and prolonged detention or evaluation is required to establish a diagnosis, determine the need for a specific surgical procedure, or prepare the patient;

(ii) When the preoperative visit is a consultation and the consulting physician does not assume care of the patient; or

(iii) When diagnostic procedures, not part of the basic surgical procedure, e.g., bronchoscopy prior to chest surgery, are provided during the immediate preoperative period.

(h) Exploratory laparotomy procedures confirm a diagnosis and determine the extent of necessary treatment. A physician may request payment only if the exploratory procedure is the only procedure done during an operative session.

(i) The services of an assistant surgeon are specialty services to be provided only by a licensed physician, and are covered only on very complex surgical procedures. Procedures not authorized for assistant surgeon coverage are listed in the Physician Provider Manual and updated by Medicaid Provider Bulletins as necessary. Medicare guidelines for limitation of assistant surgeon coverage are used, since those decisions are made at the national level with physician consultation.

(j) Medicaid does not cover surgical procedures, experimental therapies, or educational, nutritional, support programs for treatment of obesity or weight control.

## (15) Diagnostic and Therapeutic Procedures:

(a) Diagnostic needle procedures, e.g., lumbar puncture, thoracentesis, and jugular, femoral vein, or subdural taps, when performed as part of a necessary workup for a serious medical illness or injury, are covered in addition to other medical care on the same day.

(b) Diagnostic "oscopy" procedures, e.g., endoscopy, bronchoscopy, and laparoscopy, are covered separately from any major surgical procedure. However, when an "oscopy" procedure is done the same day or at the same operative session as another procedure, the "oscopy" procedure may only be covered as a multiple procedure.

(c) Magnetic resonance imaging (MRI) is covered only for service to the brain, spinal cord, hip, thigh and abdomen.

(d) Therapeutic needle procedures, e.g., scalp vein insertion, injections into cavities, nerve blocks, are covered in addition to other medical care on the same day.

(e) Puncture of a cavity or joint for aspiration followed by injection of a medication is covered as one procedure and identified by specific CPT code.

## (16) Anesthesia Services:

Anesthesia services are covered only when administered by a licensed anesthesiologist or nurse anesthetist who remains in attendance for the sole purpose of rendering general anesthesia services. Standby or monitoring by the anesthesiologist or anesthetist during local anesthesia is not a covered Medicaid anesthesia service.

## (17) Transplant Services:

Except for kidney and cornea transplants, Medicaid limits organ transplant services to those procedures for which selection criteria have been approved and documented in R414-10A.

## (18) Modifiers:

Modifiers may be used only, as defined in the CPT Manual, to show that a service or procedure has been altered to some degree but not changed in definition or code. The following limitations apply:

(a) The professional component, modifier 26, may be used only with laboratory and radiology service codes and only when direct analysis, interpretation, and written report of findings are provided by a physician on a laboratory or radiology procedure.

(b) Unusual services are identified by use of modifier 22, along with the appropriate CPT code. A prepayment review of unusual services shall be completed by Medicaid professional staff or physician consultants. A report of the service and any important supporting documentation must be submitted with the claim for review.

(c) Anesthesia by surgeon is identified by use of modifier 47. The operating surgeon may not use modifier 47 in addition to the basic procedure code. Anesthesia provided by the surgeon is part of the basic procedure being provided.

(d) Mandated services as defined by CPT and identified by modifier 32 are noncovered services.

(e) Reference laboratory services identified by modifier 90 are noncovered services.

## (19) Medications:

(a) Drugs and biologicals are limited to those approved by the Food and Drug Administration (FDA), or those approved by the Drug Utilization Review Board (DUR) for off-label use, which is use for a condition different from that initially intended for the drug or biological. Medicaid coverage of drugs and biologicals is based on individual need and orders written by a physician when the drug is given in accordance with accepted standards of medical practice and within the protocol of accepted use for the drug.

(i) Generic drugs shall be used whenever a generic product approved by the FDA is available. If the physician determines that a brand name drug is medically necessary, the physician may override

the generic requirement by writing on the prescription in his own hand writing "name brand medically necessary". Preprinted messages, abbreviations, or notations by a second party, do not meet the override requirement. The pharmacist shall fill the prescription with the generic equivalent product if the override procedure is not followed.

(ii) Injectable medications approved in HCPCS are identified in the "J" code list published by the Health Care Financing Administration or the Department, or both. The list is reviewed and revised yearly and maintained in the Physician Provider Manual by notification and update through Medicaid Provider Bulletins.

(iii) The "J" code covers only the cost of an approved product.

(iv) Office visits only for administration of medication are excluded from coverage. However, an injection code which covers the cost of the syringe, needle and administration of the medication may be used with the "J" code when medication administration is the only reason for an office call.

(v) When an office service is provided for other purposes, in addition to medication administration, only the office visit and a "J" code may be used to bill for the service provided.

(vi) The office visit code and injection code may never be used together. Only one of the codes may be used to define the service provided.

(vii) Vitamin B-12 is limited to use only in treating conditions where physiological mechanisms produce pernicious anemia. Use of Vitamin B-12 in treating any unrelated condition is excluded from coverage.

(b) Vitamins may be provided only for:

(i) Pregnant women: Prenatal vitamins with 1 mg folic acid.

(ii) Children through age five: Children's vitamins with fluoride.

(iii) Children through age one: multiple vitamin (A, C, and D) without fluoride.

(iv) Children through age 15: Fluoride supplement.

(c) Human growth stimulating hormones are limited to CHEC eligible children under the age of 15 who meet the established internal criteria for coverage that has been published and is available in the Provider Manual.

(d) Methylphenidates, amphetamines, and other central nervous system stimulants require prior authorization and may be provided only for treatment of Attention Deficit Disorder (ADD).

(e) Medications for appetite suppression are not a covered service.

(f) Non-prescription, over-the-counter items are limited, and notification of changes consistent with this rule is made by Provider Bulletin and Provider Manual updates.

(g) Nutrients may be provided only as established in R414-24A.

**R414-10-6. Co[-]payment Policy.**

This ~~rule~~ section establishes co[-]payment policy for physician services for Medicaid clients who are not in any of the federal categories exempted from co[-]payment requirements. ~~The rule~~ is authorized by 42 CFR 447.15 and 447.50, Oct. 1, 2000 ed., which are adopted and incorporated by reference.

(1) The Department shall impose a co[-]payment in the amount of ~~23~~ for each physician visit when a non-exempt Medicaid client, as designated on his Medicaid card, receives that physician service. The Department shall limit the out-of-pocket expense of the Medicaid client to \$100 annually. ~~-(Co-payments for pharmacy services will continue to be limited to \$5.00 per month.)~~

(2) The Department shall deduct ~~23~~ from the reimbursement paid to the provider for each physician visit, limited to one per day.

(3) The provider should collect the co[-]payment amount from the Medicaid client for each physician visit, limited to one per day. The provider may deny service for any client who refuses to make the copayment if the client's medical card indicates copayment is required.

(4) Medicaid clients in the following categories are exempt from co[-]payment requirements:

- (a) children;
- (b) pregnant women;
- (c) institutionalized individuals;
- (d) individuals whose total gross income, before exclusions or deductions, is below the Temporary Assistance to Needy Families (TANF) standard payment allowance. These individuals must indicate their income status to their eligibility case worker on a monthly basis to maintain their exemption from the co[-]payment requirements.

(5) Physician services for family planning purposes are exempt from the co[-]payment requirements.

**KEY:** [M]Medicaid

[November 1, 2001]2003

Notice of Continuation March 8, 2002

26-1-5

26-18-3



## Health, Health Care Financing, Coverage and Reimbursement Policy

### **R414-60**

#### Medicaid Policy for Pharmacy Copayment Procedures

##### **NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 26009

FILED: 01/31/2003, 23:25

##### **RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule, along with other proposed changes to the Medicaid program, is needed to keep expenditures within appropriations authorized by the 2002 Legislature. Utilization and enrollment have increased above projected levels and expenditures must be reduced accordingly. (DAR NOTE: The proposed changes to the Medicaid Program are found under R414-10, Amendment, DAR No. 26008; R414-60, Amendment, DAR No. 26009; R414-10, Emergency Rule, DAR No. 26010; and R414-60, Emergency Rule, DAR No. 26011 in this issue. The other changes were published in the January 15, 2003, and February 1, 2003, issues.)

SUMMARY OF THE RULE OR CHANGE: In Subsections R414-60-3(1) and R414-60-3(2) are amended to replace the \$1 copayment per prescription with a \$3 copayment up to a maximum of \$15 in copayments per month. (DAR NOTE: A corresponding 120-day (emergency) rule that is effective as of February 1, 2003, is under DAR No. 26011 in this issue.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 26-18-3

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: This will save the General Fund \$672,300 but will lose the state \$1,640,429 in federal matching funds.

❖ LOCAL GOVERNMENTS: Local governments hospitals that operate pharmacies will experience the same impact detailed for other persons, with a proportionate reduction in reimbursement directly from the state.

❖ OTHER PERSONS: This rulemaking assesses an additional \$2 copayment per prescription to qualified Medicaid clients with a limit of no more than \$15 in copayments per client per month.

Pharmacies are authorized to refuse service if the Medicaid recipient's care identifies them as able to pay the copayment. State reimbursement to pharmacies will be cut by \$2,312,729.

Medicaid recipients will incur in aggregate additional expenses of the \$672,300.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There may be some minimal modifications to provider data systems in order to incorporate the changed copayment. Medicaid recipients will incur an additional cost of \$2 per prescription up to \$15 per month.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This change will increase the contribution that a Medicaid recipient will be required to contribute toward the cost of care and may have a negative impact on providers if they choose to provide the service without collecting the copayment, 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](mailto: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 03/17/2003.

THIS RULE MAY BECOME EFFECTIVE ON: 03/18/2003

AUTHORIZED BY: Rod L. Betit, Executive Director

**R414. Health, Health Care Financing, Coverage and Reimbursement Policy.****R414-60. Medicaid Policy for Pharmacy Copayment Procedures.****R414-60-1. Introduction and Authority.**

This rule establishes Medicaid copayment policy for pharmacy services for Medicaid clients who are not in any of the federal categories exempted from copayment requirements. The rule is authorized by 42 CFR 447.15 and 447.50, Oct. 1995 ed., which are adopted and incorporated by reference.

**R414-60-2. Definitions.**

In addition to the definitions in R414-1, the following definitions also apply to this rule:

- (1) "Child" means any person under the age of 18.
- (2) "HMO Enrollees" means individuals enrolled with any Health Maintenance Organization (HMO).
- (3) "Institutionalized individual" means one who is an inpatient in a health care facility such as a hospital or nursing facility.

**R414-60-3. Copayment Policy.**

(1) The Department shall impose a copayment in the amount of \$[+]3 for each prescription filled when a non-exempt Medicaid client, as designated on his Medicaid card, receives the prescribed medication. The Department shall limit the out-of-pocket expense of the Medicaid client to \$15 per month.

(2) The Department shall deduct \$[+]3 from the reimbursement paid to the provider for each prescription, up to the maximum amount of \$15 per month for each client.

(3) The provider should collect the copayment amount from the Medicaid client for those prescriptions that require a copayment. The provider may deny service for any client who refuses to make the copayment when the client's medical card indicates copayment is required.

(4) Medicaid clients in the following categories are exempt from copayment requirements:

- (a) children;
- (b) pregnant women;
- (c) institutionalized individuals;
- (d) HMO enrollees for whom pharmacy services are included in the HMO benefit package;
- (e) individuals whose total gross income, before exclusions or deductions, is below the Temporary Assistance to Needy Families (TANF) standard payment allowance. These individuals must indicate their income status to their eligibility case worker on a monthly basis to maintain their exemption from the copayment requirements.

(5) Pharmaceuticals prescribed for family planning purposes are exempt from the copayment requirements.

**KEY: M[■]edicaid**

**[■]July 2, 1997[2003]**

**Notice of Continuation June 26, 2002 26-18-3**

**26-1-5**



**Human Services, Administration,  
Administrative Hearings  
R497-100  
Adjudicative Proceedings**

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 25995

FILED: 01/27/2003, 15:42

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** This rule provides for declaratory orders as permitted by Section 63-46b-21. This amendment revises the record retention rule regarding hearing tapes to more closely conform to Utah State Archive retention schedule requiring retention for one year.

**SUMMARY OF THE RULE OR CHANGE:** This rule sets out the form and process for requesting a declaratory order determining the applicability of a statute, rule, or order. It changes the retention period for hearing tapes from 45 days to 1 year.

**STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 63-46b-21 and Subsection 63-2-905(3)

**ANTICIPATED COST OR SAVINGS TO:**

❖ **THE STATE BUDGET:** The agency's cost will be under \$300 to purchase additional recording tapes. Tapes will be reused at the end of the year retention. Requests for declaratory orders will increase workload minimally, but no additional personnel will be required.

❖ **LOCAL GOVERNMENTS:** None--No funding for this agency comes from local government.

❖ **OTHER PERSONS:** No new costs--Parties have always been able to request a copy of a hearing tape from the agency at no fee or for a minimal fee of \$5 per tape. Administrative hearings on declaratory issues will be informal and do not require attorney representation.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** Revised rule clarifies the right to ask the agency for a Declaratory Order by using the administrative hearing process. This can be done without an attorney at little or no cost. No compliance costs will be incurred.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** This amendment will have no impact on businesses. Parties to the hearings have always been able to request a copy of a hearing tape from the agency for no fee or a minimal fee of \$5 per tape.

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

HUMAN SERVICES  
ADMINISTRATION, ADMINISTRATIVE HEARINGS  
120 N 200 W 4TH FL  
SALT LAKE CITY UT 84103-1500, or  
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Virginia S. Smith at the above address, by phone at 801-538-3902, by FAX at 801-538-4604, or by Internet E-mail at gssmith@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 03/20/2003.

THIS RULE MAY BECOME EFFECTIVE ON: 04/01/2003

AUTHORIZED BY: Robin Arnold-Williams, Executive Director

#### **R497. Human Services, Administration, Administrative Hearings.**

##### **R497-100. Adjudicative Proceedings.**

##### **R497-100-1. Definitions.**

The terms used in this rule are defined in Section 63-46b-1. In addition,

(1) For the purpose of this section, "agency" means the Department of Human Services or a [the "agency"] division or office of the Department of Human Services, include[s]ing the Division of Child and Family Services (DCFS), the Division of Services to People with Disabilities (DSPD), the Division of Youth Corrections (DYC), the Division of Aging and Adult Services (DAAS), the Division of Mental Health (DMH), the Division of Substance Abuse (SA), the Office of Licensing (OL), the Utah State Developmental Center (USDC), the Utah State Hospital (USH), and any boards, commissions, officers, councils, committees, bureaus, or other administrative units, including the Executive Director and Director of the Department or other persons acting on behalf of or under the authority of the Executive Director or Director. For purposes of this section, the term "Department of Human Services" does not include the Office of Recovery Services (ORS). The rules regarding ORS are stated in [delineated at] R527-200.

(2) "Agency actions or proceedings" of the Department of Human Services include, but are not limited to the following:

(a) challenges to findings of abuse, neglect and dependency pursuant to Section 62A-4a-116.5;

(b) due process hearings afforded to foster parents prior to removal of a foster child from their home pursuant to Section ~~{[62A-4a-206]}~~;

(c) the denial, revocation, modification, or suspension of any Department foster home license, or group care license;

(d) the denial, revocation, modification or suspension of a license issued by the Office of Licensing pursuant to Section 62A-2-101, et seq.;

(e) challenges to findings of abuse, neglect or exploitation of a disabled or elder adult pursuant to Section 62A-3-301, et seq.;

(f) the licensure of community alternative programs by the Office of Licensing;

(g) actions by the Division of Youth Corrections and the Youth Parole Authority relating to granting or revocation of parole, discipline

or, resolution of grievances of, supervision of, confinement of or treatment of residents of any youth corrections facility or institution;

(h) resolution of client grievances with respect to delivery of services by private, nongovernmental, providers within the Department's service delivery system;

(i) actions by Department owned and operated institutions and facilities relating to discipline or treatment of residents confined to those facilities;

(j) placement and transfer decisions affecting involuntarily committed residents of the Utah State Developmental Center pursuant to Section[s] 62A-5-313;

(k) protective payee hearings;

(l) Department records amendment hearings held pursuant to Section 63-2-603.

(3) "Aggrieved person" includes any applicant, recipient or person aggrieved by an agency action.

(4) "Declaratory Order" is an administrative interpretation or explanation of the applicability of a statute, rule, or order within the primary jurisdiction of the agency to specified circumstances.

~~{(4)}~~(5) "Office" means the Office of Administrative Hearings in the Department of Human Services.

~~{(5)}~~(6) "Presiding officer" means an agency head, or individual designated by the agency head, by these rules, by agency rule, or by statute to conduct an adjudicative proceeding and may include the following:

(a) hearing officers;

(b) administrative law judges;

(c) division and office directors;

(d) the superintendent of agency institutions;

(e) statutorily created boards or committees.

##### **R497-100-2. Exceptions.**

The provisions of this section do not govern the following:

(1) The procedures for promulgation of agency rules, or the judicial review of those procedures. See S~~ub~~section 63-46b-1(2)(a).

(2) Department actions relating to contracts for the purchase or sale of goods or services by and for the state or by and for the Department, including terminations of contracts by the Department.

(3) Initial applications for and initial determinations of eligibility for state-funded programs~~[eligibility determinations]~~.

##### **R497-100-3. Form of Proceeding.**

(1) All adjudicative proceedings commenced by the Department of Human Services or commenced by other persons affected by the Department of Human Services' actions shall be informal adjudicative proceedings.

(2) However, any time before a final order is issued in any adjudicative proceeding, the presiding officer may convert an informal adjudicative proceeding to a formal adjudicative proceeding if:

(a) conversion of the proceeding is in the public interest; and

(b) conversion of the proceeding does not unfairly prejudice the rights of any party.

(3) If a proceeding is converted from informal to formal, the Procedure for Formal Adjudicative Proceedings in Section 63-46b-1, et seq. shall apply. In all other cases, the Procedures for Informal Proceedings in R497-100-6 shall apply.

##### **R497-100-4. Commencement of Proceedings.**

(1) All adjudicative proceedings shall be commenced by either:

(a) a notice of agency action, if proceedings are commenced by the agency; or



(b) a request for agency action, if proceedings are commenced by persons other than the agency.

(2) (a) When adjudicative proceedings are commenced by the agency, the notice of agency action shall be in writing, signed by the designated presiding officer, and shall include:

(i) the names and mailing addresses of all respondents and other persons to whom notice is being given by the presiding officer, and the name, title, and mailing address of any attorney or employee who has been designated to appear for the agency;

(ii) the agency's file number or other reference number;

(iii) the name of the adjudicative proceeding;

(iv) the date that the notice of agency action was mailed;

(v) a statement that the adjudicative proceeding is to be conducted informally;

(vi) if a hearing is to be held in an informal adjudicative proceeding, a statement of the time and place of any scheduled hearing, a statement of the purpose for which the hearing is to be held, and a statement that a party who fails to attend or participate in the hearing may be held in default;

(vii) if the agency's rules do not provide for a hearing, a statement that the parties may request a hearing within ten working days of the notice of agency action;

(viii) a statement of the legal authority and jurisdiction under which the adjudicative proceeding is to be maintained;

(ix) the name, title, mailing address, and telephone number of the presiding officer; and

(x) a statement of the purpose of the adjudicative proceeding and, to the extent known by the presiding officer, the questions to be decided.

(b) The agency shall:

(i) mail the notice of agency action to each party; and

(ii) publish the notice of agency action if required by statute.

(c) Where the law applicable to the agency permits persons other than the agency to initiate adjudicative proceedings, that person's request for agency action shall be in writing and signed by the person invoking the jurisdiction of the agency, or by his representative, shall be filed and shall include:

(i) the names and addresses of all persons to whom a copy of the request for agency action is being sent;

(ii) the agency's file number or other reference number;

(iii) the name of the adjudicative proceeding, if known;

(iv) the date that the request for agency action was mailed;

(v) a statement of the legal authority and jurisdiction under which agency action is requested;

(vi) a statement of the relief sought from the agency; and

(vii) a statement of the facts and reasons forming the basis for relief.

(d) In the case of adjudicative proceedings commenced under Subsection (2)(c) by a person other than the agency, the presiding officer shall within ten working days give notice by mail to all parties. The written notice shall:

(i) give the agency's file number or other reference number;

(ii) give the name of the proceeding;

(iii) designate that the proceeding is to be conducted informally;

(iv) if a hearing is to be held in an informal adjudicative proceeding, state the time and place of any scheduled hearing, the purpose for which the hearing is to be held, and that a party who fails to attend or participate in the hearing may be held in default;

(v) if the agency's rules do not provide for a hearing, state the parties' right to request a hearing within ten working days of the agency's response; and

(vi) give the name, title, mailing address, and telephone number of the presiding officer.

#### **R497-100-5. Availability of Hearing.**

(1) Hearings may be held in any informal adjudicative proceedings conducted in connection with an agency action if the aggrieved party requests a hearing and if there is a disputed issue of fact. If there is no disputed issue of fact, the presiding officer may deny a request for a hearing and determine all issues in the adjudicative proceeding, if done in compliance with the policies and standards of the applicable agency. If the aggrieved person objects to the denial of a hearing, that person may raise that objection as grounds for relief in a request for reconsideration.

(2) There is no issue of fact if:

(a) the aggrieved person tenders facts which on their face establish the right of the agency to take the action or obtain the relief sought in the proceeding;

(b) the aggrieved person tenders facts upon the request of the presiding officer and the fact does not conflict with the facts relied upon by the agency in taking its action or seeking its relief.

#### **R497-100-6. Procedures for Informal Proceedings.**

In compliance with Section 63-46b-5, the procedure for the informal adjudicative proceedings is as follows:

(1)(a) The respondent to a notice of agency action or request for agency action may, but is not required to, file an answer or responsive pleading to the allegations contained in the notice of agency action or the request for agency action within 10 working days following receipt of the adverse party's pleading.

(b) A hearing shall be provided to any party entitled to request a hearing in accordance with Section 63-46b-5.

(c) In the hearing, the party named in the notice of agency action or in the request for agency action may be represented by counsel and shall be permitted to testify, present evidence and comment on the issues.

(d) Hearings will be held only after a timely notice has been mailed to all parties.

(e) Discovery is prohibited, ~~and~~ but the office may issue subpoenas or other orders to compel production of necessary evidence. The office may require that parties exchange documents prior to the hearing in order to expedite the process. All parties to the proceedings will be responsible for the appearance of witnesses.

(f) All parties shall have access to information contained in the agency's files and to all materials and information gathered in any investigation, to the extent permitted by law.

(g) Intervention is prohibited, except that intervention is allowed where a federal statute or rule requires ~~it~~ that a state permit intervention.

(h) Within a reasonable time after the close of the hearing, or after the party's failure to request a hearing within the time prescribed by the agency's rules, the presiding officer shall issue a signed order in writing that states the following:

(i) the decision;

(ii) the reasons for the decision;

(iii) a notice of any right of administrative or judicial review available to the parties; and

(iv) the time limits for filing an appeal or requesting a review.

(i) All hearings shall be open to all parties.

(j) The presiding officer's order shall be based on the facts appearing in the agency's files and on the facts presented in evidence at the hearings.

(k) A copy of the presiding officer's order shall be promptly mailed to each of the parties.

(2) All hearings shall be tape recorded at the office's expense. Any party, at his own expense, may have a reporter approved by the agency prepare a transcript from the office's record of the hearing pursuant to Section 63-46b-5(2)(b). The hearing tape will be maintained for one year[45 days] after the hearing decision has been issued[~~pursuant to Section 63-46b-5(i)~~].

#### **R497-100-7. Declaratory Orders.**

(1) Who May File. Any person or governmental entity directly affected by a statute, rule or order administered, promulgated or issued by an agency, may file a petition for a declaratory order by addressing and delivering the written petition to the presiding officer of the appropriate agency.

(2) Content of Petition.

(a) The petition shall be clearly designated as a request for an agency declaratory order and shall include the following information:

- (i) the statute, rule or order to be reviewed;
- (ii) a detailed description of the situation or circumstances at issue;
- (iii) a description of the reason or need for a declaratory order, including a statement as to why the petition should not be considered frivolous;
- (iv) an address and telephone where the petitioner can be contacted during regular work days;
- (v) a statement about whether the petitioner has participated in a completed or on-going adjudicative proceeding concerning the same issue within the past 12 months; and
- (vi) the signature of the petitioner or an authorized representative.

(3) Exemptions from Declaratory Order Procedure. A declaratory order shall not be issued by any agency of the Department under the following circumstances:

- (a) the subject matter of the petition is not within the jurisdiction and competency of the agency;
- (b) the person requesting the declaratory ruling participated in an adjudicative proceeding concerning the same issue within 12 months of the date of the declaratory order request;
- (c) the declaratory order procedure is likely to substantially prejudice the rights of a person who would be a necessary party, unless that person consents in writing to a determination of the matter by a declaratory proceeding;
- (d) the declaratory order request is trivial, irrelevant, or immaterial;
- (e) a declaratory order proceeding is otherwise prohibited by state or federal law;
- (f) a declaratory order is not in the best interest of the agency or the public;
- (g) the subject matter is not ripe for consideration; or
- (h) the issue is currently pending in a judicial proceeding.

(4) Intervention in Accordance with 63-46b-21. A person may intervene in a declaratory order proceeding by filing a petition to intervene with the presiding officer of the agency within 30 days after the original declaratory order petition was filed with the agency. The agency presiding officer may grant a petition to intervene if the petition meets the following requirements:

(a) the intervenor's legal interests may be substantially affected by the declaratory order proceedings; and

(b) the interests of justice and the orderly and prompt conduct of the declaratory order proceeding will not be materially impaired by allowing intervention.

(5) Review of Petition for Declaratory Order.

(a) After review and consideration of a petition for a declaratory order, the presiding officer of the agency may issue a written order:

- (i) declaring the applicability of the statute, rule, or order in question to the specified circumstances;
  - (ii) agreeing to issue a declaratory order within a specified time;
  - (iii) declining to issue a declaratory order and stating the reasons for its action; or
  - (iv) setting the matter for adjudicative proceedings and giving notice of the proceeding by mail to all parties.
- (b) The written notice shall:
- (i) give the name, title, mailing address, and telephone number of the presiding officer;
  - (ii) give the agency's file number or other reference number;
  - (iii) give the name of the proceeding;
  - (iv) state whether the proceeding shall be conducted informally or formally;
  - (v) state the time and place of any scheduled hearing, the purpose for which the hearing is to be held, and that a party who fails to attend or participate in the hearing may be held in default; and
  - (vi) if the agency's rules do not provide for a hearing, state the parties' right to request a hearing within ten working days of the agency's response.

(c) If the agency's presiding officer issues a declaratory order, it shall contain:

- (i) the names of all parties to the proceeding on which the declaratory order is based;
- (ii) the particular facts on which the declaratory order is based;
- (iii) the reasons for the agency's conclusion;
- (iv) a notice of any right of administrative or judicial review available to the parties; and
- (v) the time limits for filing an appeal or requesting review.

(d) A copy of all orders issued in response to a request for a declaratory proceeding shall be mailed promptly to the petitioner and any other parties.

(e) If the agency's presiding officer has not issued a declaratory order within 60 days after receipt of the petition, the petition is deemed denied.

#### **R497-100-8[7]. Agency Review.**

Agency review shall not be allowed. Nothing contained in this rule prohibits a party from filing a petition for reconsideration pursuant to Section 63-46b-13. If the 20th day for filing a request for reconsideration falls on a weekend or holiday the deadline will be extended until the next working day.

#### **R497-100-9[8]. Scope and Applicability.**

The provisions of this section supersede the provisions of any other Department rules which may conflict with the foregoing rules.

**KEY: administrative hearings, administrative procedures, social services**

**February 10, 2003**~~August 17, 1999~~

**Notice of Continuation November 27, 2000**

**62A-1-110**

**62A-1-111**

▼ ————— ▼

**Human Services, Administration,  
Administrative Services, Licensing**

**R501-2**

**Core Standards**

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 26000

FILED: 01/30/2003, 15:56

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** This amendment is intended to make the rule clearer and provide more defined explanation of procedures.

**SUMMARY OF THE RULE OR CHANGE:** This amendment reorganizes the rule to make the content clearer, revised numbering, and portions have been re-written or deleted to eliminate duplication and correct other changes.

**STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 62A-2-106

**ANTICIPATED COST OR SAVINGS TO:**

❖ **THE STATE BUDGET:** Other than for the cost of copying the revised rule, there will be no additional cost or savings on the State Budget.

❖ **LOCAL GOVERNMENTS:** The local governments have no additional cost because the changes in the rules have been more for clarification and broader definition of the already existing rule and other than the facilities complying with local government requirements, the local governments are not involved with the facilities.

❖ **OTHER PERSONS:** The changes in this rule will not produce any additional costs or savings to other persons because the rule changes are more clarification and expanded definition and not for new physical changes.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** Because the changes made in this rule are more for clarification and better definition of terms, it was determined that there would be no additional cost or savings to the affected persons unless they opt to make changes.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** With the type of changes made with this rule, there will not be a fiscal impact on any businesses.

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

HUMAN SERVICES

ADMINISTRATION, ADMINISTRATIVE SERVICES,

LICENSING

120 N 200 W

SALT LAKE CITY UT 84103-1500, or

at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Jan Bohi at the above address, by phone at 801-538-4153, by FAX at 801-538-4553, or by Internet E-mail at jbohi@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 03/17/2003.

THIS RULE MAY BECOME EFFECTIVE ON: 03/18/2003

AUTHORIZED BY: Ken Stettler, Director

**R501. Human Services, Administration, Administrative Services, Licensing.**

**R501-2. Core ~~Standards~~ Rules.**

**R501-2-1. Definition.**

Core ~~Standards~~ Rules are ~~[the license-]require[ments]~~ for Human Service Programs, ~~[as-]~~listed in R501-2-14. Where there is duplication of review by another oversight agency, the Office of Licensing, ~~[hereinafter referred to as Office-]~~shall accept that documentation as proof of compliance. Pursuant to 62A-2-106, the Office of Licensing will not enforce rules for licensees under contract to a Division in the Department of Human Services in the following areas:

- A. the administration and maintenance of client and service records; and
- B. staff qualifications; and
- C. staff to client ratios.

**R501-2-2. Program Administration.**

A. The program shall have a written statement of purpose to include the following:

1. program philosophy,
2. description of long and short term goals, this does not apply to social detoxification or child placing adoption agencies,
3. description of the services provided,
4. the population to be served,
5. fee policy,
6. participation of consumers in activities unrelated to treatment plans, and
7. program policies and procedures which[at time of initial licensing] shall be submitted prior to issuance of an initial license.

B. Copies of the above statements shall be available at all times to the Office upon request. General program information shall be available to the public.

C. The program shall have a written quality assurance plan. Implementation of the plan shall be documented.

D. The program shall have clearly stated guidelines and appropriate administrative procedures, to include the following:

1. program management,
2. maintenance of complete, accurate and accessible records, and
3. record retention.

E. The governing body, program operators, management, employees, consultants, volunteers, and interns shall read, understand, follow and sign a copy of the current Department of Human Services Provider Code of Conduct.

F. The program shall comply with State and Federal laws regarding abuse reporting in accordance with 62A-4a-403 and 62A-3-302, and shall post copies of these laws in a conspicuous place within the facility.

G. All programs which serve ~~minors~~ children or vulnerable adults shall submit identifying information for background screening of all adult persons associated with the licensee and board members who have access to children and vulnerable adults in accordance with R501-14 and R501-18 ~~for all staff~~.

H. The program shall comply with all applicable National Interstate Compact Laws.

I. A licensed substance abuse treatment program shall complete the ~~[Uniform Facility Data Set Survey]~~ National Survey of Substance Abuse Treatment annually. Substance abuse treatment programs shall also comply with Confidentiality of Alcohol and Drug Abuse Patient Records, 42 CFR Part 2.

J. The program's license shall be posted ~~in a conspicuous place on the premises~~ where it is easily read by consumers, staff and visitors. See also R501-1-5-F. The program shall post [Civil Rights and Americans With Disabilities Act, referred to as ADA, notices as applicable.] Civil Rights, License on Notice of Agency Action, abuse and neglect reporting and other notices as applicable.

K. The program shall not handle the major personal business affairs of a consumer ~~]~~ without request in writing by the consumer and legal representative.

#### **R501-2-3. Governance.**

A. The program shall have a governing body which is responsible for and has authority over the policies, training and monitoring of staff and consumer activities for all phases of the program. ~~Their~~ The governing body's responsibilities shall include the following:

1. to ensure program policy and procedures compliance,
2. to ensure continual compliance with relevant local, state and federal requirements,
3. to notify the Office of Licensing within 30 days of changes in program administration and purpose ~~], according to R501-2-2~~.
4. to ensure that the program is fiscally and operationally sound, by providing documentation by a financial professional that the program is a "going concern",
5. to ensure that the program has adequate staffing as identified on the organizational chart,
6. to ensure that the program has general liability insurance, professional liability insurance as appropriate, vehicle insurance for transport of consumers, and fire insurance, and
7. for programs serving youth, the program director or designee shall meet with the Superintendent or designee of the local school district at the time of initial licensure, and then again each year as the program ~~s~~ renews it ~~]~~s license to complete the necessary student forms including youth education forms.

B. The governing body shall be one of the following:

1. a Board of Directors in a non-profit organization; or
2. commissioners or appointed officials of a governmental unit; or
3. Board of Directors or individual owner or owners of a for-profit organization, ~~]~~ and ~~— 4. for Child Placing Adoption Agencies, a Board of Directors. The Board members shall not be owners, employees, or paid consultants of the agency.]~~

C. The program shall have a list of members of the governing body, indicating name, address and term of membership.

D. The program shall have an organization chart which identifies operating units of the program and their inter-relationships. The chart shall define lines of authority and responsibility for all program staff and identifies by name the staff person who fills each position on the chart.

E. When the governing body is composed of more than one person, the governing body shall establish written by-laws, and shall hold formal meetings at least twice a year, Child Placing Agencies must meet at least quarterly, maintain written minutes, which shall be available for review by the Office of Licensing, to include the following:

1. attendance,
2. date,
3. agenda items, and
4. actions.

#### **R501-2-4. Statutory Authority.**

A. A publicly operated program shall document the statutory basis for existence.

B. A privately operated program shall document its ownership and incorporation.

#### **R501-2-5. Record Keeping.**

The program shall have, ~~if available and appropriate,~~ a written record for each consumer to include the following:

- A. ~~[d]~~ Demographic information to include Medicaid number as required,
- B. ~~[b]~~ Biographical information,
- C. ~~[p]~~ Pertinent background information, including the following:
  1. personal history, including social, emotional, psychological and physical development,
  2. legal status,
  3. emergency contact with name, address and telephone number, and
  4. photo, as needed
- D. ~~[h]~~ Health records of a consumer including the following:
  1. immunizations, ~~[this is not applicable to adult programs]~~ for children only,
  2. medication,
  3. ~~[records of]~~ physical examinations, dental, and visual examinations, and
  4. other pertinent health records and information,
- E. ~~[s]~~ Signed consent forms for treatment and signed Release of Information form,
- F. ~~[e]~~ Copy of consumer's individual treatment or service plan,
- G. ~~[a]~~ A summary of family visits and contacts, and
- H. ~~[a]~~ A summary of attendance and ~~[leaves]~~ absences.

**R501-2-6. Direct Service Management.**

A. Direct service management, as described herein, is not applicable to social detoxification<sup>[5]</sup>~~[- residential support or child placing adoption agencies.]~~ The program shall have on file for public inspection a written eligibility policy and procedure, approved by a licensed clinical professional to include the following:

1. legal status~~[- according to State law]~~,
2. age and sex of consumer,
3. consumer needs or problems best addressed by program,
4. program limitations, and
5. appropriate placement.

B. The program shall have a written admission policy and procedure to include the following:

1. appropriate intake process,
2. age groupings as approved by the Office of Licensing.

~~[2]~~3. pre-placement requirements,

~~[3]~~4. self-admission,

~~[4]~~5. notification of legally responsible person, and

~~[5]~~6. reason for refusal of admission<sup>[5]</sup> to include a written, signed statement.

C. Intake evaluation.

1. At the time of intake an assessment shall be conducted to evaluate health and family history, medical, social, psychological and, as appropriate, developmental, vocational and educational factors.

2. In emergency situations which necessitate immediate placement, the intake evaluation shall be completed within seven days of admission.

3. All methods used in evaluating a consumer shall consider age, cultural background, dominant language, and mode of communication.

D. A written agreement, developed with the consumer, and the legally responsible person if applicable, shall be completed, signed by all parties, and kept in the consumer's record<sup>[5]</sup> with copies available to involved persons. It shall include the following:

1. rules of program,
2. consumer and family expectations,
3. services to be provided and cost of service,
4. authorization to serve and to obtain emergency care for the consumer,
5. arrangements regarding absenteeism, visits, vacation, mail, gifts, and telephone calls, when appropriate, and
6. sanctions and consequences.

E. Consumer treatment plan shall be individualized, as applicable<sup>[5]</sup>. According to the following:

1. A staff member shall be assigned to each consumer having responsibility and authority for development, implementation, and review of the plan.

2. The plan shall include the following:

- a. findings of intake evaluation and assessment,
- b. measurable long and short term goals and objectives,
  - 1) goals or objectives clearly derived from assessment information,
  - 2) goals or objectives stated in terms of specific observable changes in behavior, skills, attitudes or circumstances,
  - 3) evidence that consumer input was integrated where appropriate in identifying goals and objectives, and
  - 4) evidence of family involvement in treatment plan<sup>[5]</sup> unless clinically contraindicated,
- c. specification of daily activities, services, and treatment, and
- d. methods for evaluation<sup>[5]</sup>.

3. Treatment plans<sup>[5]</sup>:

~~a. Plans shall be developed within 30 days of admission by a treatment team and reviewed by a licensed clinical professional. Thereafter, treatment plans shall be reviewed by the licensed clinical professional as often as stated in the treatment plan. Plans for non-Medicaid consumers shall be clinically reviewed within six months of admission and at least annually thereafter.]~~ shall be developed within 30 days of consumer's admission by a treatment team and reviewed by a clinical professional if applicable. Thereafter treatment plans shall be reviewed by the licensed clinical professional if applicable as often as stated in the treatment plan.

~~[b. Where applicable, treatment or program plans shall be written to include the required components of Division of Services for People With Disabilities program plan.]~~

4. All persons working directly with the consumer shall be appropriately informed of the individual treatment plan.

5. Reports on the progress of the consumer shall be available to the applicable ~~[D]~~ division, the consumer, ~~[or]~~ and the legally responsible person.

6. Treatment record entries shall include the following:

- a. identification of program,
- b. date and duration of services provided,
- c. description of service provided,
- d. a description of consumer progress or lack of progress in the achievement of treatment goals or objectives as often as stated in the treatment plan, and

e. documentation of review of consumer's record to include the following:

- 1) signature,
- 2) title,
- 3) date, and
- 4) reason for review.

7. Transfer and ~~[D]~~ discharge

a. ~~[A]~~ discharge plan shall identify resources available to consumer.

b. ~~[F]~~ the plan shall be written so it can be understood by the consumer or legally responsible party.

c. ~~[W]~~ whenever possible the plan shall be developed with consumer's participation, or legally responsible party if necessary. The plan shall include the following:

- 1) reason for discharge or transfer,
- 2) adequate discharge plan<sup>[5]</sup> including aftercare planning,
- 3) summary of services provided,
- 4) evaluation of achievement of treatment goals or objectives,
- 5) signature and title of staff preparing summary, and
- 6) date of discharge or transfer.

d. ~~[F]~~ the program shall have a written policy concerning un-planned discharge.

8. Incident or Crisis Intervention records

a. ~~[The]~~ the program shall have written policies and procedures which includes: ~~[for the reporting and documentation of deaths of consumers, injuries, fights, or physical confrontations, situations requiring the use of passive physical restraints, suspected incidents of abuse or neglect, unusual incidents, and] reporting to program management, documentation, and management review of incidents such as deaths of consumers, serious injuries, fights, or physical confrontations, situations requiring the use of passive physical restraints, suspected incidents of abuse or neglect, unusual incidents, strip searches and~~ other situations or circumstances affecting the health, safety, or well-being of consumers.

- b. ~~[R]~~records shall include the following:
- 1) summary information,
  - 2) date, time of emergency intervention,
  - 3) action taken,
  - 4) employees and management responsible and involved,
  - 5) follow up information,
  - 6) list of referrals,
  - 7) signature and title of staff preparing report, and
  - 8) records shall be signed by management staff.
- c. ~~[The]~~the report shall be maintained in individual consumer records.

d. ~~[W]~~when an incident involves abuse, ~~[or]~~neglect, serious injury or illness, violation of the Provider Code of Conduct ~~[of a consumer,]~~ or death of a consumer, a program shall:

1) ~~[prepare a preliminary written report within 24 hours of the incident, and]~~notify the Office of Licensing, legally responsible person and any applicable agency which may include law enforcement.

2) ~~[notify the Office, the legally responsible person, and the appropriate law enforcement authority]~~a preliminary written report shall be submitted to the Office of Licensing within 24 hours of the incident.

~~[—F. Intensive Supervision and Tracking: For those programs providing intensive supervision services, a designated staff member shall provide services to the consumer as frequently as determined in the treatment plan or contract. A consumer's record shall document, in activity logs, the date, amount of time spent, and the specific activity provided to the consumer. If any one consumer has more than one staff assigned to provide intensive supervision, this action shall be justified in the consumer's record and cleared by the licensed clinical supervisor.]~~

#### **R501-2-7. Behavior Management.**

A. ~~[Behavior management methods, as described herein, are not applicable to child placing adoption agencies.—]~~The program shall have on file for public inspection~~[-]~~ a written policy and procedure for the methods of behavior management. These shall include the following:

1. definition of appropriate and inappropriate behaviors of consumers,
2. acceptable staff responses to inappropriate behaviors, and
3. consequences.

B. The policy shall be provided to all staff, and staff shall receive training relative to behavior management at least annually~~[-]~~ or more often if needed~~[-]~~.

C. No management person shall authorize or use, and no staff member shall use, any method designed to humiliate or frighten a consumer.

D. No management person shall authorize or use, and no staff member shall use nor permit the use of physical restraint with the exception of passive physical restraint. Passive physical restraint shall be used only as a temporary means of physical containment to protect the consumer, other persons, or property from harm. Passive physical restraint shall not be associated with punishment in any way.

E. Staff involved in an emergency safety intervention that results in an injury to a resident or staff must meet with the clinical professional to evaluate the circumstances that caused the injury and develop a plan to prevent future injuries.

F. Programs using time out or seclusion methods shall comply with the following:

1. The program will have a written policy and procedure which has been approved by the Office of Licensing to include:

a. Time-out or seclusion is only used when a child's behavior is disruptive to the child's ability to learn to participate appropriately, or to function appropriately with other children or the activity. It shall not be used for punishment or as a substitute for other developmentally appropriate positive methods of behavior management.

b. Time-out or seclusion shall be documented in detail and provide a clear understanding of the incident which resulted in the child being placed in that time out or seclusion.

c. If a child is placed in time out or seclusion more than twice in any twenty-four hour period, a review is conducted by the clinical professional to determine the suitability of the child remaining in the program.

d. Any one time out or seclusion shall not exceed 4 hours in duration.

e. Staff is required to maintain a visual contact with a child in time out or seclusion at all times.

f. If there is any type of emergency such as a fire alarm, or evacuation notification, children in time out or seclusion shall follow the safety plan.

g. A child placed in time out or seclusion shall not be in possession of belts, matches, weapons or any other potentially harmful objects or materials that could present a risk of harm to the child.

2. Time out or seclusion areas shall comply with the following:

a. Time out or seclusion rooms shall not have locking capability.

b. Time out or seclusion rooms shall not be located in closets, bathrooms, or unfinished basement, attic's or locked boxes.

c. A time out or seclusion room is not a bedroom, and temporary beds, or mattresses in these areas are not allowed. Time out and seclusion shall not preclude a child's need for sleep, or normal scheduled sleep period.

d. All time out or seclusion rooms shall measure at least 75 square feet with a ceiling height of at least 7 feet. They shall have either natural or mechanical ventilation and be equipped with a break resistant window, mirror or camera that allows for full observation of the room. Seclusion rooms shall have no hardware, equipment, or furnishings that obstruct observation of the child, or that present a physical hazard or a suicide risk. Rooms used for time out or seclusion shall be inspected and approved by the local fire department

[E]G. [Staff who]The program's licensed clinical professional shall be responsible for ~~[the design and]~~supervision of the behavior management procedure~~[-]~~ ~~[shall be at least 21 years of age].~~

#### **R501-2-8. Rights of Consumers.**

A. The program shall have a written policy for consumer rights to include the following~~[-]~~~~[- numbers 10-13 do not apply to child placing adoption agencies:]~~

1. privacy of information and privacy for both current and closed records,
2. reasons for involuntary termination and criteria for re-admission to the program,
3. freedom from potential harm or acts of violence to consumer or others,
4. consumer responsibilities, including household tasks, privileges, and rules of conduct,
5. service fees and other costs,

6. grievance and complaint procedures,
  7. freedom from discrimination,
  8. the right to be treated with dignity,
  9. the right to communicate by telephone or in writing with family, attorney, physician, clergyman, and counselor or case manager except when contraindicated by the licensed clinical professional~~[or supervisory personnel]~~,
  10. a list of people whose visitation rights have been restricted through the courts,
  11. the right to send and receive mail providing that security, and general health and safety requirements are met,
  12. defined smoking policy in accordance with the Utah Clean Air Act, and
  13. statement of maximum sanctions and consequences, reviewed and approved by the Office of Licensing.
- B. The consumer shall be informed of this policy to his or her understanding verbally and in writing. A signed copy shall be maintained in the consumer record.

#### **R501-2-9. Personnel Administration.**

- A. The program shall have written personnel policies and procedures to include the following:
1. employee grievances,
  2. lines of authority,
  3. orientation and on-going training,
  4. performance appraisals,
  5. rules of conduct, and
  6. sexual and personal harassment.
- B. The program shall have a director, appointed by the governing body, who shall be responsible for management of the program and facility. The director or ~~[a responsible staff member]~~designated management person shall be available at all times during operation of the program.
- C. The program shall ~~[have]~~maintain a personnel file on site for each employee to include the following:
1. application for employment,
  2. applicable credentials and certifications,
  3. initial medical history if directed by the governing body,
  4. tuberculin test if directed by the governing body,
  5. food handler permit, where required by local health authority,
  6. training record,
  7. annual performance evaluations,
  8. I-9 Form completed as applicable,
  9. comply with the provisions of R501-14 and R501-1[5]8 for background screening, and
  10. signed copy of the current Department of Human Services Provider Code of Conduct.
- ~~[—D. Staff shall have access to his or her personnel file in accordance with State and Federal law.~~
- ] ~~[E]D.~~ The program shall follow a written staff to consumer ratio[5] which shall meet specific consumer and program needs. The staff to consumer ratio shall meet or exceed the requirements set forth in the applicable categorical rules as found in ~~[R501-3, R501-7, R501-8, R501-11, and]R501-16, R501-17, R-501-19, R501-20, R501-21 and R501-22.~~
- ~~[F]E.~~ The program shall employ or contract with trained or qualified staff to perform the following functions:
1. administrative,
  2. fiscal,
  3. clerical,

4. housekeeping, maintenance, and food service,
  5. direct consumer service, and
  6. supervisory.
- ~~[G]E.~~ The program shall have a written job description for each position[5] which includes a specific statement of duties and responsibilities and the minimum level of education, training and work experience required.
- ~~[H]G.~~ Treatment shall be provided or supervised by licensed professional staff, whose qualifications are determined or approved by the governing body, in accordance with ~~[S]~~state law.
- ~~[H]H.~~ The governing body shall ensure that all staff are certified and licensed as legally required.
- ~~[H]L.~~ The program shall have access to a medical clinic or a physician licensed to practice medicine in the State of Utah.
- ~~[—K. Nursing services, when provided, shall be in accordance with technical skills defined in the Utah Nurse Practice Act.~~
- ] ~~[L]J.~~ The program shall provide interpreters for consumers[5] or refer consumers to appropriate resources as necessary to communicate with consumers whose primary language is not English.
- ~~[M]K.~~ The program shall retain the personnel file of an employee after termination of employment[5] in accordance with accepted personnel practices.
- ~~[N]L.~~ A program using volunteers, substitutes, or student interns[5] shall have a written plan to include the following:
1. direct supervision by a program staff,
  2. orientation and training in the philosophy of the program, the needs of consumers, and methods of meeting those needs,
  3. background screening,
  4. a record maintained with demographic information, and
  5. Signed copy of the current Department of Human Services Provider Code of Conduct.
- ~~[O]M.~~ Staff Training
1. ~~[S]~~staff members shall be trained in all policies of the program[5] including the following:
    - a. orientation in philosophy, objectives, and services,
    - b. emergency procedures,
    - c. behavior management,
    - ~~[—d. statutory responsibilities of the program, including rights for people with disabilities according to the Americans With Disabilities Act,~~
    - ] ~~[e]d.~~ current program policy and procedures, and
    - ~~[f]e.~~ other relevant subjects.
  2. Staff shall have completed and remain current in a certified first aid and CPR, ~~[program as required]~~such as or comparable to American Red Cross.
  3. Staff shall have current food handlers permit as required by local health authority.
  4. Training shall be documented and maintained ~~[in individual personnel files]~~on-site.

#### **R501-2-10. Infectious Disease.**

The program shall have policies and procedures designed to prevent or control infectious and communicable diseases in the facility in accordance with local, state and federal health standards.

#### **R501-2-11. Emergency Plans.**

- A. The program shall have a written plan of action for disaster and casualties to include the following:
1. designation of authority and staff assignments,
  2. plan for evacuation,

3. transportation and relocation of consumers when necessary, and

4. supervision of consumers after evacuation or relocation.

B. The program shall ~~inform~~ educate consumers on how to respond to fire warnings and other instructions for life safety including evacuation.

C. The program shall have a written plan which personnel follows in medical emergencies and arrangements for medical care, including notification of consumer's physician and nearest relative or guardian.

~~—D. Death, serious illness, or injury of a consumer or staff at the program shall be reported within 24 hours to a guardian and to the Office.~~

]

#### **R501-2-12. Safety.**

A. Fire drills in non-outpatient programs[;] shall be conducted at least quarterly and documented. Notation of inadequate response shall be documented.

B. The program shall provide access to an operable 24 hour telephone service. Telephone numbers for emergency assistance, i.e., 911 and poison control, shall be posted.

C. The program shall have an adequately supplied first aid kit in the facility, such as recommended by American Red Cross.

~~D. [Programs maintaining weapons at the facility shall assure that the weapons and ammunition are securely locked. Weapons kept at the facility and on the premises will be inaccessible to consumers at all times and rendered inoperable if possible.] All persons associated with the program having access to children or vulnerable adults who have firearms or ammunition shall assure that they are inaccessible to consumers at all times. Firearms and ammunition that are stored together shall be kept securely locked in security vaults or locked cases, not in glass fronted display cases. Firearms that are stored in display cases shall be rendered inoperable with trigger locks, bolts removed, or other disabling methods. Ammunition for those firearms shall be kept securely locked in a separate location. This does not restrict constitution or statutory rights regarding concealed weapons permits, pursuant to UCA 53-5-701 et seq.~~

#### **R501-2-13. Transportation.**

A. The program shall have written policy and procedures for transporting consumers.

B. In each program or staff vehicle[;] used to transport consumers, there shall be emergency information which includes at a minimum[;] the name, address and phone number of the program ~~or~~ and an emergency telephone number.

C. The program shall have means, or make arrangement for[;] transportation in case of emergency.

D. Drivers of vehicles shall have a valid drivers license and follow safety requirements of the State.

E. Each vehicle shall be equipped with an adequately supplied first aid kit, such as recommended by American Red Cross.

#### **R501-2-14. Categorical [Standards]Rules.**

In addition to Core [Standards]Rules, Categorical [Standards]Rules are specific regulations which must be met for the following:

A. Child Placing Agencies, R501-7,

B. Day Treatment, R501-20,

C. Intermediate Secure Treatment Programs for Minors, R501-

16.

D. Outdoor Youth Programs, R501-8,

E. Outpatient Treatment, R501-21,

F. Outpatient Domestic Violence Perpetrator Treatment, R501-21,

G. Residential Treatment, R501-19,

H. Residential Support, ~~and~~ R501-22,

I. Social Detoxification[;] and R501-11,

J. Assisted living for DSPD Residential. R710.

#### **R501-2-15. Single Service Program [Standards]Rules.**

Core [Standards]Rules of the Office do not apply to single service programs.

Single services program [standards]Rules are the regulations which must be met for the following:

A. Adult Day Care, which [standards]Rules are found in R501-13,

B. Adult Foster Care, which [standards]Rules are found in R501-17, and

~~—C. Child Foster Care, which standards are found in R501-12.~~

**KEY: licensing, human services**

**[July 2, 1998]2003**

**Notice of Continuation November 25, 2002**

**62A-2-101 et seq.**



## Human Services, Recovery Services **R527-3** Definitions

### NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 25977

FILED: 01/16/2003, 08:55

### RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The proposed rule changes are the result of a five-year review follow-up. Organizational changes within the Office of Recovery Services (ORS) have resulted in new bureau and unit names and the elimination of others. Statutory changes have resulted in other program changes that affect ORS. This includes the replacement of the Uniform Reciprocal Enforcement of Support Act (URES) by the Uniform Family Support Act (UFS), the elimination of the Aid to Families with Dependent Children program (AFDC), and the creation of the Family Employment Program (FEP). In addition, the "pass-through payment" program which had been jointly administered by ORS and the former Office of Family Support (OFS) was discontinued. However, pass-through payments are still considered in determining past-due support obligations for the period October 1984 through February 1997.

SUMMARY OF THE RULE OR CHANGE: The following terms were changed in this rule: "BCS" (Bureau of Collection Services) was changed to "BMC" (Bureau of Medical Collections); "BCSS" (Bureau of Child Support Services), was changed to "CSS" (Child Support Services); "MSG" (Management



Support Group) was changed to "MSS" (Management Support Services); and "ASU" (Agency Services Unit) was changed to "BFS" (Bureau of Financial Services). The following terms were added: "CIC" (Bureau for Children in Care); "CSU" (Customer Service Unit); "BET" (Bureau of Electronic Technology); "OT" (Office of Technology); "UIFSA" (Uniform Family Support Act); "FEP" (Family Employment Program); and "TANF" (Federal Temporary Assistance for Needy Families). The term "Pass-through payments" was changed to "Pass-through payment" as mentioned in Subsection R527-40-1(3) and the reference to Section R527-337-1 was eliminated because Rule R527-337 has been repealed. The term "IV-D" (Title IV-D of the Social Security Act) was deleted because it is already defined in Section 62A-11-103. "CS" (child support) was deleted because it is not a frequently used acronym.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 62A-11-103, 62A-11-202, 62A-11-303, 62A-11-401, and 78-45f-101

ANTICIPATED COST OR SAVINGS TO:

- ❖ THE STATE BUDGET: None--This rule does not affect the state budget because it only provides definitions to terms that relate to the Office of Recovery Services.
- ❖ LOCAL GOVERNMENTS: None--Administrative rules of the Office of Recovery Services do not apply to local governments.
- ❖ OTHER PERSONS: None--This rule only defines terms that relate to the existing ORS programs or organizational units and does not involve the operations of those entities. Consequently, the proposed rule changes should have no financial impact on other persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: None--Because this rule only provides definitions of terms related to the Office of Recovery Services and does not deal with compliance factors, there are no associated compliance costs for any person.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The purpose of this rule is to provide definitions of terms associated with the Office of Recovery Services that are either not mentioned, or are not precisely defined, in state statutes. This rule does not deal directly with agency operations or the affect of agency operations on other entities. It is, therefore, not expected that the proposed rule changes will have any fiscal impact on businesses because they only involve adding, updating, and deleting definitions.

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

HUMAN SERVICES  
RECOVERY SERVICES  
515 E 100 S  
SALT LAKE CITY UT 84102-4211, or  
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Wayne Braithwaite at the above address, by phone at 801-536-8986, by FAX at 801-536-8509, or by Internet E-mail at waynebraithwaite@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 03/17/2003.

THIS RULE MAY BECOME EFFECTIVE ON: 03/18/2003

AUTHORIZED BY: Emma Chacon, Director

**R527. Human Services, Recovery Services.**

**R527-3. Definitions.**

**R527-3-1. Definitions.**

1. Terms used in this title, R527, are defined in Section 62A-11-103, 62A-11-202, ~~[and]62A-11-303, [and]62A-11-401, and 78-45f-101.~~ In addition, the following terms are defined:
  2. "ORS" means the Office of Recovery Services.
  3. "ORSIS" means the Office of Recovery Services Computer Information System.
  4. "~~[BCS]BMC~~" means the Bureau of ~~[Collection Services]~~Medical Collections.
  5. "CIC" means the Bureau for Children in Care.
  - ~~[5]6.~~ "~~[BCSS]CSS~~" means ~~[the Bureau of]~~Child Support Services.
  - ~~[6]7.~~ "~~[MSG]MSS~~" means Management Support ~~[Group]Services.~~
  8. "CSU" means the Customer Service Unit.
  - ~~[7]9.~~ "~~[ASU]BFS~~" means ~~[Agency Services Unit]~~the Bureau of Financial Services.  
[ ]10. "IV D" refers to Title IV D of the Social Security Act.]
  10. "BET" means the Bureau of Electronic Technology.
  - ~~[9]11.~~ "OT" means the Office of Technology.
  - ~~[10]12.~~ "IV-D agency" refers to the state agency that administers a child support program under Title IV-D of the Social Security Act.
  - ~~[10]13.~~ "IV-D recipient" refers to a person who receives IV-D services.
  - ~~[11]14.~~ "IV-A" refers to Title IV-A of the Social Security Act.
  - ~~[12]15.~~ "IV-A agency" refers to the state agency that administers a public entitlement program under Title IV-A of the Social Security Act.
  - ~~[13]16.~~ "IV-A recipient" refers to a person who receives IV-A benefits.
  - ~~[14]17.~~ "~~[URES]UIFSA~~" refers to Title 78, Chapter 45f (Uniform Interstate Family Support Act) which replaces "URES", Title 77, Chapter 31 (Uniform Reciprocal Enforcement of Support Act).
  - ~~[15]18.~~ "CS" means child support.]
  - ~~[16]19.~~ "AFDC" refers to the former Aid to Families with dependent children program.
  19. "FEP" refers to the Family Employment Program which is funded by "TANF" (Federal Temporary Assistance for Needy Families).
  - ~~[17]20.~~ "Pass-through ~~[payments]~~payment" as used in R527-40-1(3) ~~[and R527-337-1]~~refers to the first \$50 of the current support that ORS ~~[collects]~~collected for a month in which the custodial parent

[receives]received AFDC. The IV-A agency paid [This]this amount [is paid]to the AFDC household [by OFS-]prior to March, 1997.

[18]21. "IRS" refers to the Internal Revenue Service.

[19]22. "TPL" means Third Party Liability.

**KEY: child support, welfare**

**[February 21, 1996]2003**

**Notice of Continuation December 18, 2002**

**62A-11-103**

**62A-11-202**

**62A-11-303**

**62A-11-401**

**78-45f-101**

## Public Safety, Fire Marshal

# R710-4

## Buildings Under the Jurisdiction of the State Fire Prevention Board

### NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE No.: 26006

FILED: 01/31/2003, 22:52

### 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 R710-4. One incorporated reference was updated, one new incorporated reference was added, fire drill schedules in institutions of higher learning were modified, a time schedule to remove existing automatic fire sprinkler heads in commercial kitchen hoods was established, and removal of existing dry chemical and non-UL300 wet chemical automatic fire extinguishing systems to be replaced by UL300 listed systems was also established.

SUMMARY OF THE RULE OR CHANGE: The proposed amendments to the existing rule are as follows: 1) in Subsection R710-4-1(1.2), the Board updated the currently adopted National Fire Protection Association, NFPA Standard 13, Installation of Sprinkler Systems to the 2002 edition; 2) in Subsection R710-4-1(1.3), the Board adopted the National Fire Protection Association, NFPA Standard 13R, Installation of Sprinkler Systems in Residential Occupancies up to and Including Four Stories in Height, 2002 edition, as a new incorporated reference; 3) in Subsection R710-4-3(3.9.1), the Board modified the currently adopted fire drill schedule for A-3 occupancies in institutions of higher learning from quarterly to yearly as long as certain conditions are met; 4) in Subsection R710-4-3(3.13), the Board established a time line for the removal of existing automatic fire sprinkler heads protecting commercial kitchen exhaust hood and duct systems to be replaced with a UL300 listed system by May 1, 2004; and 5) in Subsection R710-4-3(3.14), the Board established a time line for the removal of existing dry chemical and non-UL300 wet chemical automatic fire extinguishing systems to be replaced

with UL300 listed systems by January 1, 2006, or sooner under certain conditions.

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

THIS RULE OR CHANGE INCORPORATES BY REFERENCE THE FOLLOWING MATERIAL: 1) National Fire Protection Association, NFPA Standard 13, Installations of Sprinkler Systems, 2002 edition; and 2) National Fire Protection Association, NFPA Standard 13R, Installation of Sprinkler Systems in Residential Occupancies up to and Including Four Stories in Height, 2002 edition

### ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: There would be an aggregate anticipated cost of \$200 to reprint the existing rule and send it to those who cannot access the State Fire Marshal Website. This would also include the cost for printing and distribution of a letter of explanation and attached rule to those requesting it.

❖ LOCAL GOVERNMENTS: The only aggregate anticipated cost to local government would be the cost of updating the newly adopted standards that have been incorporated by reference.

The cost for each standard is approximately \$30. Total aggregate anticipated cost is impossible to accurately state due to the unknown number of local government entities that would purchase these standards and the exact number of standards they would purchase.

❖ OTHER PERSONS: There would be an aggregate anticipated cost of \$30 per standard to purchase the updated incorporated references. There would also be an anticipated cost of \$500 to \$3,000 per installation to replace existing automatic fire extinguishing systems protecting commercial kitchen exhaust hood and duct systems depending on the size, type, and configuration. Total aggregate anticipated cost is impossible to accurately state due to the unknown number of standards that would be purchased and the unknown number of systems that would need to be replaced or upgraded.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The compliance cost for affected persons would be approximately \$30 per NFPA standard to update to the newly incorporated references. The compliance cost for people to remove, replace, or upgrade existing dry chemical systems, non-UL300 wet chemical systems, or fire sprinkler heads to a UL300 listed system would be approximately \$500 to \$3,000 depending on the size, type, and configuration of the system.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There will be a fiscal impact on those businesses that have in existence a dry chemical system, a non UL300 wet chemical system, or automatic fire sprinkler system heads that protect commercial kitchen hood systems that are not UL300 listed. The fiscal impact will be from approximately \$500 to \$3,000 to install a UL300 listed system. There has been substantive documentation that these old systems no longer work correctly when a fire occurs due to the differences in technology and uses of different cooking oils. There has been and is a false sense of security for businesses where the old non-UL300 system exists. The cost

to provide better safety to our citizens and the properties in our state appears to justify the outlay of funds to replace these antiquated systems.

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 03/17/2003.

THIS RULE MAY BECOME EFFECTIVE ON: 03/18/2003

AUTHORIZED BY: Gary A. Wise, State Fire Marshal

## **R710. Public Safety, Fire Marshal.**

### **R710-4. Buildings Under the Jurisdiction of the State Fire Prevention Board.**

#### **R710-4-1. Adoption of Fire Codes.**

Pursuant to Title 53, Chapter 7, Section 204, of the Utah Code Annotated 1953, the Utah Fire Prevention Board adopts minimum rules for the prevention of fire and for the protection of life and property against fire and panic in any publicly owned building, including all public and private schools, colleges, and university buildings, and in any building or structure used or intended for use, as an asylum, hospital, mental hospital, sanitarium, home for the aged, assisted living facility, children's home or day care center, or any similar institutional type occupancy of any capacity; and in any place of assemblage where fifty (50) or more persons may gather together in a building, structure, tent, or room, for the purpose of amusement, entertainment, instruction, or education.

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

1.1 National Fire Protection Association (NFPA), Standard 101, Life Safety Code (LSC), 2000 edition, except as amended by provisions listed in R710-4-3, et seq. The following chapters from NFPA, Standard 101 are the only chapters adopted: Chapter 18 - New Health Care Occupancies; Chapter 19 - Existing Health Care Occupancies; Chapter 20 - New Ambulatory Health Care Occupancies; Chapter 21 - Existing Ambulatory Health Care Occupancies; Chapter 22 - New Detention and Correctional Occupancies; Chapter 23 - Existing Detention and Correctional Occupancies; and other sections referenced within and pertaining to these chapters only.

1.2 National Fire Protection Association (NFPA), Standard 13, Installation of Sprinkler Systems, [4999]2002 edition, except as amended by provisions listed in R710-4-3, et seq.

1.3 National Fire Protection Association (NFPA), Standard 13R, Installation of Sprinkler Systems - Residential Occupancies up to and Including Four Stories in Height, 2002 edition, except as amended by provisions listed in R710-4-3, et seq.

[4-3]1.4 National Fire Protection Association (NFPA), Standard 72, National Fire Alarm Code, [4996]2002 edition, except as amended by provisions listed in R710-4-3, et seq.

[4-4]1.5 National Fire Protection Association (NFPA), Standard 70, National Electric Code (NEC), 1999 edition, as adopted by the Uniform Building Standards Act, Title 58, Chapter 56, Section 4, Utah Code Annotated 1953. Wherever there are sections or tables in the International Fire Code (IFC) that reference "ICC Electrical Standard", the reference to "ICC Electrical Standard" shall be replaced with "National Electric Code".

[4-5]1.6 International Building Code (IBC), 2000 edition, as published by the International Code Council, Inc. (ICC), and as adopted under the authority of the Uniform Building Standards Act, Title 58, Chapter 56, Section 4, Utah Code Annotated 1953 and the Utah Administrative Code, R156-56-701.

[4-6]1.7 International Fire Code (IFC), 2000 edition, as published by the International Code Council, Inc. (ICC), except as amended by provisions listed in R710-4-3, et seq.

[4-7]1.8 International Mechanical Code (IMC), 2000 edition, as published by the International Code Council, Inc., and as adopted under the authority of the Uniform Building Standards Act, Title 58, Chapter 56, Section 4, Utah Code Annotated 1953 and the Utah Administrative Code, R156-56-701.

[4-8]1.9 International Fuel Gas Code (IFGC), 2000 edition, as published by the International Code Council, and as adopted under the authority of the Uniform Building Standards Act, Title 58, Chapter 56, Section 4, Utah Code Annotated 1953 and the Utah Administrative Code, R156-56-701.

[4-9]1.10 International Plumbing Code (IPC), 2000 edition, as published by the International Code Council, Inc., and as adopted under the authority of the Uniform Building Standards Act, Title 58, Chapter 56, Section 4, Utah Code Annotated 1953 and the Utah Administrative Code, R156-56-701.

[4-10]1.11 Copies of the above codes are on file in the Office of Administrative Rules and the State Fire Marshal.

#### **R710-4-2. Definitions.**

2.1 "Authority Having Jurisdiction (AHJ)" means the State Fire Marshal, his authorized deputies, or the local fire enforcement authority.

2.2 "AWWA" means American Water Works Association.

2.3 "Board" means Utah Fire Prevention Board.

2.4 "Bureau of Fire Prevention or Fire Prevention Bureau" means the AHJ.

2.5 "Fire Chief or Chief of the Department" means the AHJ.

2.6 "Fire Department" means the AHJ.

2.7 "Fire Marshal" means the AHJ.

2.8 "Fire Officer" means the State Fire Marshal, the state fire marshal's deputies, the fire chief or fire marshal of any county, city, or town fire department, the fire officer of any fire district or special service district organized for fire protection purposes is the AHJ.

2.9 "IBC" means International Building Code.

2.10 "ICC" means International Code Council, Inc.

2.11 "IFC" means International Fire Code.

2.12 "IFGC" means International Fuel Gas Code.

2.13 "IMC" means International Mechanical Code.

- 2.14 "IPC" means International Plumbing Code.
- 2.15 "LSC" means Life Safety Code.
- 2.16 "NEC" means National Electric Code.
- 2.17 "NFPA" means National Fire Protection Association.
- 2.18 "SFM" means State Fire Marshal.
- 2.19 "UCA" means Utah State Code Annotated 1953 as amended.

### **R710-4-3. Amendments and Additions.**

- 3.1 Door Closures
  - 3.1.1 IFC, Chapter 7, Section 703.2. Add the following Exception. In Group E Occupancies, where the corridor serves an occupant load greater than 30 and the building does not have an automatic fire sprinkler system installed, the door closures may be of the friction hold-open type on classrooms doors only.
- 3.2 Dumpsters
  - 3.2.1 IFC, Chapter 3, Section 304.3.3, with reference to Group E Occupancies, is amended to add the following requirement:
 

Dumpsters and containers with an individual capacity of 1.5 cubic yards (40.5 cubic feet)(1.15m) or more shall not be stored in buildings or placed within 20 feet of combustible walls, openings or combustible roof eave lines.
- 3.3 Fire Alarm Systems
  - 3.3.1 General Provisions
    - 3.3.1.1 Fire alarm system designs submitted to the AHJ, shall include complete floor plans showing location of all devices, occupancy use of each room, schematic wiring diagrams, battery calculations, and any other items deemed necessary.
  - 3.3.2 Required Installations
    - 3.3.2.1 Fire alarm systems shall be provided as required in IFC, Chapter 9, Section 907, and LSC Chapters as adopted, and in other rules promulgated by the Board.
    - 3.3.2.2 All state-owned buildings, college and university buildings, other than institutional, with an occupant load of 100 or more, all schools with an occupant load of 50 or more, shall have an approved fire alarm system with the following features:
      - 3.3.2.2.1 Products-of-combustion (smoke) detectors installed throughout all corridors and common areas of egress at the maximum prescribed spacing of thirty feet on center, and no more than fifteen feet from the walls.
      - 3.3.2.2.2 In other than fully sprinklered buildings, automatic detectors shall be installed in each enclosed space, other than corridors, at maximum prescribed spacing as specified in NFPA, Standard 72, or by their listing.
      - 3.3.2.2.3 Manual fire alarm boxes shall be provided as required.
 

In public and private elementary and secondary schools, manual fire alarm boxes shall be provided in the boiler room, kitchen, and main administrative office of each building, and any other areas as determined by the AHJ.
      - 3.3.2.2.4 The fire alarm system shall be connected to a proprietary panel, where provided within the complex.
  - 3.3.3 Main Panel
    - 3.3.3.1 An approved key plan drawing and operating instructions shall be posted at the main fire alarm panel which displays the location of all alarm zones and if applicable, device addresses.
    - 3.3.3.2 The main panel shall be located in a normally attended area such as the main office or lobby. Location of the Main Panel other than as stated above, shall require the review and authorization of the SFM. Where location as required above is not possible, an electronically supervised remote annunciator from the main panel

shall be located in a supervised area of the building. The remote annunciator shall visually indicate system power status, alarms for each zone, and give both a visual and audible indication of trouble conditions in the system. All indicators on both the main panel and remote annunciator shall be adequately labeled.

#### 3.3.4 System Wiring

3.3.4.1 System Wiring shall be in accordance with the following:

3.3.4.1.1 The Initiating Device circuits (IDC) shall be Style D as defined in NFPA, Standard 72.

3.3.4.1.2 The Indicating Appliance circuits (IAC) shall be Style Z as defined in NFPA, Standard 72.

3.3.4.1.3 Signaling line circuits shall be Style 6 or 7 as defined in NFPA, Standard 72.

3.3.4.2 All junction boxes shall be adequately identified as part of the fire alarm system. Covers for the concealed boxes shall be painted red.

#### 3.3.5 System Devices

All equipment and devices shall be listed and/or labeled by a nationally recognized testing laboratory for fire alarm use.

#### 3.3.6 Fan Shut Down

3.3.6.1 The fan shut down relay(s) in the air handling equipment shall be normally energized, and connected through and controlled by a normally closed contact in the fire alarm panel, or a normally closed contact of a remote relay under supervision by the main panel. The relays will transfer on alarm, and shall not restore until the panel is reset.

3.3.6.2 Duct detectors required by the IMC, shall be interconnected, and compatible with the fire alarm system.

#### 3.3.7 Maintenance and Tests

The owner/administrator of each building shall insure maintenance and testing as required in IFC, Chapter 9, Section 901.5 and 901.6. A written log, verifying these tests, shall be kept on file for inspection by the AHJ.

#### 3.4 Fireworks

3.4.1 IFC, Chapter 33, Section 3301.1.3 is amended to include the additional [~~Exception:~~

~~5. The use of fireworks for display and retail sales is allowed as set forth in]UCA 53-7-220 and UCA 11-3-1.~~

#### 3.5 Health Care Facilities

3.5.1 LSC Chapters 18, 19, 20 and 21, Sections 18.1.2.4, 19.1.2.4, 20.1.2.2 and 21.1.2.2 (Exiting Through Adjoining Occupancies) exception is deleted.

3.5.2 LSC Chapter 19, Section 19.3.6.1, (Rooms Allowed open to Corridor) exceptions No. 1, No. 5, No. 6, and No. 8 are deleted.

#### 3.6 Fire Department Connections

3.6.1 The fire department connection on automatic fire sprinkler and standpipe systems shall be located a reasonable distance as approved by the AHJ.

#### 3.7 Fire Sprinklers and Standpipes

3.7.1 The potable water supply to automatic fire sprinkler and standpipe systems shall be protected against backflow as required in Utah Administrative Code, R156-56-707(41).

3.7.2 Antifreeze systems shall be protected against backflow as required in Utah Administrative Code, R156-56-707(42).

#### 3.8 Water Supply Analysis

3.8.1 For proposed construction in both sprinklered and unsprinklered occupancies, the owner or architect shall provide an engineer's water supply analysis evaluating the available water supply.

3.8.2 The owner or architect shall provide the water supply analysis during the preliminary design phase of the proposed construction.

3.8.3 The water analysis shall be representative of the supply that may be available at the time of a fire as required in NFPA, Standard 13, Appendix A-9-2.1.

### 3.9 Fire Drills

3.9.1 IFC, Chapter 4, Section 405.2, Table 405.2, is amended to ~~include~~ add the following ~~[to Group E as specified in Table 405.2] footnotes:~~

c. [A fire drill in s]Secondary schools in Group E occupancies shall [be]have a fire drill conducted at least every two months, to a total of four fire drills during the nine month school year. The first fire drill shall be conducted within the first two weeks of the school year.

d. A-3 occupancies in academic buildings of institutions of higher learning are required to have one fire drill per year, provided the following conditions are met:

1. The building has a fire alarm system in accordance with Section 907.2.

2. The rooms classified as assembly, shall have fire safety floor plans as required in Section 404.3.2(4) posted.

3. The building is not classified a high-rise building.

4. The building does not contain hazardous materials over the allowable quantities by code.

### 3.10 Institutional

3.10.1 IFC, Chapter 2, Section 202, Educational Group E, Day care is amended as follows: On line three delete the word "five" and replace it with the word "four".

3.10.2 IFC, Chapter 2, Section 202, Institutional Group I-1 is amended to add the following:  
On line nine add "type 1" in front of the words "assisted living facilities".

3.10.3 IFC, Chapter 2, Section 202, Institutional Group I-2 is amended as follows: On line three delete the word "five" and replace it with the word "three". On line eight after the words "detoxification facilities" delete the rest of the paragraph, and add the following: "ambulatory surgical centers with two or more operating rooms where care is less than 24 hours and type 2 assisted living facilities. Type 2 assisted living facilities with five or fewer persons shall be classified as a Group R-4. Type 2 assisted living facilities with at least six and not more than 16 residents shall be classified as a Group I-1 facility.

3.10.4 IFC, Chapter 2, Section 202, Institutional Group I-2, Child care facility is amended as follows: On line two delete the word "five" and replace it with the word "four".

3.10.5 IFC, Chapter 2, Section 202, Institutional Group I-4 day care facilities, Child care facility is amended as follows: On line three delete the word "five" and replace it with the word "four". Also on line two of the Exception delete the word "five" and replace it with the word "four".

### 3.11 Automatic Sprinkler Systems

3.11.1 IFC, Chapter 9, Section 903.2.5 is deleted and rewritten as follows: An automatic fire sprinkler system shall be provided throughout buildings with Group I fire areas. Listed quick response or residential sprinkler heads shall be installed in patient or resident sleeping areas.

3.11.2 IFC, Chapter 9, Section 903.2.9 is amended to add the following: Exception: Buildings not more than 4500 gross square feet and not containing more than 16 residents, provided the building is equipped throughout with an approved fire alarm system that is

interconnected and receives its primary power from the building wiring and a commercial power system.

### 3.12 Retroactive Installation of Automatic Fire Alarm Systems

3.12.1 IFC, Chapter 9, Sections 907.3.1.1, 907.3.1.2, 907.3.1.3, 907.3.1.4 and 907.3.1.9 is deleted.

### 3.13 Automatic Fire Sprinkler Systems and Commercial Cooking Operations.

3.13.1 IFC, Chapter 9, Section 903.2.14.2 is amended to add the following:

903.2.14.2.1 Commercial cooking operation suppression. Automatic fire sprinkler systems protecting commercial kitchen exhaust hood and duct systems with appliances that generate appreciable depth of cooking oils shall be replaced with a UL300 listed system by May 1, 2004.

### 3.14 Alternative Automatic Fire-Extinguishing Systems

3.14.1 IFC, Chapter 9, Section 904.2.1 is amended to add the following:

904.2.1.1 Dry chemical hood system suppression. Existing automatic fire-extinguishing systems using dry chemical that protect commercial kitchen exhaust hood and duct systems shall be removed and replaced with a UL300 listed system by January 1, 2006 or before that date when any of the following occurs: 1) Six year internal maintenance service; 2) Recharge; 3) Hydrostatic test date as indicated on the manufacturers date of the cylinders; or 4) Reconfiguring of the system piping.

904.2.1.2 Wet chemical hood system suppression. Existing wet chemical fire-extinguishing systems not UL300 listed and protecting commercial kitchen exhaust hood and duct systems shall be removed, replaced or upgraded to a UL300 listed system by January 1, 2006 or before that date when any of the following occurs: 1) Six year internal maintenance service; 2) Recharge; 3) Hydrostatic test date as indicated on the manufacturers date of the cylinder; or 4) Reconfiguration of the system piping.

### **R710-4-4. Repeal of Conflicting Board Actions.**

All former Board actions, or parts thereof, conflicting or inconsistent with the provisions of this Board action or of the codes hereby adopted, are hereby repealed.

### **R710-4-5. Validity.**

The Board hereby declares that should any section, paragraph, sentence, or word of this Board action, or of the codes hereby adopted, be declared, for any reason, to be invalid, it is the intent of the Board that it would have passed all other portions of this Board action, independent of the elimination here from of any such portion as may be declared invalid.

### **R710-4-6. Conflicts.**

In the event where separate requirements pertain to the same situation in the same code, or between different codes as adopted, the more restrictive requirement shall govern, as determined by the AHJ, or his authorized representative.

### **R710-4-7. Adjudicative Proceedings.**

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

7.2 A person may request a hearing on a decision made by the AHJ, by filing an appeal to the Board within 20 days after receiving final decision from the AHJ.

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

7.4 The Board shall act as the hearing authority, and shall convene as an appeals board after timely notice to all parties involved.

7.5 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).

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

7.7 Judicial review of all final Board actions resulting from informal adjudicative proceedings is available pursuant to UCA, Section 63-46b-15.

**KEY: fire prevention, public buildings**  
~~August 15, 2002~~ **March 18, 2003**  
**Notice of Continuation June 12, 2002**  
**53-7-204**

## Public Safety, Fire Marshal

### R710-7

## Concerns Servicing Automatic Fire Suppression Systems

### NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 26001

FILED: 01/31/2003, 10:54

### 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 the schedule to remove, replace, or upgrade existing dry chemical and wet chemical commercial kitchen hood systems that are not UL300 listed.

SUMMARY OF THE RULE OR CHANGE: The proposed amendments to the existing rule are as follows: 1) in Subsection R710-7-1(1.3.3), it is proposed that all existing automatic fire suppression systems using dry chemical be removed and replaced with a UL300 listed wet chemical system by January 1, 2006, or sooner if four listed requirements occur before that date; and 2) in Subsection R710-7-1(1.3.4), it is proposed that existing wet chemical automatic fire suppression systems not UL300 listed shall be removed, replaced, or upgraded to a listed UL300 system by January 1, 2006, or sooner if four listed requirements occur before that date. The attached rule reflects those proposed amendments made in the previous rule filing that will become effective on March 4, 2003.

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

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: There would be an aggregate anticipated cost of \$200 to reprint the existing rule and send to those who cannot access the State Fire Marshal Website. This would also include the cost for printing and distribution of a letter of explanation and attached rule to those requesting it.

❖ 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 an anticipated cost of \$500 to \$3,000 per installation depending of the type and size of the existing installation. Aggregate anticipated cost is impossible to accurately state due to the unknown amount of existing systems that are in usage statewide. A moderate estimate would be in the several hundreds of existing systems that would need to be replaced or upgraded.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The compliance cost for affected persons with existing dry chemical automatic fire suppression systems would be \$1,500 to \$3,000 per existing system depending upon the size to replace it with a UL300 listed wet chemical system. The compliance cost for affected persons with existing non-UL300 wet chemical automatic fire suppression systems would be \$500 to \$3,000 to upgrade or replace the existing system to a UL300 listed system.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There will be a fiscal impact on those businesses that have in existence a dry chemical or wet chemical commercial kitchen hood systems that are not UL300 listed. There have been over the last eight years substantive documentation that these systems no longer work when a fire occurs due to the differences in technology and use of different cooking oils. There is now and has been a false sense of security for businesses where the old non-UL300 system exists. The cost to provide better safety to our citizens and the property in our state appears to justify the approximate amount of \$500 to \$3,000 per system depending upon the size and state of that system.

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 03/17/2003.

THIS RULE MAY BECOME EFFECTIVE ON: 03/18/2003

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 it meets the following:

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 All existing [A] 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.] shall be removed and replaced with a UL300 listed system by January 1, 2006 or before that date when any of the following occurs:

1.3.3.1 Six year internal maintenance service;

1.3.3.2 Recharge;

1.3.3.3 Hydrostatic test date as indicated on the manufacturer date of the cylinders;

1.3.3.4 Reconfiguration of the system piping.

1.3.4 All existing wet chemical automatic fire suppression systems not UL300 listed shall be removed, replaced or upgraded to

a UL300 listed system by January 1, 2006 or before that date when any of the following occurs:

1.3.4.1 Six year internal maintenance service;

1.3.4.2 Recharge;

1.3.4.3 Hydrostatic test date as indicated on the manufacturer date of the cylinders;

1.3.4.4 Reconfiguration of the system piping.

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 License and Inspection

Original licenses shall be valid for one year from the date of application. Thereafter, each license shall be renewed annually and renewals shall be valid 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 License and Inspection

Application for renewal shall be made 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.

### 3.9 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 for one year from the date of application. Thereafter, each certificate of registration will be renewed annually and renewals will be valid for one year from issuance. The failure to renew a certificate of registration will cause the certificate of registration to become invalid. The holder of an invalid certificate of registration shall not perform any work on automatic fire suppression systems.

#### 4.9 Renewal Date

Application for renewal will be made 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 \$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 \$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**  
~~March 4, 2003~~ **March 18, 2003**  
**Notice of Continuation June 11, 2002**  
**53-7-204**



**Public Safety, Fire Marshal**  
**R710-9**  
**Rules Pursuant to the Utah Fire**  
**Prevention Law**

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 26003

FILED: 01/31/2003, 15:36

**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 the updating of several incorporated references into the rule, and the schedule to remove, replace, or upgrade existing automatic fire sprinkler heads, dry chemical systems, and non-UL300 wet chemical systems protecting commercial kitchen hood systems to approved UL300 listed systems.

**SUMMARY OF THE RULE OR CHANGE:** The proposed amendments to the existing rule are as follows: 1) in Subsection R710-9-1(1.3), a preamble was added to the existing rule to state the general rule sections; 2) in Subsection R710-9-1(1.4), the currently adopted International Fire Code, 2000 edition, was moved to this section of the rule; 3) in R710-9-1(1.5), the Board approved the updating and incorporating by reference a number of NFPA Standards currently adopted in Chapter 45 of the International Fire Code; 4) in Section R710-9-4, the currently adopted section deputizing Special Deputy State Fire Marshals was moved from the back of the rule; 5) in Subsection R710-9-6(6.11), the Board established a time line for the removal of existing automatic fire sprinkler heads protecting commercial kitchen exhaust hood and duct systems to be replaced with UL300 listed systems by May 1, 2004; and 6) in Subsection R710-9-6(6.12), the Board established a time line for the removal of existing dry chemical and non-UL300 wet chemical automatic fire extinguishing systems for protection over commercial kitchen hood and duct systems and will need to be replaced by January 1, 2006, or sooner under certain conditions.

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

**THIS RULE OR CHANGE INCORPORATES BY REFERENCE THE FOLLOWING MATERIAL:** 1) National Fire Protection Association, NFPA 10, Standard for Portable Fire Extinguishers, 2002 edition; 2) National Fire Protection Association, NFPA 12, Standard on Carbon Dioxide Extinguishing Systems, 2000 edition; 3) National Fire Protection Association, NFPA 13, Standard for Installation of Sprinkler Systems, 2002 edition; 4) National Fire Protection Association, NFPA 13D, Standard for Installation of Sprinkler Systems in One and Two Family Dwellings and Manufactured Homes, 2002 edition; 5) National Fire Protection Association, NFPA 13R, Standard for the Installation of Sprinkler Systems in Residential Occupancies up to and including Four Stories in Height, 2002 edition; 6) National Fire Protection Association, NFPA 58, Liquefied

Petroleum Gas Code, 2001 edition; 7) National Fire Protection Association, NFPA 72, National Fire Alarm Code, 2002 edition; 8) National Fire Protection Association, NFPA 96, Standard for Ventilation Control and Fire Protection of Commercial Cooking Operations, 2001 edition; 9) National Fire Protection Association, NFPA 101, Life Safety Code, 2000 edition; and 10) National Fire Protection Association, NFPA 2001, Standard on Clean Agent Fire Extinguishing Systems, 2000 edition

**ANTICIPATED COST OR SAVINGS TO:**

❖ **THE STATE BUDGET:** There would be an aggregate anticipated cost of \$200 to reprint the existing rule and send it to those who cannot access the State Fire Marshal Website. This would also include the cost for printing and distribution of a letter of explanation and attached rule to those requesting it.

❖ **LOCAL GOVERNMENTS:** The only aggregate anticipated cost to local government would be the cost of updating the newly adopted standards that have been incorporated by reference.

The cost for each standard is approximately \$30. Total aggregate anticipated cost is impossible to accurately state due to the unknown number of local government entities that would purchase these standards and the exact number of standards they would purchase for each entity.

❖ **OTHER PERSONS:** There would be the aggregate anticipated cost of \$30 per standard to purchase the updated incorporated references. There would also be an anticipated cost of \$500 to \$3000 per installation to replace existing automatic fire extinguishing systems protecting commercial kitchen exhaust hood and duct systems depending on the type and size of the system. Total aggregate anticipated cost is impossible to accurately state due to the unknown number of standards that would be purchased and the unknown number of systems that would need to be replaced or upgraded.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** The compliance cost for affected persons would be approximately \$30 per standard to update to the newly incorporated references. The compliance cost for people to replace or upgrade existing dry chemical systems, non-UL300 wet chemical systems, or automatic fire sprinkler heads to an approved UL300 listed system would be approximately \$500 to \$3,000 depending on the size, type, and configuration of the system.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** There will be a fiscal impact on those businesses that have in existence a dry chemical system, a non-UL300 wet chemical system, or automatic fire sprinkler system heads that protect commercial kitchen hood systems that are not UL300 listed. The fiscal impact will be from approximately \$500 to \$3,000 to install a UL300 system. There have been over eight years of substantive documentation that these systems no longer work when a fire occurs due to the differences in technology and uses of different cooking oils. There has been and is a false sense of security for businesses where the old non-UL300 system exists. The cost to provide better safety to our citizens and the properties in our state appears to justify the outlay of funds to replace these antiquated systems.

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 03/17/2003.

THIS RULE MAY BECOME EFFECTIVE ON: 03/18/2003

AUTHORIZED BY: Gary A. Wise, State Fire Marshal

## **R710. Public Safety, Fire Marshal.**

### **R710-9. Rules Pursuant to the Utah Fire Prevention Law.**

#### **R710-9-1. Title, Authority, and Adoption of Codes.**

1.1 These rules shall be known as the "Rules Pursuant to the Utah Fire Prevention Law", and may be cited as such, and will be hereafter referred to as "these rules".

1.2 These rules are promulgated in accordance with Title 53, Chapter 7, Section 204, Utah Code Annotated 1953, as amended.

1.3 These rules are adopted by the Utah Fire Prevention Board to provide minimum rules for board meeting conduct, procedures to amend incorporated references, establish several board subcommittees, establish a Fire Service Education Administrator and Fire Education Program Coordinator, enforcement of the rules of the State Fire Marshal, establish rules for the Utah Fire and Rescue Academy, and deputizing Special Deputy State Fire Marshals.

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

1.4.1 International Fire Code (IFC), 2000 edition, excluding appendices, as promulgated by the International Code Council, Inc., except as amended by provisions listed in R710-9-6, et seq.

1.5 There is further adopted as part of these rules the following codes which are also incorporated by reference and supercede the adopted standards listed in the International Fire Code, 2000 edition, Chapter 45, Referenced Standards, as follows:

1.5.1 National Fire Protection Association (NFPA), NFPA 10, Standard for Portable Fire Extinguishers, 2002 edition, except as amended by provisions listed in R710-9-6, et seq.

1.5.2 National Fire Protection Association (NFPA), NFPA 12, Standard on Carbon Dioxide Extinguishing Systems, 2000 edition, except as amended by provisions listed in R710-9-6, et seq.

1.5.3 National Fire Protection Association (NFPA), NFPA 13, Standard for Installation of Sprinkler Systems, 2002 edition, except as amended by provisions listed in R710-9-6, et seq.

1.5.4 National Fire Protection Association (NFPA), NFPA 13D, Standard for the Installation of Sprinkler Systems in One and

Two Family Dwellings and Manufactured Homes, 2002 edition, except as amended by provisions listed in R710-9-6, et seq.

1.5.5 National Fire Protection Association (NFPA), NFPA 13R, Standard for the Installation of Sprinkler Systems in Residential Occupancies up to and including Four Stories in Height, 2002 edition, except as amended by provisions listed in R710-9-6, et seq.

1.5.6 National Fire Protection Association (NFPA), NFPA 58, Liquefied Petroleum Gas Code, 2001 edition, except as amended in provisions listed in R710-9-6, et seq.

1.5.7 National Fire Protection Association (NFPA), NFPA 72, National Fire Alarm Code, 2002 edition, except as amended in provisions listed in R710-9-6, et seq.

1.5.8 National Fire Protection Association (NFPA), NFPA 96, Standard for Ventilation Control and Fire Protection of Commercial Cooking Operations, 2001 edition, except as amended by provisions listed in R710-9-6, et seq.

1.5.9 National Fire Protection Association (NFPA), NFPA 101, Life Safety Code, 2000 edition, except as amended in provisions listed in R710-9-6, et seq.

1.5.10 National Fire Protection Association (NFPA), NFPA 160, Standard for Flame Effects Before an Audience, 1998 edition, except as amended by provisions listed in R710-9-6, et seq.

1.5.11 National Fire Protection Association (NFPA), NFPA 2001, Standard on Clean Agent Fire Extinguishing Systems, 2000 edition, except as amended by provisions listed in R710-9-6, et seq.

#### **R710-9-2. Definitions.**

2.1 "Academy" means Utah Fire and Rescue Academy.

2.2 "Academy Director" means the Director of the Utah Fire and Rescue Academy.

2.3 "Administrator" means Fire Service Education Administrator.

2.4 "Board" means Utah Fire Prevention Board.

2.5 "Certification Council" means Utah Fire Service Certification Council.

2.6 "Coordinator" means Fire Education Program Coordinator.

2.7 "Division" means State Fire Marshal.

2.8 "ICC" means International Code Council, Inc.

2.9 "IFC" means International Fire Code.

2.10 "Institutional occupancy" means asylums, mental hospitals, hospitals, sanitariums, homes for the aged, residential health care facilities, children's homes or institutions, or any similar institutional occupancy.

2.11 "LFA" means Local Fire Authority.

2.12 "NFPA" means National Fire Protection Association.

2.13 "Place of assembly" means where 50 or more people gather together in a building, structure, tent, or room for the purpose of amusement, entertainment, instruction, or education.

2.14 "Plan" means Fire Academy Strategic Plan.

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

2.16 "Standards Council" means Fire Service Standards and Training Council.

2.17 "Sub-Committee" means Fire Prevention Board Budget Sub-Committee or Amendment Sub-Committee.

2.18 "UCA" means Utah Code Annotated, 1953.

#### **~~R710-9-3. Specific Editions of the Fire Code and Standards.~~**

~~3.1 The International Fire Code (IFC), 2000 edition, excluding appendices, as promulgated by the International Code Council, Inc., is hereby adopted and incorporated by reference as the state fire~~

~~code, for the safeguarding of life and property from the hazards of fire and explosion, except as amended by provisions listed in R710-9-6, et seq.~~

~~3.2 National Fire Protection Association (NFPA), Standard 160, Standard for Flame Effects Before an Audience, 1998 edition, except as amended by provisions listed in R710-9-6, et seq.~~

]

**R710-9-[4]3. Conduct of Board Members and Board Meetings.**

~~[4.1]3.1~~ Board meetings shall be presided over and conducted by the chairman and in his absence the vice chairman or the chairman's designee.

~~[4.2]3.2~~ A quorum shall be required to approve any action of the Board.

~~[4.3]3.3~~ The chairman of the Board and Board members shall be entitled to vote on all issues considered by the Board. A Board member who declares a conflict of interest or where a conflict of interest has been determined, shall not vote on that particular issue.

~~[4.4]3.4~~ Meetings of the Board shall be conducted in accordance with an agenda, which shall be submitted to the members by the division, not less than 21 days before the regularly scheduled Board meetings.

~~[4.5]3.5~~ Public notice of Board meetings shall be made by the Division as prescribed in UCA Section 52-4-6.

~~[4.6]3.6~~ The division shall provide the Board with a secretary who shall prepare minutes and shall perform all secretarial duties necessary for the Board to fulfill its responsibility. The minutes of Board meetings shall be completed and sent to Board members at least 14 days prior to the scheduled Board meeting.

~~[4.7]3.7~~ A Board members standing on the Board shall come under review after two unexcused absences in one year from regularly scheduled board meetings. The Board members name shall be submitted to the governors office for status review.

**R710-9-4. Deputizing Persons to Act as Special Deputy State Fire Marshals.**

4.1 Special deputy state fire marshals may be appointed by the SFM to positions of expertise within the regular scope of the Fire Marshal's Office.

4.2 Special deputy state fire marshals may also be appointed to assist the Fire Marshal's Office in establishing and maintaining minimum fire prevention standards in those occupancies listed in the Fire Prevention Law.

4.3 Special deputy state fire marshals shall be appointed after review by the State Fire Marshal in regard to their qualifications and the overall benefit to the Office of the State Fire Marshal.

4.4 Special deputy state fire marshals shall be appointed by completing an oath and shall be appointed for a specific period of time.

4.5 Special deputy state fire marshals shall have a picture identification card and shall carry that card when performing their assigned duties.

**R710-9-5. Procedures to Amend the International Fire Code.**

5.1 All requests for amendments to the IFC shall be submitted to the division on forms created by the division, for presentation to the Board at the next regularly scheduled Board meeting.

5.2 Requests for amendments received by the division less than 21 days prior to any regularly scheduled meeting of the Board may be delayed in presentation until the next regularly scheduled Board meeting.

5.3 Upon presentation of a proposed amendment, the Board shall do one of the following:

5.3.1 accept the proposed amendment as submitted or as modified by the Board;

5.3.2 reject the proposed amendment;

5.3.3 submit the proposed amendment to the Board Amendment Subcommittee for further study; or

5.3.4 return the proposed amendment to the requesting agency, accompanied by Board comments, allowing the requesting agency to resubmit the proposed amendment with modifications.

5.4 The Board Amendment Subcommittee shall report its recommendation to the Board at the next regularly scheduled Board meeting.

5.5 The Board shall make a final decision on the proposed amendment at the next Board meeting following the original submission.

5.6 The Board may reconsider any request for amendment, reverse or modify any previous action by majority vote.

5.7 When approved by the Board, the requesting agency shall provide to the division within 45 days, the completed ordinance.

5.8 The division shall maintain a list of amendments to the IFC that have been granted by the Board.

5.9 The division shall make available to any person or agency copies of the approved amendments upon request, and may charge a reasonable fee for multiple copies in accordance with the provisions of UCA, 63-2-203.

**R710-9-6. Amendments and Additions.**

The following amendments and additions are hereby adopted by the Board for application statewide:

6.1 Institutional

6.1.1 IFC, Chapter 2, Section 202, Educational Group E, Day care is amended as follows: On line three delete the word "five" and replace it with the word "four".

6.1.2 IFC, Chapter 2, Section 202, Institutional Group I-1 is amended to add the following: On line nine add "type 1" in front of the words "assisted living facilities".

6.1.3 IFC, Chapter 2 Section 202, Institutional Group I-2 is amended as follows: On line three delete the word "five" and replace it with the word "three". On line eight after the words "detoxification facilities" delete the rest of the paragraph, and add the following: "ambulatory surgical centers with two or more operating rooms where care is less than 24 hours and type 2 assisted living facilities. Type 2 assisted living facilities with five or fewer persons shall be classified as a Group R-4. Type 2 assisted living facilities with at least six and not more than 16 residents shall be classified as a Group I-1 facility.

6.1.4 IFC, Chapter 2, Section 202, Institutional Group I-2, Child care facility is amended as follows: On line two delete the word "five" and replace it with the word "four".

6.1.5 IFC, Chapter 2, Section 202, Institutional Group I-4 day care facilities, Child care facility is amended as follows: On line three delete the word "five" and replace it with the word "four". Also on line two of the Exception delete the word "five" and replace it with the word "four".

6.2 Record Drawings

6.2.1 IFC, Chapter 9, Section 901.2.1 is amended to add the following: The code official has the authority to request record drawings ("as built") to verify any modifications to the previously approved construction documents.

6.2.2 IFC, Chapter 9, Section 902.1 Definitions, RECORD DRAWINGS is deleted and rewritten as follows: Drawings ("as built") that document all aspects of a fire protection system as installed.

### 6.3 Automatic Fire Sprinkler Systems

6.3.1 IFC, Chapter 9, Section 903.2.5 is deleted to include the exception and rewritten as follows: An automatic fire sprinkler system shall be provided throughout buildings with Group I fire areas. Listed quick response or residential sprinkler heads shall be installed in patient or resident sleeping areas.

6.3.2 IFC, Chapter 9, Section 903.2.9 is amended to add the following: Exception: Buildings not more than 4500 gross square feet and not containing more than 16 residents, provided the building is equipped throughout with an approved fire alarm system that is interconnected and receives its primary power from the building wiring and a commercial power system.

### 6.4 Class K Portable Fire Extinguishers

6.4.1 IFC, Chapter 9, Section 906.4, and NFPA, Standard 10, Section 2-3.2, 1998 edition, is deleted and replaced with the following:

6.4.1.1 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.

6.4.1.2 Those existing sodium or potassium bicarbonate dry-chemical portable fire extinguishers, having a minimum rating of 40-BC, and specifically placed for protection of commercial food heat-processing equipment, shall be allowed to remain in use in the kitchen area to provide protection to hazards other than the commercial food heat-processing oils and cooking media.

### 6.5 Retroactive Installations of Automatic Fire Alarm Systems in Existing Buildings

6.5.1 IFC, Chapter 9, Sections 907.3.1.1, 907.3.1.2, 907.3.1.3, 907.3.1.4, 907.3.1.6, 907.3.1.7, 907.3.1.8 and 907.3.1.9 are deleted.

### 6.6 Backflow Protection

6.6.1 The potable water supply to automatic fire sprinkler systems and standpipe systems shall be protected against backflow as required in Utah Administrative Code, R156-56-707(41).

### 6.7 Exit Signs

6.7.1 IFC, Chapter 10, Section 1003.2.10 is amended to add the following section: 1003.2.10.1.1 Floor-level exit signs. Where exit signs are required in Section 1003.2.10.1, additional approved exit signs that are internally or externally illuminated, photo luminescent or self-luminous, shall be provided in all corridors serving guest rooms of R-1 occupancies and amusement building exits. The bottom of such signs shall not be less than six inches (152mm) nor more than 8 inches (203mm) above the floor level and shall indicate the path of travel. For exit and access doors, the sign shall be on the door or adjacent to the door with the closest edge of the sign within eight inches (203mm) of the door frame.

### 6.8 Fireworks

6.8.1 IFC, Chapter 33, Section 3301.1.3 is amended to add the following Exception: 5. The use of fireworks for display and retail sales is allowed as set forth in UCA 53-7-220 and UCA 11-3-1.

### 6.9 Flammable and Combustible Liquids

6.9.1 IFC, Chapter 34, Section 3404.4.3 is amended as follows: Delete 3403.6 on line three and replace it with 3403.4.

### 6.10 Liquefied Petroleum Gas

6.10.1 IFC, Chapter 38, Section 3809.12, is amended as follows: Delete 20 from line three and replace it with 10.

### 6.11 Automatic Fire Sprinkler Systems and Commercial Cooking Operations

6.11.1 IFC, Chapter 9, Section 903.2.14.2 is amended to add the following:

903.2.14.2.1 Commercial cooking operation suppression. Automatic fire sprinkler systems protecting commercial kitchen exhaust hood and duct systems with appliances that generate appreciable depth of cooking oils shall be replaced with a UL300 listed system by May 1, 2004.

### 6.12 Alternative Automatic Fire-Extinguishing Systems

6.12.1 IFC, Chapter 9, Section 904.2.1 is amended to add the following:

904.2.1.1 Dry chemical hood system suppression. Existing automatic fire-extinguishing systems using dry chemical that protect commercial kitchen exhaust hood and duct systems shall be removed and replaced with a UL300 listed system by January 1, 2006 or before that date when any of the following occurs: 1) Six year internal maintenance service; 2) Recharge; 3) Hydrostatic test date as indicated on the manufacturers date of the cylinders; or 4) Reconfiguration of the system piping.

904.2.1.2 Wet chemical hood system suppression. Existing wet chemical fire-extinguishing systems not UL300 listed and protecting commercial kitchen exhaust hood and duct systems shall be removed, replaced or upgraded to a UL300 listed system by January 1, 2006 or before that date when any of the following occurs: 1) Six year internal maintenance service; 2) Recharge; 3) Hydrostatic test date as indicated on the manufacturer date of the cylinder; or 4) Reconfiguration of the system piping.

### **R710-9-7. Fire Advisory and Code Analysis Committee.**

7.1 There is created by the Board a Fire Advisory and Code Analysis Committee whose duties are to provide direction to the Board in the matters of fire prevention and building codes.

7.2 The committee shall serve in an advisory position to the Board, members shall be appointed by the Board, shall serve for a term of three years, and shall consist of the following members:

7.2.1 A member of the State Fire Marshal's Office.

7.2.2 The Code Committee Chairman of the Fire Marshal's Association of Utah.

7.2.3 A fire marshal from a local fire department.

7.2.4 A fire inspector or fire officer involved in fire prevention duties.

7.2.5 A member appointed at large.

7.3 This committee shall join together with the Uniform Building Code Commission Fire Protection Advisory Committee to form the Unified Code Analysis Council.

7.4 The Council shall meet as directed by the Board or as directed by the Building Codes Commission or as needed to review fire prevention and building code issues that require definitive and specific analysis.

7.5 The Council shall select one of its members to act in the position of chair and another to act as vice chair. The chair and vice chair shall serve for one year terms on a calendar year basis. Elections for chair and vice chair shall occur at the meeting conducted in the last quarter of the calendar year.

7.6 The chair or vice chair of the council shall report to the Board or Building Codes Commission recommendations of the Council with regard to the review of fire and building codes.

**R710-9-8. Fire Service Education Administrator and Fire Education Program Coordinator.**

8.1 There is created by the Board a Fire Service Education Administrator for the State of Utah. This Administrator shall be the State Fire Marshal.

8.2 The Administrator shall oversee statewide fire service education of all personnel receiving training monies from the Fire Academy Support Account.

8.2.1 The Administrator shall oversee fire service education in fire suppression, fire prevention, fire administration, operations, hazardous materials, rescue, fire investigation, and public fire education in the State of Utah.

8.3 The Administrator shall dedicate sufficient time and efforts to ensure that those monies dedicated from the Fire Academy Support Account are expended in the best interests of all personnel receiving fire service education.

8.4 The Administrator shall ensure equitable monies are expended in fire service education to volunteer, career, and prospective fire service personnel.

8.5 The Administrator shall as directed by the Board, solicit the legislature for funding to ensure that fire service personnel receive sufficient monies to receive the education necessary to prevent loss of life or property.

8.6 The Administrator shall oversee the Fire Department Assistance Grant program by completing the following:

8.6.1 Insure that a broad based selection committee is impaneled each year.

8.6.2 Compile for presentation to the Board the proposed grants.

8.6.3 Receive the Board's approval before issuing the grants.

8.7 The Administrator shall if necessary, establish proposed changes to fire service education statewide, insuring personnel receive the most proficient and professional training available, insure completion of agreements and contracts, and insure that payments on agreements and contracts are completed expeditiously.

8.8 The Administrator shall report to the Board at each regularly scheduled Board meeting the current status of fire service education statewide. The Administrator shall present any proposed changes in fire service education to the Board, and receive direction and approval from the Board, before making those changes.

8.9 To assist the Administrator in statewide fire service education there is hereby created a Fire Education Program Coordinator.

8.10 The Coordinator shall conduct fire service education evaluations, budget reviews, performance audits, and oversee the effectiveness of fire service education statewide.

8.11 The Coordinator shall ensure that there is an established Utah Fire Service Strategic Training Plan for fire service education statewide. The Coordinator shall work with the Academy Director to update the Strategic Plan and keep it current to the needs of the fire service.

8.12 The Coordinator shall report findings of audits, budgetary reviews, training contracts or agreements, evaluation of training standards, and any other necessary items of interest with regard to fire service education to the Administrator.

8.13 The Coordinator shall ensure that contracts are established each year for training and education of fire personnel

that meets the needs of those involved in fire service education statewide.

8.14 The Coordinator shall be the staff assistant to the Fire Service Standards and Training Council and shall present agenda items to the Council Chair that need resolution or review. As the staff assistant to the Training Council, the coordinator shall ensure that appointed members attend, encourage that the decisions made further the interests of fire service education statewide, and ensure that the Board is kept informed of the Training Council's decisions.

**R710-9-9. Enforcement of the Rules of the State Fire Marshal.**

9.1 Fire and life safety plan reviews of new construction, additions, and remodels of state owned facilities shall be conducted by the SFM, or his authorized deputies. State owned facilities shall be inspected by the SFM, or his authorized deputies.

9.2 Fire and life safety plan reviews of new construction, additions, and remodels of public and private schools shall be completed by the SFM, or his authorized deputies, and the LFA.

9.3 Fire and life safety plan reviews of new construction, additions, and remodels of publicly owned buildings, privately owned colleges and universities, and institutional occupancies, with the exception of state owned buildings, shall be completed by the LFA. If not completed by the LFA, the SFM, or his authorized deputies shall complete the plan review.

9.4 The following listed occupancies shall be inspected by the LFA. If not completed by the LFA, the SFM, or his authorized deputies shall inspect.

9.4.1 Publicly owned buildings other than state owned buildings as referenced in 9.1 of this rule.

9.4.2 Public and private schools.

9.4.3 Privately owned colleges and universities.

9.4.4 Institutional occupancies as defined in Section 9-2 of this rule.

9.4.5 Places of assembly as defined in Section 9-2 of this rule.

9.5 The Board shall require prior to approval of a grant the following:

9.5.1 That the applying fire agency be actively participating in the statewide fire statistics reporting program.

9.5.2 The Board shall also require that the applying fire agency be actively working towards structural or wildland firefighter certification through the Utah Fire Service Certification System.

**R710-9-10. Fire Service Standards and Training Council.**

10.1 There is created by the Board, the Fire Service Standards and Training Council, whose duties are to provide direction to the Board and Academy in matters relating to fire service standards, training, and certification.

10.2 This Council shall serve in an advisory position to the Board, members shall be appointed by the Board, shall serve three year terms, and shall consist of the following members:

10.2.1 Representative from the Utah State Fire Chiefs Association.

10.2.2 Representative from the Utah State Firemen's Association.

10.2.3 Representative from the Fire Marshal's Association of Utah.

10.2.4 Specialist in hazardous materials representing the Hazardous Materials Institute.

10.2.5 Fire/arson investigator representing the Utah Chapter of the International Association of Arson Investigators.



10.2.6 Specialist in wildland fire suppression and prevention from the Utah State Division of Forestry, Fire and State Lands.

10.2.7 Representative from the International Association of Firefighters.

10.2.8 Representative from the Utah Fire Service Certification Council.

10.2.9 Representative from the fire service that sits on the Utah State Emergency Medical Services Committee.

10.2.10 Representative from the Utah Fire Training Officers Association.

10.3 The Council shall meet quarterly and may hold other meetings as necessary for proper transaction of business. The majority of the Council shall be present to constitute a quorum.

10.4 The Council shall select one of its members to act in the position of chair, and another member to act as vice chair. The chair and vice chair shall serve one year terms on a calendar year basis. Elections for chair and vice chair shall occur at the meeting conducted in the last quarter of the calendar year. If voted upon by the council, the vice chair will become the chair the next succeeding calendar year.

10.5 If a council member has two or more unexcused absences during a 12 month period, from regularly scheduled Council meetings, it is considered grounds for dismissal pending review by the Board. The Coordinator shall submit the name of the Council member to the Board for status review.

10.6 A member of the Council may have a representative of their respective organization sit in proxy of that member, if submitted in writing and approved by the Coordinator prior to the meeting.

10.7 The Chair or Vice Chair of the Council shall report to the Board the activities of the Council at regularly scheduled Board meetings. The Coordinator may report to the Board the activities of the Council in the absence of the Chair or Vice Chair.

10.8 The Council shall consider all subjects presented to them, subjects assigned to them by the Board, and shall report their recommendations to the Board at regularly scheduled Board meetings.

#### **R710-9-11. Fire Prevention Board Budget and Amendment Sub-Committees.**

11.1 There is created two Fire Prevention Board Sub-Committees known as the Budget Subcommittee and the Amendment Subcommittee. The subcommittees membership shall be appointed from members of the Board.

11.2 Membership on the Sub-Committee shall be by appointment of the Board Chair or as volunteered by Board members. Membership on the Sub-Committee shall be limited to four Board members.

11.3 The Sub-Committee shall meet as necessary and shall vote and appoint a chair to represent the Sub-Committee at regularly scheduled Board meetings.

#### **R710-9-12. Utah Fire Service Certification Council.**

12.1 There is created by the Board, the Utah Fire Service Certification Council, whose duties are to oversee fire service certification in the State of Utah.

12.2 The Certification Council shall be made up of 12 members, appointed by the Academy Director, approved by the Board, and each member shall serve three year terms.

12.3 The Certification Council shall be made up of users of the certification system and comprise both paid and volunteer fire personnel, members with special expertise, and members from various geographical locations in the state.

12.4 The purpose of the Certification Council is to provide direction on all aspects of certification, and shall report the activities of the Certification Council to the Fire Service Standards and Training Council.

12.5 Functioning of the Certification Council with regard to certification, re-certification, testing, meeting procedures, examinations, suspension, denial, annulment, revocation, appeals, and reciprocity, shall be conducted as specified in the Utah Fire Service Voluntary Certification Program, Policy and Procedures Manual.

12.6 A copy of the Utah Fire Service Voluntary Certification Program, Policy and Procedures Manual, shall be kept on file at the State Fire Marshal's Office and the Utah Fire and Rescue Academy.

#### **R710-9-13. Utah Fire and Rescue Academy.**

13.1 The fire service training school shall be known as the Utah Fire and Rescue Academy.

13.2 The Director of the Utah Fire and Rescue Academy shall report to the Administrator the activities of the Academy with regard to completion of the agreed academy contract.

13.3 The Academy Director may recommend to the Administrator or Coordinator new or expanded standards regarding fire suppression, fire prevention, public fire education, safety, certification, and any other items of necessary interest about the Academy.

13.4 The Academy shall receive approval from the Administrator, after being presented to the Standards and Training Council, any substantial changes in Academy training programs that vary from the agreed contract.

13.5 The Academy Director shall provide to the Coordinator by October 1st of each year, a numerical summary of those students attending the Academy in the following categories:

13.6.1 Those participating in the certification process and those who have received certification during the previous contract period.

13.6.2 Those working towards and those who have received an Associate in Fire Science in the previous contract period.

13.6.3 Those who have completed other Academy classes during the previous contract period.

13.6 The Academy Director shall provide to the Coordinator by October 1st of each year, a numerical comparison of the categories required in Section 13.5, comparing attendance in the previous contract period.

13.7 The Academy Director shall provide to the Coordinator by October 1st of each year, in accepted budgeting practices, a cost analysis of classes provided by the Academy, and the cost per student to the Academy to provide those classes.

13.8 The Academy Director shall provide to the Coordinator by October 1st of each year, a numerical summary of those students attending Academy courses in the following categories:

13.8.1 Non-fire service personnel enrolled in college courses.

13.8.2 Volunteer or career fire service personnel enrolled in college credit courses.

13.8.3 Volunteer or career fire service personnel enrolled in non-credit continuing education courses.

13.9 The Academy Director shall present to the Coordinator by January of each year, proposals to be incorporated in the Academy contract for the next fiscal year.

**[R710-9-14. Deputizing Persons to Act as Special Deputy State Fire Marshals.**

— 14.1 Special deputy state fire marshals may be appointed by the SFM to positions of expertise within the regular scope of the Fire Marshal's Office.

— 14.2 Special deputy state fire marshals may also be appointed to assist the Fire Marshal's Office in establishing and maintaining minimum fire prevention standards in those occupancies listed in the Fire Prevention Law.

— 14.3 Special deputy state fire marshals shall be appointed after review by the State Fire Marshal in regard to their qualifications and the overall benefit to the Office of the State Fire Marshal.

— 14.4 Special deputy state fire marshals shall be appointed by completing an oath and shall be appointed for a specific period of time.

14.5 Special deputy state fire marshals shall have a picture identification card and shall carry that card when performing their assigned duties.

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**R710-9-[15]14. Repeal of Conflicting Board Actions.**

All former Board actions, or parts thereof, conflicting or inconsistent with the provisions of this Board action or of the codes hereby adopted, are hereby repealed.

**R710-9-[16]15. Validity.**

The Utah Fire Prevention Board hereby declares that should any section, paragraph, sentence, or word of this Board action, or of the codes hereby adopted, be declared invalid, it is the intent of the Utah Fire Prevention Board that it would have passed all other portions of this action, independent of the elimination of any portion as may be declared invalid.

**R710-9-[17]16. Adjudicative Proceedings.**

[17.1]16.1 All adjudicative proceedings performed by the

agency shall proceed informally as set forth herein and as authorized by UCA, Sections 63-46b-4 and 63-46b-5.

[17.2]16.2 If a city, county, or fire protection district refuses to establish a method of appeal regarding a portion of the IFC, the appealing party may petition the Board to act as the board of appeals.

[17.3]16.3 A person may request a hearing on a decision made by the SFM, his authorized deputies, or the LFA, by filing an appeal to the Board within 20 days after receiving final decision.

[17.4]16.4 All adjudicative proceedings, other than criminal prosecution, taken by the SFM, his authorized deputies, or the LFA, to enforce the Utah Fire Prevention and Safety Act and these rules, shall commence in accordance with UCA, Section 63-46b-3.

[17.5]16.5 The Board shall act as the hearing authority, and shall convene as an appeals board after timely notice to all parties involved.

[17.6]16.6 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).

[17.7]16.7 Reconsideration of the Board's decision may be requested in writing within 20 days of the date of the decision pursuant to UCA, Section 63-46b-13.

[17.8]16.8 Judicial review of all final Board actions resulting from informal adjudicative proceedings is available pursuant to UCA, Section 63-46b-15.

**KEY: fire prevention, law**

**[August 15, 2002] March 18, 2003**

**Notice of Continuation June 12, 2002  
53-7-204**

▼ ————— ▼

**End of the Notices of Proposed Rules Section**

## NOTICES OF 120-DAY (EMERGENCY) RULES

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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.

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### Health, Health Care Financing, Coverage and Reimbursement Policy **R414-10** Physician Services

#### NOTICE OF 120-DAY (EMERGENCY) RULE

DAR FILE NO.: 26010  
FILED: 01/31/2003, 23:27

#### RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule, along with other proposed changes to the Medicaid program, is needed to keep expenditures within appropriations authorized by the 2002 Legislature. Utilization and enrollment have increased above projected levels and expenditures must be reduced accordingly. (DAR NOTE: The proposed changes to the Medicaid Program are found under R414-10, Amendment, DAR No. 26008; R414-60, Amendment, DAR No. 26009; R414-10, Emergency Rule, DAR No. 26010; and R414-60, Emergency Rule, DAR No. 26011 in this issue. The other changes were published in the January 15, 2003, and February 1, 2003, issues.)

SUMMARY OF THE RULE OR CHANGE: In Subsections R414-10-6(1) and R414-10-6(2) are amended to replace the \$2 copayment with the \$3 copayment up to a maximum of \$100 per year. The \$15 per year copayment limit is removed. In all instances in the rule, "co-payment" is changed to "copayment." (DAR NOTE: A corresponding proposed amendment is under DAR No. 26008 in this issue.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Title 58, Chapter 12; and Sections 26-1-5 and 26-18-3

#### ANTICIPATED COST OR SAVINGS TO:

- ❖ THE STATE BUDGET: This will save the General Fund \$36,300 but \$88,571 in federal matching funds will be lost.
- ❖ LOCAL GOVERNMENTS: If local government physicians choose to serve Medicaid clients that are able, but unwilling to pay the copayment, their reimbursement will drop by \$1 per encounter. The recipient's Medicaid card clearly identifies which recipients are deemed able to pay the copayment. State reimbursement to local government physician/clinics will drop by a percentage of \$124,871.
- ❖ OTHER PERSONS: If private physicians choose to serve Medicaid clients that are able, but unwilling to pay the copayment, their reimbursement will drop by \$1 per encounter. The recipient's Medicaid card clearly identifies which recipients are deemed able to pay the copayment. State reimbursement to local government physician/clinics will drop by a percentage of \$124,871.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There may be some minimal modifications to provider data systems in order to incorporate the changed copayment. Medicaid recipients will incur an additional cost of \$1 per doctor visit.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This change will increase the contribution that a Medicaid recipient will be required to contribute toward the cost of care and may have a negative impact on providers if they choose to provide the service without collecting the copayment, 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, and 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: 02/01/2003

AUTHORIZED BY: Rod L. Betit, Executive Director

#### **R414. Health, Health Care Financing, Coverage and Reimbursement Policy.**

##### **R414-10. Physician Services.**

##### **R414-10-1. Introduction and Authority.**

(1) The Physician Services Program provides a scope of physician services to meet the basic medical needs of eligible Medicaid recipients. It encompasses the art and science of caring for those who are ill through the practice of medicine or osteopathy defined in Title 58, Chapter 12, UCA.

(2) Physician services are a mandatory Medicaid, Title XIX, program authorized by Sections 1901 and 1905(a)(1) of the Social Security Act, 42 CFR 440.50, October 1996 edition, and Sections 26-1-5 and 26-18-3, UCA.

##### **R414-10-2. Definitions.**

In addition to the definitions in R414-1, the following definitions apply to this rule:

(1) "Childhood health evaluation and care" (CHEC) means the Utah-specific term for the federally mandated program of early and periodic screening, diagnosis, and treatment for children under the age of 21.

(2) "Client" means an individual eligible to receive covered Medicaid services from an enrolled Medicaid provider.

(3) "Clinical Laboratory Improvement Amendments" (CLIA) means the federal Health Care Financing Administration program that limits reimbursement for laboratory services based on the equipment and capability of the physician or laboratory to provide an appropriate, competent level of laboratory service.

(4) "Cognitive services" means non-invasive diagnostic, therapeutic, or preventive office visits, hospital visits, therapy, and related nonsurgical services.

(5) "Covered Medicaid service" means service available to the eligible Medicaid client within the constraints of Medicaid policy and criteria for approval of service.

(6) "Current Procedural Terminology" (CPT) means the manual published by the American Medical Association that provides a systematic listing and coding of procedures and services performed by physicians and simplifies the reporting of services, which is adopted and incorporated by reference. Some limitations are addressed in R414-26.

(7) "Early and periodic screening, diagnosis, and treatment" (EPSDT) means the federally mandated program for children under the age of 21.

(8) "Family planning" means diagnosis, treatment, medications, supplies, devices, and related counseling in family planning methods to prevent or delay pregnancy.

(9) "Health Common Procedures Coding System" (HCPCS) means a system mandated by the Health Care Financing Administration to code procedures and services. This system utilizes the CPT Manual for physicians, and individually developed service codes and definitions for nonphysician providers. The coding system is used to provide consistency in determining payment for services provided by physicians and noninstitutional providers.

(10) "Intensive, inpatient hospital rehabilitation service" means an intense rehabilitation program provided in an acute care general hospital through the services of a multidisciplinary, coordinated, team approach directed toward improving the ability of the patient to function.

(11) "Package surgical procedures" means preoperative office visits and preparation, the operation, local infiltration, topical or regional anesthesia when used, and the normal, uncomplicated follow-up care extending up to six weeks post-surgery.

(12) "Patient" means an individual who is receiving covered professional services provided or directed by a licensed practitioner of the healing arts enrolled as a Medicaid provider.

(13) "Personal supervision" means the critical observation and guidance of medical services by a physician of a nonphysician's activities within that nonphysician's licensed scope of practice.

(14) "Physician services," whether furnished in the office, the recipient's home, a hospital, a skilled nursing facility, or elsewhere, means services provided:

(a) within the scope of practice of medicine or osteopathy; and

(b) by or under the personal supervision of an individual licensed to practice medicine or osteopathy.

(15) "Prior authorization" means the required approval for provision of a service, that the provider must obtain from the Department before providing that service.

(16) "Professional component" means that part of laboratory or radiology service that may be provided only by a physician capable of analyzing a procedure or service and providing a written report of findings.

(17) "Provider" means an entity or a licensed practitioner of the healing arts providing approved Medicaid services to patients under a provider agreement with the Department.

(18) "Services" means the types of medical assistance specified in Sections 1905(a)(1) through (25) of the Social Security Act and interpreted in 42 CFR 440, October 1996 edition, which are adopted and incorporated by reference.

(19) "Technical component" means that part of laboratory or radiology service necessary to secure a specimen and prepare it for analysis, or to take an x-ray and prepare it for reading and interpretation.

**R414-10-3. Client Eligibility Requirements.**

Physician services are available to categorically and medically needy eligible individuals.

**R414-10-4. Program Access Requirements.**

(1) Physician services are available only from a physician who meets all requirements necessary to participate in the Utah Medicaid Program and who has signed a provider agreement.

(2) Physician services are available only from a physician who renders medically necessary physician services in accordance with his specific provider agreement and with Department rules.

(3) An eligible Medicaid client may seek physician services from:

(a) a physician in private practice who is an enrolled Medicaid provider;

(b) a Health Maintenance Organization (HMO) that has a contract with the Department;

(c) a federally qualified community health center; or

(d) any other organized practice setting recognized by the Department for providing physician services.

**R414-10-5. Service Coverage.**

(1) Physician services involve direct patient care and securing and supervising appropriate diagnostic ancillary tests or services in order to diagnose the existence, nature, or extent of illness, injury, or disability. In addition, physician services involve establishing a course of medically necessary treatment designed to prevent or minimize the adverse effects of human disease, pain, illness, injury, infirmity, deformity, or other impairments to a client's physical or mental health.

(2) Physician services may be provided only within the parameters of accepted medical practice and are subject to limitations and exclusions established by the Department on the basis of medical necessity, appropriateness, and utilization control considerations.

(3) Program limitations and noncovered services are established by specific program policy maintained in the Physician Provider Manual and updated by notification through Medicaid Information Bulletins. Following is a general list of medical and health care services excluded from coverage:

(a) Services rendered during a period the recipient was ineligible for Medicaid;

(b) Services medically unnecessary or unreasonable;

(c) Services which fail to meet existing standards of professional practice, or which are currently professionally unacceptable;

(d) Services requiring prior authorization, but for which such authorization was not received;

(e) Services, elective in nature, based on patient request or individual preference rather than medical necessity;

(f) Services fraudulently claimed;

(g) Services which represent abuse or overuse;

(h) Services rejected or disallowed by Medicare when the rejection was based upon any of the reasons listed above.

(i) Services for which third party payors are primarily responsible, e.g., Medicare, private health insurance, liability insurance. Medicaid may make a partial payment up to the Medicaid maximum if the limit has not been reached by a third party.

(j) If a procedure or service is not covered for any of the above reasons or because of specific policy exclusion, all related services and supplies, including institutional costs, are excluded for the standard post operative recovery period.

(4) Experimental or medically unproven physician services or procedures are excluded from coverage. Criteria established and approved by the Department staff and physician consultants are used to

identify noncovered services and procedures. Policy statements developed by the Department of Health and Human Services, Health Care Financing Administration, Coverage Issues Bureau, are also used to determine Department policy for noncovered services.

(5) Certain services are excluded from coverage because medical necessity, appropriate utilization, and cost effectiveness of the services cannot be assured. A variety of lifestyle factors contribute to the "syndromes" associated with such services, and there is no specific therapy or treatment identified except for those that border on behavior modification, experimental, or unproven practices. Services include:

(a) Sleep apnea or sleep studies, or both;

(b) pain clinics; and

(c) Eating disorders clinics.

(6) When a service or procedure does not qualify for coverage under the Medicaid program because it is an elective cosmetic, reconstructive, or plastic surgery, all related services, supplies, and institutional costs are excluded from coverage.

(7) Medications for appetite suppression, surgical procedures, unproven or experimental treatments, or educational, nutritional support programs for the treatment of obesity or weight control, are excluded from coverage.

(8) Cognitive or Office Services:

(a) Cognitive services by a provider are limited to one service per client per day. These services are defined as office visits, hospital visits except for those following a package surgical procedure, therapy visits, and other types of nonsurgical services. When a second office visit for the same problem or a hospital admission occurs on the same date as another service, the physician shall combine the services as one service and select a procedure code that indicates the overall care given.

(b) Routine physical examinations, not part of an otherwise medically necessary service, are excluded from coverage, except in the following circumstances:

(i) Preschool and school age children, including those who are EPSDT (CHEC) eligible, participating in the ongoing CHEC program of scheduled services and follow-up care.

(ii) New patients seeing a physician for the first time with an initial complaint where a comprehensive physical examination, including a medical and social history, is necessary.

(iii) Medically necessary examinations associated with birth control medication, devices, and instructions.

(c) Family planning services may be provided only by or under the supervision of a physician and only to individuals of childbearing age, including sexually active minors. The following services are excluded from coverage as family planning services:

(i) Experimental or unproven medical procedures, practices, or medication.

(ii) Surgical procedures for the reversal of previous elective sterilization, both male and female.

(iii) Infertility studies.

(iv) In-vitro fertilization.

(v) Artificial insemination.

(vi) Surrogate motherhood, including all services, tests, and related charges.

(vii) Abortion, except where the life of the mother would be endangered if the fetus were carried to term, or where pregnancy is the result of rape or incest.

(d) After-hours service codes may be used only by a private physician, primary care provider, who responds to treat a patient in the physician's private office for a medical emergency, accident, or injury after regular office hours. Only one of the after hours CPT codes may be used per visit.

(e) Laboratory services provided by a physician in his office are limited to the waived tests or those types of laboratory tests identified by the federal Health Care Financing Administration for which each individual physician is CLIA certified to provide, bill, and receive Medicaid payment.

(f) A specimen collection fee is covered for service in a physician's office only when a specimen is to be sent to an outside laboratory, and the physician or one of his office staff under his personal supervision actually extracts the specimen from a patient, and only by one of the following tasks:

(i) Drawing a blood sample through venipuncture, i.e., inserting into a vein a needle with syringe or vacutainer to draw the specimen; or

(ii) Collecting a urine sample by catheterization.

(iii) A drawing fee for finger, heel, or ear sticks is limited to only infants under the age of two years.

(g) Eye examinations are covered, but only once each calendar year.

(h) Contact lenses are covered only for aphakia, nystagmus, keratoconus, severe corneal distortion, cataract surgery, and in those cases where visual acuity cannot be corrected to at least 20/70 in the better eye.

(9) Psychiatric Services:

(a) Psychiatric services or psychosocial diagnosis and counseling are specialty medical services. Psychiatric services, whether in a private office, a group practice, or private clinic setting, may only be provided directly and documented and billed to the Department by the private physician. Charting and documentation must clearly reflect the private physician's direct provision of care.

(b) Nonphysician psychosocial counseling services are excluded from coverage as a Medicaid benefit. The personal supervision policy, R414-45, may not be applied to psychiatric services.

(c) Admission to a general hospital for psychiatric care by a physician requires prior authorization and is limited to those cases determined by established criteria and utilization review standards to be of a severity that appropriate intensity of service cannot be provided in any alternate setting.

(d) Coverage for treatment of organic brain disease is limited to that provided by the primary care provider.

(10) Laboratory and Radiology Services:

(a) Physicians prepared in a highly specialized field of practice, e.g., neurology or neurosurgery, who provide consultation and diagnostic radiology services in an independent setting at the request of a private physician may bill for both the technical and professional component of the radiology service.

(b) Dermatologists with specialized preparation in pathology services specifically for the skin may provide and bill for those services.

(11) Hospital Services:

(a) A patient hospitalized for nonsurgical services may require more than one visit per day because of the patient's condition and treatment needs. Since physician visits are limited to one per day, the physician shall select one procedure code to define the overall care given. If intensive care services are provided, or critical care service codes are used to define service provided, the Department requires additional documentation from the physician. The medical record must show documentation of medical necessity and result of the additional service.

(b) If, for the convenience of the physician and not for medical necessity, a patient is transferred between physicians within the same hospital or from one hospital to another hospital, both physicians may only use subsequent hospital care service codes to define and bill for

services provided. Under this policy limitation, services associated with the following codes are excluded from coverage as a Medicaid benefit:

(i) Consultation; and

(ii) Initial hospital care services.

(c) Treatment of alcoholism or drug dependency in an inpatient setting is limited to acute care for detoxification only.

(d) Services for pregnant women who do not meet United States residency requirements (undocumented aliens) are limited to only hospital admission for labor and delivery. Medicaid does not cover prenatal services.

(12) Abortion, Sterilization and Hysterectomy:

(a) Abortion procedures are limited to:

(i) those where the pregnancy is the result of rape or incest; or

(ii) a case with medical certification of necessity where a woman suffers from a physical disorder, physical injury, or physical illness, including a life-endangering physical condition caused by or arising from the pregnancy itself that would, as certified by a physician, place the woman in danger of death unless an abortion is performed.

(b) Sterilization and hysterectomy procedures are limited to those which meet the requirements of 42 CFR 441, Subpart F, October 1996 edition, which is adopted and incorporated by reference.

(13) Cosmetic, Plastic, or Reconstructive Services:

(a) Cosmetic, plastic, or reconstructive surgery procedures may only be covered when medically necessary to:

(i) correct a congenital anomaly;

(ii) restore body form or function following an accidental injury; or

(iii) revise severe disfiguring and extensive scarring resulting from neoplastic surgery.

(14) Surgical Services:

(a) Surgical procedures defined and coded in the CPT Manual are limited by Utah Medicaid policy to prior authorization, or are excluded from coverage. Limitations are documented on the Medical and Surgical Procedures Prior Authorization List, reviewed and revised yearly and maintained in the Physician Provider Manual through notification by Provider Bulletins.

(b) Surgical procedures are "package" services. The package service includes:

(i) the preoperative examination, initiation of the hospital record, and development of a treatment program either in the physician's office on the day before admission, or in the hospital or the physician's office on the same day as admission to the hospital;

(ii) the operation;

(iii) any topical, local, or regional anesthesia; and

(iv) the normal, uncomplicated follow-up care covering the period of hospitalization and office follow-up for progress checks or any service directly related to the surgical procedure for up to six weeks post surgery.

(c) Interpretation of "package" services:

(i) A physician may not bill for an office visit the day prior to surgery, for preadmission or admission workup, or for subsequent hospital care while the patient is being prepared, hospitalized, or under care for a "package" surgical service.

(ii) Consultation services may be billed by the consulting physician only when consultation and no other service is provided. When a consulting physician admits and follows a patient, independently or concurrently with the primary physician, only admission codes and subsequent care codes may be used.

(iii) Office visits for up to six weeks following the hospitalization which relate to the same diagnosis are part of the "package" service.

The only exception to either inpatient or office service is for service related to complications, exacerbations, or recurrence of other diseases or problems requiring additional or separate service.

(d) Procedures exempt from the "package" definition are identified in the CPT Manual by an asterisk. The CPT Manual outlines the surgical guidelines which apply to documentation and billing of procedures marked by an asterisk.

(e) Complications, exacerbations, recurrence, or the presence of other diseases or injuries requiring services concurrent with the initial surgical procedure during the listed period of normal follow-up care, may warrant additional charges only when the record shows extensive documentation and justification of additional services.

(f) When an additional surgical procedure is carried out within the listed period of follow-up care for a previous surgery, the follow-up periods continue concurrently to their normal terminations.

(g) Preoperative examination and planning are covered as separate services only in the following circumstances:

(i) When the preoperative visit is the initial visit for the physician and prolonged detention or evaluation is required to establish a diagnosis, determine the need for a specific surgical procedure, or prepare the patient;

(ii) When the preoperative visit is a consultation and the consulting physician does not assume care of the patient; or

(iii) When diagnostic procedures, not part of the basic surgical procedure, e.g., bronchoscopy prior to chest surgery, are provided during the immediate preoperative period.

(h) Exploratory laparotomy procedures confirm a diagnosis and determine the extent of necessary treatment. A physician may request payment only if the exploratory procedure is the only procedure done during an operative session.

(i) The services of an assistant surgeon are specialty services to be provided only by a licensed physician, and are covered only on very complex surgical procedures. Procedures not authorized for assistant surgeon coverage are listed in the Physician Provider Manual and updated by Medicaid Provider Bulletins as necessary. Medicare guidelines for limitation of assistant surgeon coverage are used, since those decisions are made at the national level with physician consultation.

(j) Medicaid does not cover surgical procedures, experimental therapies, or educational, nutritional, support programs for treatment of obesity or weight control.

(15) Diagnostic and Therapeutic Procedures:

(a) Diagnostic needle procedures, e.g., lumbar puncture, thoracentesis, and jugular, femoral vein, or subdural taps, when performed as part of a necessary workup for a serious medical illness or injury, are covered in addition to other medical care on the same day.

(b) Diagnostic "oscopy" procedures, e.g., endoscopy, bronchoscopy, and laparoscopy, are covered separately from any major surgical procedure. However, when an "oscopy" procedure is done the same day or at the same operative session as another procedure, the "oscopy" procedure may only be covered as a multiple procedure.

(c) Magnetic resonance imaging (MRI) is covered only for service to the brain, spinal cord, hip, thigh and abdomen.

(d) Therapeutic needle procedures, e.g., scalp vein insertion, injections into cavities, nerve blocks, are covered in addition to other medical care on the same day.

(e) Puncture of a cavity or joint for aspiration followed by injection of a medication is covered as one procedure and identified by specific CPT code.

(16) Anesthesia Services:

Anesthesia services are covered only when administered by a licensed anesthesiologist or nurse anesthetist who remains in attendance for the sole purpose of rendering general anesthesia services. Standby or monitoring by the anesthesiologist or anesthetist during local anesthesia is not a covered Medicaid anesthesia service.

(17) Transplant Services:

Except for kidney and cornea transplants, Medicaid limits organ transplant services to those procedures for which selection criteria have been approved and documented in R414-10A.

(18) Modifiers:

Modifiers may be used only, as defined in the CPT Manual, to show that a service or procedure has been altered to some degree but not changed in definition or code. The following limitations apply:

(a) The professional component, modifier 26, may be used only with laboratory and radiology service codes and only when direct analysis, interpretation, and written report of findings are provided by a physician on a laboratory or radiology procedure.

(b) Unusual services are identified by use of modifier 22, along with the appropriate CPT code. A prepayment review of unusual services shall be completed by Medicaid professional staff or physician consultants. A report of the service and any important supporting documentation must be submitted with the claim for review.

(c) Anesthesia by surgeon is identified by use of modifier 47. The operating surgeon may not use modifier 47 in addition to the basic procedure code. Anesthesia provided by the surgeon is part of the basic procedure being provided.

(d) Mandated services as defined by CPT and identified by modifier 32 are noncovered services.

(e) Reference laboratory services identified by modifier 90 are noncovered services.

(19) Medications:

(a) Drugs and biologicals are limited to those approved by the Food and Drug Administration (FDA), or those approved by the Drug Utilization Review Board (DUR) for off-label use, which is use for a condition different from that initially intended for the drug or biological. Medicaid coverage of drugs and biologicals is based on individual need and orders written by a physician when the drug is given in accordance with accepted standards of medical practice and within the protocol of accepted use for the drug.

(i) Generic drugs shall be used whenever a generic product approved by the FDA is available. If the physician determines that a brand name drug is medically necessary, the physician may override the generic requirement by writing on the prescription in his own hand writing "name brand medically necessary". Preprinted messages, abbreviations, or notations by a second party, do not meet the override requirement. The pharmacist shall fill the prescription with the generic equivalent product if the override procedure is not followed.

(ii) Injectable medications approved in HCPCS are identified in the "J" code list published by the Health Care Financing Administration or the Department, or both. The list is reviewed and revised yearly and maintained in the Physician Provider Manual by notification and update through Medicaid Provider Bulletins.

(iii) The "J" code covers only the cost of an approved product.

(iv) Office visits only for administration of medication are excluded from coverage. However, an injection code which covers the cost of the syringe, needle and administration of the medication may be used with the "J" code when medication administration is the only reason for an office call.

(v) When an office service is provided for other purposes, in addition to medication administration, only the office visit and a "J" code may be used to bill for the service provided.

(vi) The office visit code and injection code may never be used together. Only one of the codes may be used to define the service provided.

(vii) Vitamin B-12 is limited to use only in treating conditions where physiological mechanisms produce pernicious anemia. Use of Vitamin B-12 in treating any unrelated condition is excluded from coverage.

(b) Vitamins may be provided only for:

(i) Pregnant women: Prenatal vitamins with 1 mg folic acid.

(ii) Children through age five: Children's vitamins with fluoride.

(iii) Children through age one: multiple vitamin (A, C, and D) without fluoride.

(iv) Children through age 15: Fluoride supplement.

(c) Human growth stimulating hormones are limited to CHEC eligible children under the age of 15 who meet the established internal criteria for coverage that has been published and is available in the Provider Manual.

(d) Methylphenidates, amphetamines, and other central nervous system stimulants require prior authorization and may be provided only for treatment of Attention Deficit Disorder (ADD).

(e) Medications for appetite suppression are not a covered service.

(f) Non-prescription, over-the-counter items are limited, and notification of changes consistent with this rule is made by Provider Bulletin and Provider Manual updates.

(g) Nutrients may be provided only as established in R414-24A.

#### **R414-10-6. Co[-]payment Policy.**

This ~~rule~~ section establishes co[-]payment policy for physician services for Medicaid clients who are not in any of the federal categories exempted from co[-]payment requirements. ~~[The rule-]~~ is authorized by 42 CFR 447.15 and 447.50, Oct. 1, 2000 ed., which are adopted and incorporated by reference.

(1) The Department shall impose a co[-]payment in the amount of \$[2]3 for each physician visit when a non-exempt Medicaid client, as designated on his Medicaid card, receives that physician service. The Department shall limit the out-of-pocket expense of the Medicaid client to \$100 annually. ~~[(Co-payments for pharmacy services will continue to be limited to \$5.00 per month.)]~~

(2) The Department shall deduct \$[2] from the reimbursement paid to the provider for each physician visit, limited to one per day.

(3) The provider should collect the co[-]payment amount from the Medicaid client for each physician visit, limited to one per day. The provider may deny service for any client who refuses to make the copayment if the client's medical card indicates copayment is required.

(4) Medicaid clients in the following categories are exempt from co[-]payment requirements:

(a) children;

(b) pregnant women;

(c) institutionalized individuals;

(d) individuals whose total gross income, before exclusions or deductions, is below the Temporary Assistance to Needy Families (TANF) standard payment allowance. These individuals must indicate their income status to their eligibility case worker on a monthly basis to maintain their exemption from the co[-]payment requirements.

(5) Physician services for family planning purposes are exempt from the co[-]payment requirements.

**KEY: Medicaid**

**[November 1, 2001]2003**

**Notice of Continuation March 8, 2002**

**26-1-5**

**26-18-3**



## Health, Health Care Financing, Coverage and Reimbursement Policy

### **R414-60**

#### Medicaid Policy for Pharmacy Copayment Procedures

##### **NOTICE OF 120-DAY (EMERGENCY) RULE**

DAR FILE NO.: 26011

FILED: 01/31/2003, 23:28

##### **RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule, along with other proposed changes to the Medicaid program, is needed to keep expenditures within appropriations authorized by the 2002 Legislature. Utilization and enrollment have increased above projected levels and expenditures must be reduced accordingly. (DAR NOTE: The proposed changes to the Medicaid Program are found under R414-10, Amendment, DAR No. 26008; R414-60, Amendment, DAR No. 26009; R414-10, Emergency Rule, DAR No. 26010; and R414-60, Emergency Rule, DAR No. 26011 in this issue. The other changes were published in the January 15, 2003, and February 1, 2003, issues.)

SUMMARY OF THE RULE OR CHANGE: Subsections R414-60-3(1) and R414-60-3(2) are amended to increase the copayment \$3 up to a maximum of \$15 in copayments per month. (DAR NOTE: A corresponding proposed amendment is under DAR No. 26009 in this issue.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 26-18-3

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: This will save the General Fund \$672,300 but \$1,640,429 in federal matching funds will be lost.

❖ LOCAL GOVERNMENTS: Local governments hospitals that operate pharmacies will experience the same impact detailed for other persons, with a proportionate reduction in reimbursement directly from the state.

❖ OTHER PERSONS: This rulemaking assesses an additional \$2 copayment per prescription to qualified Medicaid clients with a limit of no more than \$15 in copayments per client per month.



Pharmacies are authorized to refuse service if the Medicaid recipient's card identifies them as able to pay the copayment. State reimbursement to pharmacies will be cut by \$2,312,729. Medicaid recipients in aggregate will pay \$672,300 for this service.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There may be some minimal modifications to provider data systems in order to incorporate the changed copayment. Medicaid recipients that are able to pay will incur an additional cost of \$2 per prescription up to \$15 per month.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This change will increase the contribution that a Medicaid recipient will be required to contribute toward the cost of care and may have a negative impact on providers if they choose to provide the service without collecting the copayment, 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, and 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](mailto:rmartin@utah.gov)

THIS RULE IS EFFECTIVE ON: 02/01/2003

AUTHORIZED BY: Rod L. Betit, Executive Director

**R414. Health, Health Care Financing, Coverage and Reimbursement Policy.**

**R414-60. Medicaid Policy for Pharmacy Copayment Procedures.**

**R414-60-1. Introduction and Authority.**

This rule establishes Medicaid copayment policy for pharmacy services for Medicaid clients who are not in any of the federal categories exempted from copayment requirements. The rule is authorized by 42 CFR 447.15 and 447.50, Oct. 1995 ed., which are adopted and incorporated by reference.

**R414-60-2. Definitions.**

In addition to the definitions in R414-1, the following definitions also apply to this rule:

- (1) "Child" means any person under the age of 18.
- (2) "HMO Enrollees" means individuals enrolled with any Health Maintenance Organization (HMO).
- (3) "Institutionalized individual" means one who is an inpatient in a health care facility such as a hospital or nursing facility.

**R414-60-3. Copayment Policy.**

(1) The Department shall impose a copayment in the amount of \$[+]3 for each prescription filled when a non-exempt Medicaid client, as designated on his Medicaid card, receives the prescribed medication. The Department shall limit the out-of-pocket expense of the Medicaid client to \$15 per month.

(2) The Department shall deduct \$[+]3 from the reimbursement paid to the provider for each prescription, up to the maximum amount of \$15 per month for each client.

(3) The provider should collect the copayment amount from the Medicaid client for those prescriptions that require a copayment. The provider may deny service for any client who refuses to make the copayment when the client's medical card indicates copayment is required.

(4) Medicaid clients in the following categories are exempt from copayment requirements:

- (a) children;
- (b) pregnant women;
- (c) institutionalized individuals;
- (d) HMO enrollees for whom pharmacy services are included in the HMO benefit package;
- (e) individuals whose total gross income, before exclusions or deductions, is below the Temporary Assistance to Needy Families (TANF) standard payment allowance. These individuals must indicate their income status to their eligibility case worker on a monthly basis to maintain their exemption from the copayment requirements.

(5) Pharmaceuticals prescribed for family planning purposes are exempt from the copayment requirements.

**KEY: Medicaid**

**[July 2, 1997]2003**

**Notice of Continuation June 26, 2002**

**26-1-5**

**26-18-3**



# FIVE-YEAR NOTICES OF REVIEW AND STATEMENTS OF CONTINUATION

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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).

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## Commerce, Real Estate **R162-107** Unprofessional Conduct

### FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 25981  
FILED: 01/21/2003, 14:49

### 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 61-2b-6(1)(l) authorizes the Division to adopt rules for the administration of the licensure and regulation of appraisers. Subsection 61-2b-29(12) authorizes rules defining unprofessional conduct.

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 is the first five year review of this rule. No written comments have been received since the rule was originally promulgated.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Rule R162-107 is necessary to set forth specific acts that are considered unprofessional and therefore grounds for disciplinary action pursuant to Subsection 61-2b-29(12).

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

COMMERCE  
REAL ESTATE  
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:

Shelley Wismer at the above address, by phone at 801-530-6761, by FAX at 801-530-6749, or by Internet E-mail at swismer@utah.gov

AUTHORIZED BY: Dexter Bell, Director

EFFECTIVE: 01/21/2003



## Health, Health Care Financing, Coverage and Reimbursement Policy **R414-27** Medicare Nursing Home Certification

### FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 25982  
FILED: 01/21/2003, 18:09

### 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 26-18-3(2) requires the Department of Health to develop implementing policy for the Medicaid program. This rule establishes the requirement of Medicare Nursing Home Certification, in order to reduce Medicaid nursing home payments. Thus, this rule saves the Medicaid program additional costs and allows it to operate more efficiently.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written or oral comments have been received regarding this rule.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule exists to assure that nursing homes meet minimum quality standards based on Medicare certification so that more third-party collections, such as from Medicare, may be collected, thus reducing Medicaid nursing home payments; and should be continued.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

Ross Martin 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](mailto:rmartin@utah.gov)

AUTHORIZED BY: Rod L. Betit, Executive Director

EFFECTIVE: 01/21/2003

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**Health, Health Care Financing,  
Coverage and Reimbursement Policy  
R414-301  
Medicaid General Provisions**

**FIVE YEAR NOTICE OF REVIEW AND  
STATEMENT OF CONTINUATION**

DAR FILE No.: 26004  
FILED: 01/31/2003, 20:09

**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: This rule is authorized by Subsection 26-18-3(3), which allows the Department of Health to contract with other qualified agencies for services in connection with the administration of the Medicaid program. In addition, it is required by 42 CFR 431 Subpart F, which provides for the safeguarding of information on applicants and recipients. Further, this rule is required by 42 CFR 431.220 through 431.246, which sets forth the hearing rights of the client and the hearing procedures for Medicaid.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written or oral comments have been received regarding this rule.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule must be continued because it defines the different medical assistance programs for which the Department of Health is responsible. It also sets forth Medicaid client rights and responsibilities and safeguards client information. It establishes client rights to a fair hearing and the hearing process in general.

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](mailto:rmartin@utah.gov)

AUTHORIZED BY: Rod L. Betit, Executive Director

EFFECTIVE: 01/31/2003

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**Health, Health Care Financing,  
Coverage and Reimbursement Policy  
R414-302  
Eligibility Requirements**

**FIVE YEAR NOTICE OF REVIEW AND  
STATEMENT OF CONTINUATION**

DAR FILE No.: 26005  
FILED: 01/31/2003, 20:13

**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: Section 26-18-3 requires the Department of Health to develop implementing policy for the Medicaid program. In addition, this rule is required by 42 CFR 435 Subpart E, which sets forth the general eligibility requirements for Medicaid recipients.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written or oral comments have been received regarding this rule.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule is needed because it defines certain eligibility requirements individuals must meet

to receive Medicaid, such as being a citizen or qualified alien according to federal law, being a resident of the state, and providing other information upon application as required by federal law. This rule must be continued because it explains who can be eligible for the Medicaid program.

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](mailto:rmartin@utah.gov)

AUTHORIZED BY: Rod L. Betit, Executive Director

EFFECTIVE: 01/31/2003

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**Health, Health Care Financing,  
Coverage and Reimbursement Policy  
R414-303  
Coverage Groups**

**FIVE YEAR NOTICE OF REVIEW AND  
STATEMENT OF CONTINUATION**

DAR FILE No.: 26012  
FILED: 01/31/2003, 23:34

**NOTICE OF REVIEW AND  
STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 26-18-3 requires the Department of Health to develop implementing policy for the Medicaid program. In addition, this rule is required by 42 CFR 435, Subparts B, C, and D, which establish the coverage groups for Medicaid.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written or oral comments have been received regarding this rule.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule must be continued because it defines the Medicaid coverage groups for which the Department of Health is required to provide, as well as those for which the department elects to provide. In addition, the rule lists specific criteria of eligibility for such programs.

The department is responsible to manage the Medicaid programs and must explain what programs are provided, and the eligibility criteria to receive coverage under such programs.

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](mailto:rmartin@utah.gov)

AUTHORIZED BY: Rod L. Betit, Executive Director

EFFECTIVE: 01/31/2003

▼ ————— ▼

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

**FIVE YEAR NOTICE OF REVIEW AND  
STATEMENT OF CONTINUATION**

DAR FILE No.: 26017  
FILED: 01/31/2003, 23:35

**NOTICE OF REVIEW AND  
STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 26-18-3 requires the Department of Health to develop implementing policy for the Medicaid program. In addition, this rule is required by 42 CFR 435, Subparts G, H and I, which set forth the general financial requirements and options for Medicaid, along with the specific eligibility and post-eligibility financial requirements for the medically needy.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written or oral comments have been received regarding this rule.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule must be continued because it defines the specific income criteria, income limits and income budgeting methodologies for Medicaid programs the Department of Health elects to provide. The department is

responsible to manage the Medicaid programs and must explain what programs are provided and the eligibility criteria to receive coverage under such programs.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

Craig Devashrayee or Ross Martin at the above address, by phone at 801-538-6641 or 801-538-6592, by FAX at 801-538-6099 or 801-538-6099, or by Internet E-mail at cdevashrayee@utah.gov or rmartin@utah.gov

AUTHORIZED BY: Rod L. Betit, Executive Director

EFFECTIVE: 01/31/2003

Medicaid programs, and must explain for applicants and recipients what programs are provided and the eligibility criteria to receive coverage under such programs.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

Ross Martin or Craig Devashrayee at the above address, by phone at 801-538-6592 or 801-538-6641, by FAX at 801-538-6099 or 801-538-6099, or by Internet E-mail at rmartin@utah.gov or cdevashrayee@utah.gov

AUTHORIZED BY: Rod L. Betit, Executive Director

EFFECTIVE: 01/31/2003

## Health, Health Care Financing, Coverage and Reimbursement Policy

### **R414-305**

#### Resources

#### **FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

DAR File No.: 26018  
FILED: 01/31/2003, 23:40

#### **NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 26-18-3 requires the Department of Health to develop implementing policy for the Medicaid program. In addition, this rule is required by 42 CFR 435, Subparts H and I, which set forth the income and resource eligibility standards for Medicaid clients.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written or oral comments have been received regarding this rule.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule must be continued because it defines specific resource criteria. These criteria include exempt resources, how resources are counted, and resource limits for Medicaid programs for the Department of Health is required to provide or which the department elects to provide. The department is responsible to manage the

## Health, Health Care Financing, Coverage and Reimbursement Policy

### **R414-306**

#### Program Benefits

#### **FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

DAR File No.: 26019  
FILED: 01/31/2003, 23:45

#### **NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 26-18-3 requires the Department of Health to develop implementing policy for the Medicaid program. Also, this rule is required by 42 CFR 435.914, which sets forth the effective date of when a recipient becomes available for Medicaid services. In addition, this rule is required by 42 CFR 431 Subpart B, which sets forth the general administrative requirements necessary to meet the needs of Medicaid recipients.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written or oral comments have been received regarding this rule.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule must be continued because it defines certain benefits provided under Medicaid programs, explains when eligibility can begin for an eligible

applicant, defines the criteria and limitations for non-emergency medical transportation, and defines who can receive a state supplemental payment as an institutional resident. These benefits and limitations need to be defined for Medicaid applicants and recipients and are not described in other rules.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

Ross Martin or Craig Devashrayee at the above address, by phone at 801-538-6592 or 801-538-6641, by FAX at 801-538-6099 or 801-538-6099, or by Internet E-mail at [rmartin@utah.gov](mailto:rmartin@utah.gov) or [cdevashrayee@utah.gov](mailto:cdevashrayee@utah.gov)

AUTHORIZED BY: Rod L. Betit, Executive Director

EFFECTIVE: 01/31/2003

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 describes the methods accepted by the Department of Health for filing an application for medical assistance, the eligibility periods and when eligibility ends, and the criteria for providing verifications to determine eligibility. These requirements need to be defined so that Medicaid applicants and recipients know what is required and what their rights are.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

Ross Martin or Craig Devashrayee at the above address, by phone at 801-538-6592 or 801-538-6641, by FAX at 801-538-6099 or 801-538-6099, or by Internet E-mail at [rmartin@utah.gov](mailto:rmartin@utah.gov) or [cdevashrayee@utah.gov](mailto:cdevashrayee@utah.gov)

AUTHORIZED BY: Rod L. Betit, Executive Director

EFFECTIVE: 01/31/2003

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## Health, Health Care Financing, Coverage and Reimbursement Policy

### **R414-307**

#### Eligibility Determination and Redetermination

##### **FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

DAR FILE No.: 26020  
FILED: 01/31/2003, 23:50

##### **NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 26-18-3 requires the Department of Health to develop implementing policy for the Medicaid program. In addition, this rule is required by 42 CFR 435.911, 435.912, 435.913, 435.914, 435.916, 435.919 and 435.920, which set forth the policy for the determination of Medicaid eligibility and the redeterminations of Medicaid eligibility.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written or oral comments have been received regarding this rule.

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## Health, Health Care Financing, Coverage and Reimbursement Policy

### **R414-308**

#### Record Management

##### **FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

DAR FILE No.: 26021  
FILED: 01/31/2003, 23:55

##### **NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 26-18-3 requires the Department of Health to develop implementing policy for the Medicaid program. Also, this rule is required by 42 CFR 431.17, which sets forth the policy for the maintenance and retention of records. In addition, this rule is authorized by 42 CFR 435.916, which requires the Medicaid agency to have procedures in place to ensure that recipients make timely and accurate reports of any change in circumstances that may affect their eligibility.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written or oral comments have been received regarding this rule.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule must be continued as it defines how the Department of Health maintains case records for recipients and explains notification requirements for applicants and recipients. This rule also informs recipients of when the department may hold a medical card, close a recipient's case, and defines what constitutes improper coverage or overpayment of benefits. It also explains what actions the department must take when improper coverage or overpayment of benefits has occurred. Recipients are entitled to know these requirements.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

Craig Devashrayee or Ross Martin at the above address, by phone at 801-538-6641 or 801-538-6592, by FAX at 801-538-6099 or 801-538-6099, or by Internet E-mail at cdevashrayee@utah.gov or rmartin@utah.gov

AUTHORIZED BY: Rod L. Betit, Executive Director

EFFECTIVE: 01/31/2003

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## Human Services, Recovery Services **R527-39** Applicant/Recipient Cooperation

### FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 25979  
FILED: 01/17/2003, 16:09

### 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: Section 62A-11-104 gives the Office of Recovery Services (ORS) the responsibility to determine whether an applicant or recipient of financial assistance or Medicaid is cooperating in good faith as required in Section 62A-11-307.2. Section 62A-11-307.2 specifies that to "cooperate in good faith" an applicant/recipient must provide the name and other

identifying information of the other parent unless good cause or other exception applies. In addition, the applicant/recipient is required to supply additional necessary information and appear at interviews, hearings, and legal proceedings. When it is necessary to establish paternity, the statute requires the applicant/recipient and child to submit to genetic testing. It also requires that ORS determine and redetermine, when appropriate, whether the applicant/recipient has cooperated in establishing paternity or in establishing, modifying, or enforcing a child support order. When a determination of non-cooperation is made, the statute requires ORS to provide notice to the applicant/recipient including information that the determination may be contested. In addition to providing a list of Office of Recovery Services/Child Support Services (ORS/CSS) objectives and the specific cooperation actions necessary to facilitate attainment of those objectives, this rule describes the options available to an applicant/recipient who wishes to contest a noncooperation determination when a good cause or other exception does not apply.

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: This rule should be continued because the laws upon which it is based and the policies that are supported by it are still in effect. Furthermore, this rule provides the applicant/recipient the additional option to contest a non-cooperation determination informally at the agency level rather than proceeding under the Utah Administrative Procedures Act or through the district court. It also addresses each progressive level of appeal.

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

HUMAN SERVICES  
RECOVERY SERVICES  
515 E 100 S  
SALT LAKE CITY UT 84102-4211, or  
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Wayne Braithwaite at the above address, by phone at 801-536-8986, by FAX at 801-536-8509, or by Internet E-mail at waynebraithwaite@utah.gov

AUTHORIZED BY: Emma Chacon, Director

EFFECTIVE: 01/17/2003

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## Human Services, Recovery Services **R527-430** Administrative Notice of Lien-Levy Procedures

**FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

DAR FILE No.: 25980  
FILED: 01/21/2003, 13:54

**NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 62A-11-304.1 allows the Office of Recovery Services (ORS) to impose liens to satisfy past-due support, subject to the obligor's right to contest the lien-levy action and the amount claimed to be past-due. The statute authorizes ORS to intercept and seize certain periodic or lump-sum payments due an obligor, attach and seize the assets of an obligor held in financial institutions, and attach retirement funds if the obligor is receiving periodic payments or has the authority to make withdrawals from the retirement account. This rule establishes procedures regarding release of funds to an unobligated spouse when the unobligated spouse is co-owner of a financial account or joint-recipient of certain non-means tested payments and contests a lien-levy action upon any of those assets.

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: Section 62A-11-304.1, upon which this rule is based, is still in effect and the lien-levy procedures described in the rule are reflected in current ORS policy and practices so this rule should be continued.

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

HUMAN SERVICES  
RECOVERY SERVICES  
515 E 100 S  
SALT LAKE CITY UT 84102-4211, or  
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
Wayne Braithwaite at the above address, by phone at 801-536-8986, by FAX at 801-536-8509, or by Internet E-mail at waynebraithwaite@utah.gov

AUTHORIZED BY: Emma Chacon, Director

EFFECTIVE: 01/21/2003



Insurance, Administration  
**R590-124**  
Loss Information Rule

**FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

DAR FILE No.: 25990  
FILED: 01/24/2003, 12:26

**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: Subsection 31A-2-201(3) allows the commissioner to make rules to implement Title 31A. Subsection 31A-23-302(8) gives specific rulemaking authority to the commissioner after a finding of misleading, deceptive, unfairly discriminatory, unfair inducements or unreasonable restraint of competition occurring in the marketplace. Section R590-124-4 of the rule provides instruction as to what loss information insurers are required to release, when and how often and in what type of format.

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 by the department in the past five years.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: It is important that the law provide guidelines to insurers for the maintenance of loss information and its dissemination to insureds and other insurers. Otherwise, this kind of information is not released by insurers. The information is important to insureds to determine if their efforts to reduce losses has been successful or not and the information is important to other insurers who want to provide a competitive quote for the insured's business so this rule should be continued.

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

AUTHORIZED BY: Jilene Whitby, Information Specialist

EFFECTIVE: 01/24/2003





Insurance, Administration  
**R590-155**  
 Disclosure of Life and Health Guaranty  
 Association Limitations

**FIVE YEAR NOTICE OF REVIEW AND  
 STATEMENT OF CONTINUATION**

DAR FILE NO.: 25993  
 FILED: 01/24/2003, 13:11

**NOTICE OF REVIEW AND  
 STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Subsection 31A-2-201(3)(a) authorizes the commissioner to make rules to implement the provisions of the insurance code and in this case, Subsection 31A-28-119(4), requiring a disclosure notice to insureds stating that their policy is not covered under the Life and Health Guaranty Association if their insurers becomes insolvent.

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 by the department in the past five years.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Section 31A-28-119 was initially written to prohibit agents from telling prospective insureds that the policy they would like to sell them would be covered by the guaranty association even if the insurance company became insolvent. This argument was used deceptively by some agents to sell policies for companies that were financially unsound or not members of the guaranty association. This rule needs to be continued to protect insureds.

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](mailto:jwhitby@utah.gov)

AUTHORIZED BY: Jilene Whitby, Information Specialist

EFFECTIVE: 01/24/2003



Public Safety, Criminal Investigations  
 and Technical Services, Criminal  
 Identification  
**R722-300**  
 Concealed Firearm Permit Rule

**FIVE YEAR NOTICE OF REVIEW AND  
 STATEMENT OF CONTINUATION**

DAR FILE NO.: 25999  
 FILED: 01/28/2003, 11:48

**NOTICE OF REVIEW AND  
 STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule is authorized by Subsection 53-5-704(17) which allows the commissioner to make rules to administer the Concealed Weapon Act, Title 53, Chapter 5, Part 7.

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 were received regarding the rule as currently written. However, in December 2000 the former department administration proposed various changes to the rule. Several comments were received in opposition to those proposed changes. For that reason, and others, the new administration withdrew the proposed changes and the rule remained as it is currently written.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule should be continued because it informs the public how the division administers the Concealed Weapon Act, Title 53, Chapter 5, Part 7.

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

PUBLIC SAFETY  
 CRIMINAL INVESTIGATIONS AND TECHNICAL  
 SERVICES, CRIMINAL IDENTIFICATION  
 CALVIN L RAMPTON COMPLEX  
 4501 S 2700 W  
 SALT LAKE CITY UT 84119-5994, or  
 at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
 Joyce Carter at the above address, by phone at 801-965-3810, by FAX at 801-965-4749, or by Internet E-mail at [joycecarter@utah.gov](mailto:joycecarter@utah.gov)

AUTHORIZED BY: Robert Flowers, Commissioner

EFFECTIVE: 01/28/2003



Public Safety, Criminal Investigations and Technical Services, Criminal Identification

R722-320

Undercover Identification

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 25998
FILED: 01/28/2003, 11:44

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 53-10-104 addresses the duties of the division, including the statutory mandate to provide assistance and specialized law enforcement services to federal, local, and state agencies as authorized by Subsections 53-10-104(1), 53-10-104(9), and 53-10-104(14).

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: This rule should be continued because it informs law enforcement agencies regarding the criteria and procedure used by the division in obtaining identification and personal history information for their peace officers who conduct undercover investigations.

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

PUBLIC SAFETY
CRIMINAL INVESTIGATIONS AND TECHNICAL SERVICES, CRIMINAL IDENTIFICATION
CALVIN L RAMPTON COMPLEX
4501 S 2700 W
SALT LAKE CITY UT 84119-5994, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Joyce Carter at the above address, by phone at 801-965-3810, by FAX at 801-965-4749, or by Internet E-mail at joycecarter@utah.gov

AUTHORIZED BY: Robert Flowers, Commissioner

EFFECTIVE: 01/28/2003



Public Safety, Criminal Investigations and Technical Services, Criminal Identification

R722-340

Emergency Vehicles

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 25996
FILED: 01/28/2003, 11:30

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 41-6-1.5 and Subsection 53-1-108(1)(c) authorize the commissioner of public safety to make rules governing emergency use of signal lights on private vehicles and allowing privately-owned vehicles to be designated for part-time emergency use.

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: This rule should be continued because it informs the public regarding the criteria and procedure followed by the department in designating privately-owned vehicles for part-time emergency use.

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

PUBLIC SAFETY
CRIMINAL INVESTIGATIONS AND TECHNICAL SERVICES, CRIMINAL IDENTIFICATION
CALVIN L RAMPTON COMPLEX
4501 S 2700 W
SALT LAKE CITY UT 84119-5994, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Joyce Carter at the above address, by phone at 801-965-3810, by FAX at 801-965-4749, or by Internet E-mail at joycecarter@utah.gov

AUTHORIZED BY: Robert Flowers, Commissioner

EFFECTIVE: 01/28/2003



## NOTICES OF FIVE-YEAR REVIEW EXTENSIONS

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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. The extension permits the agency to file the review up to 120 days beyond the anniversary date.

Agencies have filed extensions for the rules listed below. The "Extended Due Date" is 120 days after the anniversary date. The five-year review extension is governed by *Utah Code* Subsection 63-46a-9(4) and (5) (1996).

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### Administrative Services

#### Facilities Construction and Management

No. 25984 (filed 01/22/2003 at 11:00 a.m.): R23-7. Utah State Building Board Policy Statement Master Planning.

Enacted or Last Five-Year Review: 01/28/98 (No. 20705, 5YR, filed 01/28/98 at 1:38 p.m., published 02/15/98)

Extended Due Date: 05/28/2003

No. 25986 (filed 01/22/2003 at 12:00 p.m.): R23-11. Facilities Allocation and Sales Procedures.

Enacted or Last Five-Year Review: 01/28/98 (No. 20708, 5YR, filed 01/28/98 at 1:38 p.m., published 02/15/98)

Extended Due Date: 05/28/2003

**End of the Notices of Five-Year Review Extensions Section**

## NOTICES OF RULE EFFECTIVE DATES

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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.

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### Abbreviations

AMD = Amendment  
CPR = Change in Proposed Rule  
NEW = New Rule  
R&R = Repeal and Reenact  
REP = Repeal

### Alcoholic Beverage Control

#### Administration

No. 25650 (AMD): R81-7-3. Guidelines for Issuing Permits for Outdoor or Large-Scale Public Events.  
Published: December 15, 2002  
Effective: January 24, 2003

### Commerce

#### Occupational and Professional Licensing

No. 25651 (AMD): R156-47b-302a. Qualifications for Licensure as a Massage Therapist - Massage School Curriculum Standards - Equivalent Education and Training.  
Published: December 15, 2002  
Effective: January 16, 2003

#### Real Estate

No. 25663 (AMD): R162-8-9. Disclosure Requirements.  
Published: December 15, 2002  
Effective: January 16, 2003

### Environmental Quality

#### Water Quality

No. 25636 (AMD): R317-1. Definitions and General Requirements.  
Published: December 1, 2002  
Effective: January 30, 2003

No. 25635 (AMD): R317-4-3. Onsite Wastewater Systems General Requirements.  
Published: December 1, 2002  
Effective: January 30, 2003

No. 25632 (AMD): R317-6-6. Implementation.  
Published: December 1, 2002  
Effective: January 30, 2003

No. 25631 (AMD): R317-7-13. Public Participation.  
Published: December 1, 2002  
Effective: January 30, 2003

No. 25634 (AMD): R317-8. Utah Pollutant Discharge Elimination System (UPDES).  
Published: December 1, 2002  
Effective: January 30, 2003

No. 25638 (AMD): R317-10. Certification of Wastewater Works Operators..  
Published: December 1, 2002  
Effective: January 30, 2003

No. 25637 (AMD): R317-11. Certification Required to Design, Inspect and Maintain Underground Wastewater Disposal Systems, or Conduct Percolation and Soil Tests for Underground Wastewater Disposal Systems.  
Published: December 1, 2002  
Effective: January 30, 2003

### Human Services

#### Administration, Administrative Services, Licensing

No. 25652 (AMD): R501-1. General Provisions.  
Published: December 15, 2002  
Effective: January 30, 2003

No. 25707 (AMD): R501-8. Outdoor Youth Programs.  
Published: December 15, 2002  
Effective: January 17, 2003

No. 25660 (AMD): R501-11. Social Detoxification Programs.  
Published: December 15, 2002  
Effective: January 30, 2003

No. 25644 (AMD): R501-12. Child Foster Care.  
Published: December 1, 2002  
Effective: January 30, 2003

### Pardons (Board Of)

#### Administration

No. 25627 (AMD): R671-201. Original Parole Grant Hearing Schedule and Notice.  
Published: December 1, 2002  
Effective: January 29, 2003

### Public Safety

#### Driver License

No. 25645 (NEW): R708-39. Physical and Mental Fitness Testing.  
Published: December 1, 2002  
Effective: January 24, 2003

**RULES INDEX  
BY AGENCY (CODE NUMBER)  
AND  
BY KEYWORD (SUBJECT)**

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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 31, 2003, the effective dates of which are no later than February 15, 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).

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