

UTAH STATE BULLETIN

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

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Inquiries concerning administrative rules or other contents of the *Bulletin* may be addressed to the responsible agency or to: Division of Administrative Rules, 4120 State Office Building, Salt Lake City, Utah 84114, telephone (801) 538-3218, FAX (801) 538-1773. To view rules information, and on-line versions of the division's publications, visit: <http://www.rules.utah.gov/>

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Division of Administrative Rules, Salt Lake City 84114

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SPECIAL NOTICES

Governor's Proclamation: Calling the Fifty-Fifth Legislature into a Tenth Extraordinary Session (Senate Only)

PROCLAMATION

WHEREAS, since the close of the 2004 General Session of the 55th Legislature of the State of Utah, certain matters have arisen which require immediate legislative attention; and

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

NOW, THEREFORE, I, OLENE S. WALKER, Governor of the State of Utah, by virtue of the authority vested in me by the Constitution and the Laws of the State of Utah, do by this Proclamation call the Senate only of the 55th Legislature of the State of Utah into a Tenth Extraordinary Session at the Senate Chambers, State Capitol Complex in Salt Lake City, Utah, on the 18th day of August, 2004, at 12:00 noon, for the following purpose:

For the Senate to consent to appointments made by the Governor to positions within state government of the State of Utah since the close of the 2004 General Session of the 55th Legislature of the State of Utah.

IN TESTIMONY WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Utah. Done at the State Capitol Complex in Salt Lake City, Utah, this 3rd day of August, 2004.

(State Seal)

Olene S. Walker
Governor

Gayle F. McKeachnie
Lieutenant Governor

Governor's Declaration: Declaration of Agricultural Disaster

DECLARATION OF AGRICULTURAL DISASTER

WHEREAS, extreme drought has reduced soil moisture in many areas of the state, rendering crop production unproductive for agricultural purposes;

WHEREAS, the U. S. Department of Agriculture's Drought Monitor classifies the drought conditions in the State of Utah as "Extreme and/or Exceptional";

WHEREAS, well below normal snow pack has left the spring snow melt well below normal levels in most areas of the state;

WHEREAS, many agricultural reservoirs throughout the state have not received adequate supplies of irrigation water resulting in low to non-existent levels in some areas;

WHEREAS, insect infestation, hot weather, fire, and wind in many areas of the state have exacerbated the drought conditions;

WHEREAS, many grazing lands that are normally available to livestock owners are not available, or do not offer adequate livestock feed; and

WHEREAS, high forage and feed costs, as well as increased transportation costs, will weigh heavily on an industry already facing a sixth consecutive year of drought;

NOW THEREFORE, I, Olene S. Walker, Governor of the state of Utah, by virtue of the power vested in me by the constitution and the laws of the State of Utah, hereby declare a "Statewide Agricultural Disaster" due to the aforesaid drought and insect infestation in the State of Utah.

IN TESTIMONY, WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the state of Utah this 30th day of July, 2004.

(State Seal)

Olene S. Walker
Governor

ATTEST:

Gayle F. McKeachnie
Lieutenant Governor

Natural Resources
Wildlife Resources

Public Notice of Emergency Changes to the 2004 Utah Fishing Regulations Established by the Wildlife Board for Taking Fish and Crayfish

I, Kevin Conway, by authority granted in Section 23-14-8 of the Wildlife Resources Code of Utah, declare an emergency amendment to the 2004 Utah Fishing Regulations. The following has been amended:

OTTER CREEK RESERVOIR (Piute County):

Trout limit 8

These changes would remain in effect through September 30, 2004. Regulations established by the Wildlife Board for the 2004 Fishing Proclamation would take effect again October 1, 2004, when normal fall stocking would begin to replace the lost fisheries.

Fishing and harvest regulations are being relaxed because the reservoir will likely be drained or drawn down to very low levels due to the drought.

Except for any other emergency changes made since January 1, 2004, all other rules established in the 2004 Utah Fishing Regulations remain in effect.

UTAH DIVISION OF WILDLIFE RESOURCES
By: Cindee Jensen, Acting Director

Subscribed and sworn to before me this 20th day of July 2004.
Dolores F. Roberts, Notary Public
My commission expires: January 15, 2008

End of the Special Notices Section

NOTICES OF PROPOSED RULES

A state agency may file a PROPOSED RULE when it determines the need for a new rule, a substantive change to an existing rule, or a repeal of an existing rule. Filings received between July 16, 2004, 12:00 a.m., and August 2, 2004, 11:59 p.m. are included in this, the August 15, 2004, 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 September 14, 2004. 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 December 13, 2004, the agency may notify the Division of Administrative Rules that it wants to make the PROPOSED RULE effective. The agency sets the effective date. The date may be no fewer than 31 days nor more than 120 days after the publication date of this issue of the *Utah State Bulletin*. Alternatively, the agency may file a CHANGE IN PROPOSED RULE in response to comments received. If the Division of Administrative Rules does not receive a NOTICE OF EFFECTIVE DATE or a CHANGE IN PROPOSED RULE, the PROPOSED RULE filing lapses and the agency must start the process over.

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

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

The Proposed Rules Begin on the Following Page.

Agriculture and Food, Plant Industry
R68-6
Utah Nursery Act

NOTICE OF PROPOSED RULE
 (Amendment)

DAR FILE No.: 27320
 FILED: 07/30/2004, 14:48

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule protects the industry and consumer from misrepresentation of nursery stock; and provides for proper labeling, guaranteed analysis, or areas pertaining to viability, health, and condition.

SUMMARY OF THE RULE OR CHANGE: This change adopts the American Standard For Nursery Stock, ANSI Z60.1-1996, approved November 6, 1996, published by the American Association of Nurseryman.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 4-15-3

THIS RULE OR CHANGE INCORPORATES BY REFERENCE THE FOLLOWING MATERIAL: American Standard for Nursery Stock, ANSI Z60.1 - 1996, approved November 6, 1996, published by the American Association of Nurseryman

ANTICIPATED COST OR SAVINGS TO:

❖ **THE STATE BUDGET:** There is no cost or savings associated with this rule. This rule establishes the standards for labeling of nursery stock being manufactured or sold in Utah.

❖ **LOCAL GOVERNMENTS:** There is no cost or savings associated with this rule. This rule establishes the standards for labeling of nursery stock being manufactured or sold in Utah.

❖ **OTHER PERSONS:** There is no cost or savings associated with this rule. This rule establishes the standards for labeling of nursery stock being manufactured or sold in Utah.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs associated with this rule. This rule is established to regulate the labeling of nursery stock being manufactured or sold in Utah.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule has no fiscal impact on businesses. The labels are provided by the nurseryman's association.

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

AGRICULTURE AND FOOD
 PLANT INDUSTRY
 350 N REDWOOD RD
 SALT LAKE CITY UT 84116-3087, or
 at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Marolyn Leetham, Clair Allen, or Dick Wilson at the above address, by phone at 801-538-7114, 801-538-7187, or 801-538-7180, by FAX at 801-538-7126, 801-538-7126, or 801-538-7126, or by Internet E-mail at mleetham@utah.gov, ClairAllen@utah.gov, or dwilson@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 09/14/2004.

THIS RULE MAY BECOME EFFECTIVE ON: 09/15/2004

AUTHORIZED BY: Cary G. Peterson, Commissioner

R68. Agriculture and Food, Plant Industry.

R68-6. Utah Nursery Act.

R68-6-3. Labeling.

A. In order to identify nursery stock properly, whenever it is shipped, delivered, or transported to any purchaser, at least one label bearing the name, origin (state grown or propagated), size, variety, and grade (where applicable) shall be attached to each separate species or variety.

B. Whenever a grade or size designation is used or implied in labeling or in an advertisement referring to a kind of nursery stock for which grades or sizes have been established in these rules, the nursery stock so labeled or so advertised shall conform to the specifications of the particular grade or size as stated herein. Advertisements of such stock offered for sale in containers shall state plant grade or size, irrespective of the size of the container.

C. Non-established container stock shall be so identified by a water resistant tag on which the words "non-established container stock" are printed. The tags shall be not less than 2 x 4 inches in size with lettering of 24 point Gothic type. The minimum length of time the stock has been planted in the container or the date the stock was planted in the container must also be stated on the tag. The tag shall bear only the required labeling. It shall be the responsibility of the supplier of non-established container stock to adequately label such stock as provided herein.

D. All roses shall be labeled by grade for individual plants, bundles, or single lots.

R68-6-4. Condition of Nursery Stock.

A. Any nursery stock which, in the judgment of the Commissioner or his authorized agents, does not meet the following minimum indices of vitality shall be removed from sale.

1. Woody-stemmed deciduous stock, such as fruit and shade trees, rose bushes, and shrubs shall have moist tissue in the stem or stems and branches and shall have viable buds or unwilted growth sufficient to permit the nursery stock to live and grow in a form characteristic of the species when planted and given reasonable care, except that in the case of rose bushes each stem must show moist, green undamaged cambium in at least the first 8 inches above the graft. Any single stem on a rose bush not meeting this specification shall disqualify the entire plant: PROVIDED, that a bush may be pruned to comply with the specification if at least two stems meeting the specification remain and the grade designation is changed accordingly.

2. Hardy herbaceous biennials or perennial when in a wilted, rotted, or any other condition indicative of poor vitality shall not be sold or offered for sale in Utah.

3. Any bare-rooted or prepackaged woody-stemmed nursery stock having in excess of two inches of etiolated or otherwise abnormal growth from individual buds shall not be sold or offered for sale.

4. Balled and burlapped stock in a weakened condition as evidenced by dieback or dryness of earthball or foliage, or such stock having broken or loose earthballs shall not be sold or offered for sale.

5. Stock offered for sale in containers. The container shall be sufficiently rigid to hold the ball shape, protecting the root mass during shipment.

a. Container stock offered for sale shall be healthy, vigorous, ~~[wellrooted]~~ well rooted, and established in the container in which it is sold. The tops of the plants shall be of good quality and in a healthy growing condition. Sufficient new fibrous roots shall have developed so that the root mass will retain its shape and hold together when removed from the container. This shall be evidenced in each case by the earthball of such stock remaining reasonably intact upon removing it from the container.

b. Non-established container stock offered for sale shall be deciduous stick which shows good top quality and a vigorous healthy growing condition. The potting media shall be capable of sustaining satisfactory plant growth. Evergreen stock shall not be offered for sale in containers unless it is well established in the container.

R68-6-5. Standards for Nursery Stock.

[A-]Nursery stock offered for sale in Utah shall meet the grade and size standards as ~~[set forth herein]~~ published by the American Association of Nurseryman (AAN), in the American Standard for Nursery Stock, ANSI Z60.1-1996 Approved November 6, 1996. The American Standards for Nursery Stock provides buyers and sellers of nursery stock with common terminology to facilitate transactions involving nursery stock.

~~1. Deciduous Trees:~~

~~a. Caliper Measurements. Caliper shall be the determining measurement in grading. Caliper of the trunk shall be taken 6 inches above the ground level up to and including 4 inch caliper size and 12 inches above the ground level for larger sizes.~~

~~b. Height Measurements. Height shall be given in single foot units up to 6 feet; example 5-6 feet over 6 feet height shall be given in double foot units; example: 6-8 feet, 12-14 feet.~~

~~2. Deciduous Shrubs:~~

~~a. Height Measurement.~~

~~(1) Dwarf and Semi-dwarf Shrubs: State height in inches up to 24 inches; usually in 3 inch series; examples: 3-6 inches; 6-9 inches. Larger than 24 inches state height in feet with 1/2 foot series; example 2 to 2 1/2 feet, 2 1/2 to 3 feet.~~

~~(2) Strong Growing Shrubs: State height in 6 inch series up to 24 inches; example: 12-18 inches; over 24 inches by single feet up to 6 feet; then in double feet above 6 feet; example: 8-10 feet.~~

~~3. Coniferous Evergreens:~~

~~a. Spreading Types:~~

~~(1) Measurement designates spread (height not considered). Use 3 inch intervals up to 18 inches. Use 6 inch intervals from 18 inches to four feet. Use 1 foot intervals from 4 feet up.~~

~~(2) Measurement should be average of plant and not the greatest diameter. Plants properly trimmed and transplanted should measure the same in any direction. If a plant is uneven, for example 15 inches the widest way and 9 the narrowest, it should be classified as 12 inch stock.~~

~~b. Semi-Spreading Type:~~

~~(1) Measurement designates spread. Use 3 inch intervals up to 18 inches. Use 6 inch intervals from 18 inches to 4 feet. Use 1 foot intervals from 4 feet up.~~

~~(2) Measurement should be average as in Spreading Type. Height of first class material will be at least one half of the spread. Above 3 feet, the height will be less than spread, varying somewhat according to natural growth of the particular species and method of handling.~~

~~c. Globe or Dwarf Type:~~

~~(1) Measurement designates height. Use 3 inch intervals up to 18 inches. Use 6 inch intervals from 18 inches to 4 feet. Use 1 foot intervals from 4 feet up.~~

~~(2) Spread will usually be equal to height in well grown material up to twelve inches. From thereon, there will be a variation of spread to height depending on the variety.~~

~~d. Cone Type:~~

~~(1) Measurement designates height. Use 3 inch intervals up to 18 inches. Use 6 inch intervals from 18 inches to 5 feet. Use 1 foot intervals from 5 to 8 feet. Use 2 foot intervals from 8 feet up.~~

~~(2) The ratio of height to spread of properly grown material should not be less than 4 to 2 1/2.~~

~~e. Broad Upright Type:~~

~~(1) Measurement designates height. Use 3 inch intervals up to 18 inches. Use 6 inch intervals from 18 inches to 5 feet. Use 1 foot intervals from 5 to 8 feet. Use 2 foot intervals from 8 feet up.~~

~~(2) This group includes all the broader, upright growing evergreens which develop a straight sided form with many upright branches or "leaders."~~

~~(3) The ratio of height to spread of properly grown material should not be less than 4 to 2.~~

~~f. Columnar Type:~~

~~(1) Measurement designates height. Use 3 inch intervals up to 18 inches. Use 6 inch intervals from 18 inches to 5 feet. Use 1 foot intervals from 5 feet to 8 feet. Use 2 foot intervals from 8 feet up.~~

~~(2) This group includes all the upright growing evergreens which naturally develop a straight sided form or one that tapers only slightly from the ground to a point more than half the height.~~

~~(3) The broader types will usually have a ratio of height to spread of 4 to 1. Many forms, however, will not attain this ratio and even those of broad habit may be trimmed to advantage into a narrowed form. However, in most cases the ratio of height to spread should not be less than 5 to 1, except with certain specialty types which characteristically grow more narrow.~~

~~4. Broadleaf Evergreens:~~

~~a. Measurement of height should be where the branches start, and not at the ground, if the plant is leggy. It should stop where the main part of the plant ends, and not to the tip of a thin shoot.~~

~~(1) Spreading Type:~~

~~Measurement designates spread (height not considered). Use 3 inch intervals up to 24 inches. Use 6 inch intervals from 24 inches to 4 feet. Use 1 foot intervals over 4 feet.~~

~~(2) Semi-Spreading Type:~~

~~Measurement designates spread (height not considered). Use 3 inch intervals up to 24 inches. Use 6 inch intervals from 24 inches to 4 feet. Use 1 foot intervals over 4 feet.~~

— (3) ~~Globe or Dwarf Type.~~

— (a) ~~Measurement designates height. Use 3 inch intervals up to 18 inches. Use 6 inch intervals from 18 inches to 4 feet. Use 1 foot intervals from 4 feet up.~~

— (b) ~~Spread will usually be equal to or only slightly less than the height, but in no case will the ratio be more than 2 to 1 or height more than twice spread.~~

— (4) ~~Broad Upright Type.~~

— (a) ~~Measurement designates height. Use 3 inch intervals up to 18 inches. Use 6 inch intervals from 18 inches to 3 feet. Use 1 foot intervals from 3 feet up.~~

— (b) ~~This group includes all of the larger growing upright broadleaves which vary considerably in ratio of spread to height. Well grown material will in most cases have a height equal to if not greater than the spread. However, the spread should not be less than two thirds of the height.~~

— (5) ~~Cone Type.~~

— (a) ~~Measurement designates height. Use 3 inch intervals up to 18 inches. Use 6 inch intervals from 18 inches to 3 feet. Use 1 foot intervals from 3 feet up.~~

— (b) ~~This type includes all upright growing broadleaf evergreens which naturally develop into a conical form. Well grown material will have a ratio of height to spread of 3 to 1. A greater spread is acceptable.~~

— 5. ~~Rose Grades.~~

— a. ~~The standards specified apply only to field grown two year roses when sold either bare root, individually wrapped and packaged, or in containers. All grades of roses must have a well-developed root system and have proportionate weight and caliper according to grade and variety. Roses shall be graded by size, number and length of canes, and proper consideration should be given to weight and caliper of canes, depending upon grade and variety. The specifications outlined for length of canes are applicable before pruning in preparation for sale. If the cut back is less than the length specified for various approved grades, then the grade shall be determined by caliper of the cane. Packaged roses shall have a minimum cane length of 8 inches and shall comply with the caliper requirements for the various approved grades. Roses offered for sale in containers may be cut back to a minimum of 4 inches above the bud union at the time they are potted, and still comply with the grade in which they were classified prior to pruning in preparation for potting.~~

— (1) ~~Hybrid Tea, Tea, Grandiflora, Hybrid Perpetual, Moss and Miscellaneous Bush Roses.~~

— (a) ~~Grade No. 1. Three or more strong canes, two of which are to be 16 inches and up, and one cane to be 18 inches and up, branched not higher than 3 inches above the bud union. Minimum caliper for this grade when the canes are cut back less than the specified lengths shall be 3/8 inch.~~

— (b) ~~Grade No. 1 1/2. Two or more strong canes, to be 13 inches and up, branched not higher than 3 inches above the bud union. Minimum caliper for this grade when the canes are cut back less than the specified lengths shall be 5/16 inch.~~

— (c) ~~Grade No. 2. Two or more strong canes 10 inches and up, branched not higher than 3 inches above the bud union. Minimum caliper for this grade when the canes are cut back less than the specified length shall be 1/4 inch.~~

— (2) ~~Floribunda Roses.~~

— (a) ~~Grade No. 1. Three or more strong canes, two of which are to be 15 inches and up, branches not higher than 3 inches above the~~

~~bud union. Minimum caliper for this grade when the canes are cut back less than the specified lengths shall be 5/16 inch.~~

— (b) ~~Grade No. 1 1/2. Two or more strong canes to be 14 inches and up, branched not higher than 3 inches above the bud union. Minimum caliper for this grade when the canes are cut back less than the specified lengths shall be 1/4 inch.~~

— (c) ~~Grade No. 2. Two or more strong canes to be 12 inches and up, branched not higher than 3 inches above the bud union. Minimum caliper for this grade when the canes are cut back less than the specified lengths shall be 3/16 inch.~~

— (3) ~~Polyantha, Dwarf, and Light Growing Floribunda Roses.~~

— (a) ~~Grade No. 1. Four or more canes, all to be 12 inches and up, branched not higher than 3 inches above the bud union. Minimum caliper for this grade when the canes are cut back less than the specified lengths shall be 1/4 inch.~~

— (b) ~~Grade No. 1 1/2. Three or more canes, all to be 10 inches and up, branched not higher than 3 inches above the bud union. Minimum caliper for this grade when the canes are cut back less than the specified lengths shall be 3/16 inch.~~

— (c) ~~Grade No. 2. Two or more strong canes, both to be 10 inches and up, branched not higher than 3 inches above the bud union. Minimum caliper for this grade when the canes are cut back less than the specified lengths shall be 1/8 inch.~~

— (4) ~~Climbing Roses.~~

— (a) ~~Grade No. 1. Three or more strong canes, 24 inches and up with the exception of Wichuraiana and Wichuraiana types, which are to have 4 strong canes each 24 inches and up, branched not higher than 3 inches above the bud union or crown. Minimum caliper for this grade when the canes are cut back less than the specified lengths shall be 7/16 inch.~~

— (b) ~~Grade No. 1 1/2. Two strong canes, each 18 inches and up with the exception of Wichuraiana and Wichuraiana types which are to have 3 strong canes 18 inches and up, branched not higher than 3 inches above the bud union or crown. Minimum caliper for this grade when the canes are cut back less than the specified lengths shall be 3/8 inch.~~

— (c) ~~Grade No. 2. Two strong canes, each 14 inches and up, with the exception of Wichuraiana and Wichuraiana types which are to have 3 strong canes 16 inches and up, branched not higher than 3 inches above the bud union or crown. Minimum caliper for this grade when the canes are cut back less than the specified lengths shall be 5/16 inch.~~

— 6. ~~Vines and Ground Covers.~~

— a. ~~Fast Growing Vines.~~

— (1) ~~Two year No. 1. Shall have heavy, well branched tops with not less than 3 runners 18 inches and up and vigorous, well-developed root system.~~

— (2) ~~Two year No. 2. Lighter grade below No. 1 standard but without defects, 3 runners 12 inches and up and a root system commensurate with the top.~~

— b. ~~Medium Growing Vines.~~

— (1) ~~Two year No. 1. Shall have a heavy, well branched top and vigorous, well-developed root system.~~

— (2) ~~Two year Medium Lighter grade than No. 1. Without serious defects, top not as well branched. Root system must be in proportion to top.~~

— c. ~~Clump Type.~~

— (1) ~~Clump type shall be designated by age and heavy or light grade. Dormant plants may or may not have live runners. They shall~~

~~have a well-developed root system and healthy well-developed crown.~~

~~d. Ground Covers.~~

~~(1) Dwarf Vines and Ground Cover are to be designated or described by age, size of clump and length of runners and other characteristics peculiar to the particular species offered.~~

]

R68-6-6. Organizational Provisional Permit.

A. Special projects held by nonprofit educational, charitable, or service organizations may be exempt from payment of fees for nursery license provided the applicant provides an application for such.

B. All funds received from sales of such plants shall be used for the benefit of the organization or for improvement or beautification projects within the local community.

C. Plant materials distributed at these special projects shall meet the standards as described in R68-6-4 and R68-6-5.

D. No special project will be in direct competition with any licensed nursery.

E. Permit will be issued for on annual activity only. No fee required, but application must be completed and approved by the department before the project begins.

KEY: nurseries (agricultural)

~~[1987]~~**2004**

Notice of Continuation January 16, 2001

4-15-3



Commerce, Administration

R151-33

Pete Suazo Utah Athletic Commission
Act Rule

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 27312

FILED: 07/28/2004, 09:09

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This change adds or amends provisions for purposes of compliance with recent statutory amendments and with national boxing standards. It also clarifies adjudicative procedures before the Commission.

SUMMARY OF THE RULE OR CHANGE: The changes include: 1) removes "nominal value" from definitions in Subsection R151-33-102(6) as it is no longer used in the Athletic Commission statute and removes the reference to "nominal value" in Section R151-33-902; 2) revises and clarifies adjudicative procedures in Sections R151-33-401 and R151-33-402; 3) changes the time frame in which contestants can receive preflight physicals prior to an event to better accommodate the unarmed combat industry; and 4) increases the cruiserweight classification in Subsection R151-33-601(1)(p) to 200 pounds in accordance with national standards.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 13-33-101 et seq.

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: There may be some costs as a result of an administrative law judge conducting the hearings, but that cost can be absorbed within the current budget.

❖ LOCAL GOVERNMENTS: No impact is anticipated, because local government is not involved in the regulation or enforcement of the unarmed combat industry.

❖ OTHER PERSONS: No costs to licensees or other individuals are anticipated as a result of these amendments. The costs as to removing the "nominal value" definition have already been addressed through passage of the recent statutory amendments, S.B. 149 (2004 Legislative Session). The amendment relating to preflight physicals will better accommodate "last minute" entries into unarmed combat competitions, but no cost impact is apparent. Finally, no cost to other persons is apparent as to the amendment of adjudicative procedures. (DAR NOTE: S.B. 149 is found at UT L 2004 Ch 17, and was effective 05/03/2004.)

COMPLIANCE COSTS FOR AFFECTED PERSONS: No costs to licensees or other individuals are anticipated as a result of these amendments. The costs as to removing the "nominal value" definition have already been addressed through passage of the recent statutory amendments, S.B. 149 (2004). The amendment relating to preflight physicals will better accommodate "last minute" entries into unarmed combat competitions, but no cost impact is apparent. Finally, no cost to regulated persons is apparent as to the amendment of adjudicative procedures.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There appears to be no fiscal impact to businesses as a result of amendments to the provisions on adjudicative procedures, preflight physicals or weight classifications. The Utah Legislature has already addressed any fiscal impact to businesses as to removing the "nominal value" definition through its passage of S.B. 149 in the 2004 Legislative Session.

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

COMMERCE

ADMINISTRATION

HEBER M WELLS BLDG

160 E 300 S

SALT LAKE CITY UT 84111-2316, or

at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Masuda Medcalf at the above address, by phone at 801-530-7663, by FAX at 801-530-6446, or by Internet E-mail at mmedcalf@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 09/14/2004.

THIS RULE MAY BECOME EFFECTIVE ON: 09/15/2004

AUTHORIZED BY: Klare Bachman, Executive Director

R151. Commerce, Administration.

R151-33. Pete Suazo Utah Athletic Commission Act Rule.

R151-33-102. Definitions.

In addition to the definitions in Title 13, Chapter 33, the following definitions are adopted for the purpose of this Rule:

(1) "Boxing" means the sport of attack and defense using the fist, covered by an approved boxing glove.

(2) "Designated Commission member" means a member of the Commission designated as supervisor for a contest and responsible for the conduct of a contest, as assisted by other Commission members, Commission personnel, and others, as necessary and requested by the designated Commission member.

(3) "Drug" means a controlled substance, as defined in Title 58, Chapter 37, Utah Controlled Substances Act, or alcohol.

(4) "Elimination Tournament" means a contest involving unarmed combat in which contestants compete in a series of matches until not more than one contestant remains in any weight category.

(5) "Mandatory count of eight" means a required count of eight that is given by the referee of a boxing contest to a contestant who has been knocked down.

(6) [~~"Nominal Value" means a trophy, plaque, or ribbon that is valued at no more than \$25.~~

~~—(7)—~~"Unprofessional conduct" is as defined in Subsection 13-33-102(21), and is defined further to include the following:

(a) as a promoter, failing to promptly inform the Commission of all matters relating to the contest;

(b) as a promoter, substituting a contestant in the 24 hours immediately preceding the scheduled contest without approval of the Commission;

(c) violating the rules for conduct of contests;

(d) testing positive for drugs or alcohol in a random body fluid screen before or after participation in any contest;

(e) testing positive for HIV;

(f) failing or refusing to comply with a valid order of the Commission or a representative of the Commission; and

(g) for a promoter and a contestant, entering into a secret contract that contradicts the terms of the contract(s) filed with the Commission.

R151-33-401. Designation of Adjudicative Proceedings.

(1) Formal Adjudicative Proceedings. The following proceedings before the Commission are designated as formal adjudicative proceedings:

(a) any action to revoke, suspend, restrict, place on probation or enter a reprimand as to a license [~~revocation, suspension, or immediate suspension~~]; [~~and~~

(b) approval or denial of applications for renewal of a license;

~~—(c) any proceedings conducted subsequent to the issuance of a cease and desist order; and~~

~~—(d) the withholding of a purse by the Commission pursuant to Subsection 13-33-504(3).~~

(2) Informal Adjudicative Proceedings. [~~(a)~~

The following proceedings before the Commission [~~initiated by a request for agency action~~] are designated as informal adjudicative proceedings:

(a) [~~i~~] approval or denial of applications for initial licensure;

(b) [~~ii~~] approval or denial of applications for [~~renewal of a license;~~

~~—(iii) applications for reinstatement of a license; and~~

(c) [~~iv~~] protests against the results of a match. [~~(b) The following proceedings initiated by a notice of agency action are designated as informal adjudicative proceedings;~~

~~—(i) the restriction or probation of a license;~~

~~—(ii) a public or private reprimand against a licensee; and~~

~~—(iii) any proceedings conducted subsequent to the issuance of a cease and desist order.]~~

(3) Any other adjudicative proceeding before the Commission not specifically listed in Subsections (1) and (2) above, is designated as an informal adjudicative proceeding.

R151-33-402. Adjudicative Proceedings in General.

(1) The procedures for formal adjudicative proceedings are set forth in Sections 63-46b-6 through 63-46b-10; the Department of Commerce Administrative Procedures Act Rule, R151-46b; and this Rule.

(2) The procedures for informal adjudicative proceedings are set forth in Section 63-46b-5; Rule R151-46b; and this Rule.

(3) No evidentiary hearings shall be held in informal adjudicative proceedings before the Commission with the exception of protests against the results of a match in which an evidentiary hearing is permissible if timely requested. Any request for a hearing with respect to a protest of match results shall comply with the requirements of Section R151-33-404.

(4) Unless otherwise specified by the Commission, an administrative law judge shall be designated as the presiding officer to conduct any hearings in adjudicative proceedings before the Commission and thus rule on evidentiary issues and matters of law or procedure. [The Commission shall act as the presiding officers in all adjudicative proceedings. The Commission shall appoint one Commission member to act as presiding officer for questions of law and the remaining Commission members shall act as presiding officers for questions of fact.]

(5) [4] The Commission shall be designated as the sole presiding officer in any adjudicative proceeding where no evidentiary hearing is conducted. The Commission shall be designated as the presiding officer to serve as the fact finder at evidentiary hearings.

~~—(6) A majority vote of the Commission [members acting as presiding officers for questions of fact] shall constitute its [the Commission's] decision. [In the event of a tie vote, the Commission member acting as presiding officer for questions of law shall cast the deciding vote.~~

~~—(5)—~~Orders of the Commission shall be issued in accordance with Section 63-46b-10 for formal adjudicative proceedings, [~~and~~] Subsection 63-46b-5(1)(i) for informal adjudicative proceedings, and shall be signed by the Director or, in his or her absence, by the Chair [~~man~~] of the Commission.

R151-33-505. Physical Examination - Physician.

(1) Not less than [~~eight~~] one hour[s] before a contest, each contestant shall be given a medical examination by a physician who is appointed by the designated Commission member. The examination shall include a detailed medical history and a physical examination of all of the following:

(a) eyes;

(b) teeth;

(c) jaw;

(d) neck;

(e) chest;

- (f) ears;
- (g) nose;
- (h) throat;
- (i) skin;
- (j) scalp;
- (k) head;
- (l) abdomen;
- (m) cardiopulmonary status;
- (n) neurological, musculature, and skeletal systems;
- (o) pelvis; and
- (p) the presence of controlled substances in the body.

(2) If after the examination the physician determines that a contestant is unfit for competition, the physician shall notify the Commission of this determination, and the Commission shall prohibit the contestant from competing.

(3) The physician shall provide a written certification of those contestants who are in good physical condition to compete.

(4) Before a bout, a female contestant shall provide the ringside physician with the results of a pregnancy test performed on the contestant within the previous 14 days. If the results of the pregnancy test are positive, the physician shall notify the Commission, and the Commission shall prohibit the contestant from competing.

(5) A female contestant with breast implants shall be denied a license.

(6) A contestant who has had cardiac surgery shall not be issued a license unless he is certified as fit to compete by a cardiovascular surgeon.

(7) A contest shall not begin until a physician and an attended ambulance are present. The physician shall not leave until the decision in the final contest has been announced and all injured contestants have been attended to.

(8) The contest shall not begin until the physician is seated at ringside. The physician shall remain at that location for the entire fight, unless it is necessary for the physician to attend to a contestant.

R151-33-601. Boxing - Contest Weights and Classes.

- (1) Boxing weights and classes are established as follows:
- (a) Strawweight: up to 105 lbs. (47.627 kgs.)
 - (b) Light-Flyweight: over 105 to 108 lbs. (47.627 to 48.988 kgs.)
 - (c) Flyweight: over 108 to 112 lbs. (48.988 to 50.802 kgs.)
 - (d) Super Flyweight: over 112 to 115 lbs. (50.802 to 52.163 kgs.)
 - (e) Bantamweight: over 115 to 118 lbs. (52.163 to 53.524 kgs.)
 - (f) Super Bantamweight: over 118 to 122 lbs. (53.524 to 55.338 kgs.)
 - (g) Featherweight: over 122 to 126 lbs. (55.338 to 57.153 kgs.)
 - (h) Super Featherweight: over 126 to 130 lbs. (57.153 to 58.967 kgs.)
 - (i) Lightweight: over 130 to 135 lbs. (58.967 to 61.235 kgs.)
 - (j) Super Lightweight: over 135 to 140 lbs. (61.235 to 63.503 kgs.)
 - (k) Welterweight: over 140 to 147 lbs. (63.503 to 66.678 kgs.)
 - (l) Super Welterweight: over 147 to 154 lbs. (66.678 to 69.853 kgs.)
 - (m) Middleweight: over 154 to 160 lbs. (69.853 to 72.574 kgs.)
 - (n) Super Middleweight: over 160 to 168 lbs. (72.574 to 76.204 kgs.)
 - (o) Light-heavyweight: over 168 to 175 lbs. (76.204 to 79.378 kgs.)
 - (p) Cruiserweight: over 175 to [495]200 lbs. (79.378 to [88.454]90.80 kgs.)

(q) Heavyweight: all over [495]200 lbs. ([88.454]90.80 kgs.)

(2) A contestant shall not fight another contestant who is outside of the contestant's weight classification unless prior approval is given by the Commission.

(3) A contestant who has contracted to box in a given weight class shall not be permitted to compete if he or she exceeds that weight class at the weigh-in, unless the contract provides for the opposing contestant to agree to the weight differential. If the weigh-in is held the day before the contest and if the opposing contestant does not agree or the contract does not provide for a weight exception, the contestant may have two hours to attempt to lose not more than three pounds in order to be reweighed.

(4) The Commission shall not allow a contest in which the contestants are not fairly matched. In determining if contestants are fairly matched, the Commission shall consider all of the following factors with respect to the contestant:

- (a) the win-loss record of the contestants;
- (b) the weight differential;
- (c) the caliber of opponents;
- (d) each contestant's number of fights; and
- (e) previous suspensions or disciplinary actions.

R151-33-902. Definitions.

Pursuant to Section 13-33-304, the Commission adopts the following definitions:

(1) For purposes of Subsection 13-33-304(3), "[A]amateur [B]boxing" means a live boxing contest conducted in accordance with the standards and regulations of USA Boxing, Inc., and in which[where] the contestants participate for a non-cash purse[prize of nominal value as defined in the Pete Suazo Utah Athletic Commission Act].

(2) "Applicant" means an Organization Which Promotes Amateur Boxing in the State as defined in this section.

(3) "Grant" means the Commission's distribution of monies as authorized under Section 13-33-304(3).

(4) "Organization Which Promotes Amateur Boxing in the State" means an amateur boxing club located within the state, registered with USA Boxing Incorporated.

(5) "State Fiscal Year" means the annual financial reporting period of the State of Utah, beginning July 1 and ending June 30.

KEY: licensing, boxing, contests
~~December 2, 2003~~ **September 2004**
Notice of Continuation August 2, 2002
13-33-101 et seq.



Health, Health Care Financing, Coverage and Reimbursement Policy

R414-26

Implementation and Maintenance of the Health Care Financing Administration Common Procedure Coding System (HCPCS)

NOTICE OF PROPOSED RULE

(Repeal)
 DAR FILE No.: 27315
 FILED: 07/28/2004, 16:56

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is being repealed due to the Health Insurance Portability and Accountability Act (HIPAA), which established standard medical data code sets to be used to code and bill for health care services furnished to recipients.

SUMMARY OF THE RULE OR CHANGE: This rule needs to be repealed because the coding is not standardized and is based solely on Centers for Medicare and Medicaid Services, Utah Medical Association, and local policy guidelines. For example, local codes that were specific to Utah Medicaid and previously allowed to be developed by the agency are no longer valid. Thus, the repeal of this rule is in accordance with HIPAA definitions and codes. This rule is repealed in its entirety.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 26-1-5 and 65 FR 50312 (2000)

ANTICIPATED COST OR SAVINGS TO:

- ❖ **THE STATE BUDGET:** There is no impact to the state budget associated with this repeal because Standard Medical Data Code Sets were previously implemented to be in compliance with HIPAA.
- ❖ **LOCAL GOVERNMENTS:** There is no budget impact to local governments as a result of this repeal because Standard Medical Data Code Sets were previously implemented to be in compliance with HIPAA.
- ❖ **OTHER PERSONS:** There is no budget impact to other persons as a result of this repeal because Standard Medical Data Code Sets were previously implemented to be in compliance with HIPAA.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for affected persons because Standard Medical Data Code Sets were previously implemented to be in compliance with HIPAA.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule is being repealed due to HIPAA which established standard medical data code sets to be used to code and bill for health care services furnished to recipients. There should be no fiscal impact on business due to this action. Scott D. Williams, MD Executive Director

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 at the above address, by phone at 801-538-6641, by FAX at 801-538-6099, or by Internet E-mail at cdevashrayee@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 09/14/2004.

THIS RULE MAY BECOME EFFECTIVE ON: 09/15/2004

AUTHORIZED BY: Scott D. Williams, Executive Director

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

~~[R414-26. Implementation and Maintenance of the Health Care Financing Administration Common Procedure Coding System (HCPCS).~~

~~R414-26-1. Policy.~~

~~1. The rule entitled "Health Common Procedure Coding System (HCPCS), published in the Federal Register Vol. 50, No. 194, Monday, October 7, 1985, is incorporated by reference, and will become effective no later than November 1, 1986. Specific effective dates which apply to each program will be identified as the scope of service is reviewed, revised and the specific codes identified for each service.~~

~~2. The following sections are the modifications of this rule that apply to Utah:~~

~~a. The CPT 4 Manual with the accompanying descriptive terms, identifying codes and instructions will be limited to use only by physicians to identify the code medical services and procedures provided to a patient by the Physician. (Other providers as identified and limited by CFR 405.232 (a) may be authorized to use selected CPT 4 codes, but only if HCPCS codes are not available for the specialty.)~~

~~b. Providers of service other than physician services, covered by the Medicaid program will use the HCPCS codes developed by the Health Care Financing Administration specifically for the service provided by the specialty.~~

~~Laboratory and x ray services listed in the CPT 4 Manual are special diagnostic services provided by or under the direction of a Physician pathologist or radiologist.~~

~~c. Policy staff will have the responsibility to review each new edition of the CPT 4 Manual and each new publication of HCPCS codes for the other specialties. The purpose of this review will be to identify new services, eliminated services or procedures, and altered descriptions of service. Where additions, deletions, and/or changes have occurred, research will be initiated with subsequent development of appropriate policy recommendations and rulemaking to establish service coverage and/or limitations determined to be appropriate for Medicaid.~~

~~d. Policy staff will have the responsibility to review "X" codes established by Blue Cross, "S" codes established by the Utah Medical Association, and "Z" codes established by Medicare to determine appropriate service coverage and/or Limitations for Medicaid.~~

~~ICD9 CM diagnosis or surgical procedure codes will also be reviewed and evaluated by Policy staff.~~

~~Policy recommendations and rulemaking will be initiated when indicated.~~

~~e. Policy staff will have the responsibility for assignment and review of "Y" codes which are specific to Medicaid. Policy recommendations and rulemaking will be initiated as indicated.~~

~~f. No service, procedure, technology or individual code will be added, covered or deleted without benefit of the established policy development process.~~

~~Health Care Financing has the option to limit the amount, duration, or scope of services or to exclude a service or procedure from coverage by Medicaid. Policy recommendations will be based on medical necessity, appropriateness, utilization control concerns (CFR 440.230) and will take into consideration the following:~~

~~Existing policy for noncoverage of cosmetic, experimental or nonproven medical practices.~~

~~Information available from the Special Coverage Issues Bureau; Bureau of Eligibility, Reimbursement, and Coverage; Health Care Financing Administration; Department of Health and Human Services.~~

~~Information and recommendations from physician consultants employed by Utah Department of Health, Division of Health Care Financing.~~

~~Consultation with appropriate groups or individuals from various professional organizations.~~

~~Legal Counsel~~

~~Consultation with policy staff of the local Medicare carrier.~~

~~Consultation with policy staff of Medicaid programs in other states (selected).~~

~~Other sources determined appropriate by the specific issue being addressed.~~

KEY: medicaid

1987

**Notice of Continuation December 31, 2002
26-1-5]**



Health, Health Care Financing, Coverage and Reimbursement Policy **R414-33B** Substance Abuse Targeted Case Management

NOTICE OF PROPOSED RULE

(New Rule)

DAR FILE NO.: 27327

FILED: 08/02/2004, 16:20

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rulemaking is necessary to comply with Subsection 26-18-3(2)(a), which requires that programs previously allowed to be implemented by policy now be implemented by rule.

SUMMARY OF THE RULE OR CHANGE: This is a new rule for Substance Abuse Targeted Case Management that puts into rule the program that Section 26-18-3 previously allowed to be in policy.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 26-18-3 and 42 U.S.C. 1396n(g)

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: There is no impact to the state budget associated with this rulemaking because the program was previously implemented by policy and now needs to be implemented in rule pursuant to Subsection 26-18-3(2)(a).

❖ LOCAL GOVERNMENTS: There is no budget impact to local governments as a result of this rulemaking because the program was previously implemented by policy and now needs to be implemented in rule pursuant to Subsection 26-18-3(2)(a).

❖ OTHER PERSONS: There is no budget impact to other persons as a result of this rulemaking because the program was previously implemented by policy and now needs to be implemented in rule pursuant to Subsection 26-18-3(2)(a).

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for affected persons because the program was previously implemented by policy and now needs to be implemented in rule pursuant to Subsection 26-18-3(2)(a).

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There is no fiscal impact on businesses because of this rulemaking as it only places in rule a program that was previously allowed to be in policy. Scott Williams, MD, Executive Director

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 at the above address, by phone at 801-538-6641, by FAX at 801-538-6099, or by Internet E-mail at cdevashrayee@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 09/14/2004.

THIS RULE MAY BECOME EFFECTIVE ON: 09/15/2004

AUTHORIZED BY: Scott D. Williams, Executive Director

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

R414-33B. Substance Abuse Targeted Case Management.

R414-33B-1. Introduction and Authority.

(1) This rule outlines targeted case management services available to Medicaid clients diagnosed with a substance abuse disorder.

(2) This rule is authorized under UCA 26-18-3 and governs the services allowed under 42 USC section 1396n(g) which authorizes targeted case management services.

R414-33B-2. Definitions.

In this rule, "Substance abuse disorder" means diagnoses listed in the Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition-Text Revision (DSM-IV-TR), in the range of 291.00-291.99, 292.00-292.99, 303.00-303.99, 304.00-304.99 and 305.00-305.99

R414-33B-3. Client Eligibility Requirements.

(1) Targeted case management is available to Medicaid clients with substance abuse disorders who meet the categorically and medically needy eligibility categories and who are enrolled in the Traditional Medicaid Plan.

(2) Targeted case management is available to the children of Medicaid clients who are at risk of developing a substance abuse disorder due to the client's history of substance abuse and current substance abuse.

R414-33B-4. Program Access Requirements.

(1) Targeted case management services must be provided by or through a substance abuse program that is under contract with or directly operated by a local county substance abuse authority.

(2) Targeted case management may be provided to a Medicaid client who is diagnosed with a substance abuse disorder for whom a needs assessment completed by a qualified targeted case manager documents that:

(a) the individual requires treatment or services from a variety of agencies and providers to meet his documented medical, social, educational, and other needs; and

(b) there is reasonable indication that the individual will access needed services only if assisted by a qualified targeted case manager who, in accordance with an individualized case management service plan, locates, coordinates, and regularly monitors the service.

(3) Targeted case management may be provided to a child of a Medicaid client for whom a needs assessment completed by a qualified targeted case manager documents that:

(a) the child is at risk of developing a substance abuse disorder due to parental history of substance of substance abuse or current substance abuse.

(b) the child requires treatment or services from a variety of agencies and providers to meet his documented medical, social, educational, and other needs; and

(c) there is reasonable indication that the child will access needed services only if assisted by a qualified targeted case manager who, in accordance with an individualized case management service plan, locates, coordinates, and regularly monitors the service.

R414-33B-5. Service Coverage.

(1) Covered services are:

(a) assessing and documenting the client's need for community resources and services;

(b) developing a written, individualized, coordinated case management service plan to assure the client's adequate access to needed medical, social, educational and other related services with input as appropriate from the client, family and other agencies knowledgeable about the client's needs;

(c) linking the client with community resources and needed services, including assisting the client to establish and maintain eligibility for entitlements other than Medicaid;

(d) coordinating the delivery of services to the client, including CHEC screening and follow-up, including consultation with other agencies to ensure the most appropriate interventions and services are provided by all agencies and providers involved in the client's care;

(e) monitoring and coordinating as needed prescribed medications with prescribing professionals to ensure that all medications prescribed are appropriate, providing information on the client's medication regimen to other prescribers and other agencies and providers involved in the client's care;

(f) periodically assessing and monitoring the client's status and functioning and modifying the targeted case management service plan, or the client's clinical treatment plan, as needed;

(g) periodic monitoring of the client to ensure needed services have been identified and that they are being obtained in a timely manner;

(h) instructing the client or caretaker, as appropriate, in independently accessing needed services;

(i) monitoring the quality and appropriateness of the client's services; and

(j) monitoring the client's progress and continued need for targeted case management and other services;

(2) The agency may bill Medicaid for the above activities only if the activities are identified in the case management service plan and the time spent in the activity involves a face-to-face encounter, telephone or written communication with the client, family, caretaker, service provider, or other individual with a direct involvement in providing or assuring the client obtains the necessary services documented in the service plan.

(3) Case management service provided to a hospital or nursing facility patient is limited to a maximum of five hours per admission.

R414-33B-6. Qualified Providers.

Targeted case management services must be provided by an individual who is:

(1) a licensed physician, a licensed psychologist, a licensed clinical social worker, a licensed certified social worker, a licensed social service worker, a licensed advanced practice registered nurse, a licensed registered nurse, a licensed professional counselor, a licensed substance abuse counselor, a licensed marriage and family counselor; or

(2) an individual working toward licensure in one of the professions identified in subsection (a); or

(3) a licensed practical nurse or a non-licensed individual working under the supervision of one of the individuals identified in subsection (1) or (2).

R414-33B-7. Reimbursement Methodology.

The Department pays the lower of the amount billed and the rate on the fee schedule. The fee schedule was initially established after consultation with provider representatives. A provider shall not charge the Department a fee that exceeds the provider's usual and customary charges for the provider's private pay patients.

KEY: Medicaid

2004
26-18-3



Health, Health Care Financing,
Coverage and Reimbursement Policy
R414-34
Substance Abuse Services

NOTICE OF PROPOSED RULE

(New Rule)
DAR FILE NO.: 27323
FILED: 08/02/2004, 12:09

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rulemaking is necessary to comply with Subsection 26-18-3(2)(a), which requires that programs previously allowed to be implemented by policy now be implemented by rule.

SUMMARY OF THE RULE OR CHANGE: This is a proposed new rule for Substance Abuse Services that puts into rule the program that Section 26-18-3 previously allowed to be in policy.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 26-18-3 and 42 CFR 440.130 (October 2003)

ANTICIPATED COST OR SAVINGS TO:

❖ **THE STATE BUDGET:** There is no impact to the state budget associated with this rulemaking because the program was previously implemented by policy and now needs to be implemented in rule pursuant to Subsection 26-18-3(2)(a).

❖ **LOCAL GOVERNMENTS:** There is no budget impact to local governments as a result of this rulemaking because the program was previously implemented by policy and now needs to be implemented in rule pursuant to Subsection 26-18-3(2)(a).

❖ **OTHER PERSONS:** There is no budget impact to other persons as a result of this rulemaking because the program was previously implemented by policy and now needs to be implemented in rule pursuant to Subsection 26-18-3(2)(a).

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for affected persons because the program was previously implemented by policy and now needs to be implemented in rule pursuant to Subsection 26-18-3(2)(a).

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There is no fiscal impact on businesses because of this rulemaking as it only places in rule a program that was previously allowed to be in policy. Scott Williams, MD, Executive Director

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 at the above address, by phone at 801-538-6641, by FAX at 801-538-6099, or by Internet E-mail at cdevashrayee@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 09/14/2004.

THIS RULE MAY BECOME EFFECTIVE ON: 09/15/2004

AUTHORIZED BY: Scott D. Williams, Executive Director

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

R414-34. Substance Abuse Services.

R414-34-1. Introduction and Authority.

(1) This rule outlines the program designed to evaluate and treat individuals with substance abuse disorders.

(2) This rule is authorized under UCA 26-18-3 and governs the services allowed under 42 CFR 440.130, Oct. 2003 ed.

R414-34-2. Definitions.

In this rule:

(a) "Diagnostic services " means any medical procedure recommended by a physician or other licensed mental health therapist to enable him to identify the existence, nature, or extent of substance abuse disorder in a client.

(b) "Rehabilitative services " means any medical or remedial services recommended by a physician or other licensed mental health therapist for maximum reduction of a client's substance abuse disorder and restoration of the client to his best possible functional level.

(c) "Substance abuse disorder" means diagnoses listed in the Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition-Text Revision (DSM-IV-TR), in the range of 291.00-291.99, 292.00-292.99, 303.00-303.99, 304.00-304.99 and 305.00-305.99.

R414-34-3. Client Eligibility Requirements.

Substance abuse treatment is available to any categorically or medically needy Medicaid client.

R414-34-4. Program Access Requirements.

(1) Diagnostic and rehabilitative substance abuse services must be provided by or through a substance abuse program that is under contract with or directly operated by a local county substance abuse authority.

(2) The substance abuse treatment program must evaluate the client to determine if:

(a) the client carries a primary diagnosis of a substance abuse disorder and requires substance abuse treatment services; or

(b) the client's child requires services to reduce the child's risk of developing a substance abuser disorder.

R414-34-5. Service Coverage.

(1) Services must be recommended by a licensed mental health therapist.

(2) The scope of diagnostic and rehabilitative substance abuse services includes the following:

- (a) psychiatric diagnostic interview examination;
 - (b) alcohol and drug assessment by a non-physician;
 - (c) psychological testing;
 - (d) individual psychotherapy;
 - (e) group psychotherapy;
 - (f) individual psychotherapy with medical evaluation and management services;
 - (g) family psychotherapy with client present;
 - (h) family psychotherapy without client present;
 - (i) therapeutic behavioral services;
 - (j) pharmacologic management;
 - (k) individual skills training and development;
 - (l) psychosocial rehabilitative services; and
 - (m) intensive psychosocial rehabilitative services for children through the month of their thirteenth birthday.
- (3) Medicaid adult clients in the Non-Traditional Medicaid Plan have the following service exclusions:
- (a) hypnosis, occupational, and recreational therapy; and
 - (b) office calls in conjunction with medication management for repetitive therapeutic injections; and
 - (4) Psychiatric diagnosis interview examinations for legal purposes only, such as for custodial or visitation rights are excluded from coverage for all Medicaid clients.

R414-34-6. Qualified Providers.

- (1) Diagnostic and rehabilitative services must be provided by an individual, as limited by the scope of his license, who is:
 - (a) a licensed physician, a licensed psychologist, a licensed clinical social worker, a licensed certified social worker, a licensed social service worker, a licensed advanced practice registered nurse specializing in mental health nursing, a licensed registered nurse, a licensed professional counselor, a licensed substance abuse counselor, or a licensed marriage and family counselor; or
 - (b) an individual working toward licensure in one of the professions identified in subsection (a); or
 - (c) a licensed practical nurse or other trained staff working under the supervision of one of the individuals identified in subsection (1)(a) or (b).

R414-34-7. Reimbursement Methodology.

The Department pays the lower of the amount billed or the rate on the substance abuse treatment providers' fee schedule. The fee schedule was initially established after consultation with provider representatives. A provider shall not charge the Department a fee that exceeds the provider's usual and customary charges for the provider's private pay patients.

KEY: Medicaid

2004
26-18-3

▼ ————— ▼

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

R414-36

**Services by Community Mental Health
Centers**

NOTICE OF PROPOSED RULE

(New Rule)

DAR FILE NO.: 27322

FILED: 08/02/2004, 11:45

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rulemaking is necessary to comply with Subsection 26-18-3(2)(a), which requires that programs previously allowed to be implemented by policy now be implemented by rule. Rule R414-25, Mental Health Clinic Services, will be repealed as a result of this rulemaking because the rule is outdated and does not reflect current policy.

SUMMARY OF THE RULE OR CHANGE: This is a proposed new rule for community mental health center services that puts into rule the program that Section 26-18-3 previously allowed to be in policy. This new rule replaces Rule R414-25 which will be repealed. The rule outlines community mental health center services that are currently covered and delineates the ways community mental health center services are provided. In 27 counties of the State, Medicaid recipients are automatically enrolled in the capitated Prepaid Mental Health Plan. Community mental health centers participating in this program receive premiums to serve all Medicaid recipients in their catchment areas. Exceptions to enrollment in the Prepaid Mental Health Plan are also delineated. In two counties, community mental health centers continue to be reimbursed on a fee-for-service basis rather than a prepaid capitation basis.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 26-18-3(2)(a); and 42 CFR 440.130, 1902(a)(1), 1915(b)(3), and 1915(b)(4) of the Social Security Act

ANTICIPATED COST OR SAVINGS TO:

- ❖ **THE STATE BUDGET:** There is no impact to the state budget associated with this rulemaking because the program was previously implemented by policy and now needs to be implemented in rule pursuant to Subsection 26-18-3(2)(a).
- ❖ **LOCAL GOVERNMENTS:** There is no budget impact to local governments as a result of this rulemaking because the program was previously implemented by policy and now needs to be implemented in rule pursuant to Subsection 26-18-3(2)(a).
- ❖ **OTHER PERSONS:** There is no budget impact to other persons as a result of this rulemaking because the program was previously implemented by policy and now needs to be implemented in rule pursuant to Subsection 26-18-3(2)(a).

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for affected persons because the program was previously implemented by policy and now needs to be implemented in rule pursuant to Subsection 26-18-3(2)(a).

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There will be no compliance costs on businesses because of this rule. The rule implements existing policy that is now required to be in rule. Scott Williams, MD, Executive Director

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:

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THIS RULE MAY BECOME EFFECTIVE ON: 09/15/2004

AUTHORIZED BY: Scott D. Williams, Executive Director

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

R414-36. Services by Community Mental Health Centers.

R414-36-1. Introduction and Authority.

(1) This rule outlines the diagnostic and rehabilitative mental health services provided to Medicaid clients by community mental health centers.

(2) This rule is authorized under UCA 26-18-3 and governs the services allowed under 42 CFR 440.130, Oct. 2003 ed., and implements waivers authorized under federal waiver authority in subsections 1902(a)(1), 1915(b)(3) and 1915(b)(4) of the Social Security Act.

R414-36-2. Definitions.

In this rule:

"Diagnostic services " means any medical procedure recommended by a physician or other licensed mental health therapist to enable him to identify the existence, nature, or extent of a mental health disorder in a client.

"Prepaid Mental Health Plan" means the prepaid, capitated program through which the Department pays contracted community mental health centers to provide all needed inpatient and outpatient mental health services to residents of the community mental health center's catchment area who are enrolled in the plan.

"Rehabilitative services " means any medical or remedial services recommended by a physician or other licensed mental health therapist for maximum reduction of a client's mental health disorder and restoration of the client to his best possible functional level.

R414-36-3. Client Eligibility Requirements.

Diagnostic and rehabilitative mental health services are available to any Categorically or Medically Needy Medicaid client, except that

(1) Medicaid clients who reside at the Utah State Hospital and the Utah Developmental Center are not covered under the Prepaid Mental Health Plan;

(2) children in State custody are enrolled in the Prepaid Mental Health Plan only for inpatient mental health services;

(3) Medicaid clients who enroll in the UNI HOME Program are disenrolled from the Prepaid Mental Health Plan;

(4) state subsidized adoptive children who have been exempted from the Prepaid Mental Health Plan by parent request are enrolled in the Prepaid Mental Health Plan only for inpatient mental health services.

R414-36-4. Program Access Requirements.

(1) Diagnostic and rehabilitative mental health services must be provided by or through a community mental health center that is under contract with or directly operated by a local county mental health authority.

(2) The community mental health center must evaluate the client to determine if the client has a mental health disorder that requires mental health services.

R414-36-5. Service Coverage.

(1) Services must be recommended by a licensed mental health therapist.

(2) The scope of diagnostic and rehabilitative mental health services includes:

(a) psychiatric diagnostic interview examination;

(b) mental health assessment by non-physician;

(c) psychological testing;

(d) individual psychotherapy;

(e) group psychotherapy;

(f) individual psychotherapy with medical evaluation and management services;

(g) family psychotherapy with patient present;

(h) family psychotherapy without patient present;

(i) therapeutic behavioral services;

(j) pharmacologic management;

(k) individual skills training and development;

(l) psychosocial rehabilitative services; and

(m) intensive psychosocial rehabilitative services for children ages 0 through the month of their 13th birthday.

(3) Medicaid clients who reside in counties covered by a Prepaid Mental Health Plan contractor are automatically enrolled in the Prepaid Mental Health Plan for that county. A Medicaid client covered by a Prepaid Mental Health Plan may receive additional services approved by CMS under the Social Security Act section 1915(b)(3) waiver authority.

(4) Medicaid adult recipients ages 19 and over in the TANF and Medically Needy eligibility categories who are enrolled in the Non-Traditional Medicaid Plan have the following service limitations:

(a) inpatient mental health care is limited to a maximum of 30 days per year;

(b) outpatient mental health services are limited to a maximum of 30 outpatient mental health treatment services or visits per year

(c) targeted case management services under R414-33A for the chronically mentally ill also count toward the maximum of 30 outpatient mental health services.

(4) Medicaid clients enrolled in the Non-Traditional Medicaid Plan also have the following service exclusions:

(a) services for conditions without manifest psychiatric diagnoses;

(b) hypnosis, occupational, or recreational therapy; and

(c) office calls in conjunction with medication management for repetitive therapeutic injections.

(4) Psychiatric diagnosis interview examinations for legal purposes only, such as for custodial or visitation rights are excluded from coverage for all Medicaid clients.

R414-36-6. Qualified Providers.

(1) Diagnostic and rehabilitative services must be provided by an individual, as limited by the scope of his license, who is:

(a) a licensed physician, a licensed psychologist, a licensed clinical social worker, a licensed certified social worker, a licensed social service worker, a licensed advanced practice registered nurse specializing in mental health nursing, a licensed registered nurse, a licensed professional counselor, or a licensed marriage and family counselor; or

(b) an individual working toward licensure in one of the professions identified in subsection (a); or

(c) a licensed practical nurse or other trained staff working under the supervision of one of the individuals identified in subsection (1)(a) or (b).

R414-36-7. Reimbursement Methodology.

(1) Two community mental health centers are not under contract with the Department as Prepaid Mental Health Plan contractors. The Department reimburses these two community mental health centers on a fee-for-service basis. The Department pays the lower of the amount billed or the Medicaid fee schedule. The fee schedule was initially established after consultation with provider representatives. A provider shall not charge the Department a fee that exceeds the provider's usual and customary charges for the provider's private pay clients.

(2) The Department pays Prepaid Mental Health Plan contractors a capitated monthly premium to cover all inpatient and outpatient mental health services needed by Medicaid clients. The premiums are developed and certified as actuarially sound by independent actuaries who meet the qualification standards established by the American Academy of Actuaries.

KEY: Medicaid
2004
26-18-3



Health, Health Care Financing,
Coverage and Reimbursement Policy
R414-90
Diabetes Self-Management Training

NOTICE OF PROPOSED RULE

(New Rule)

DAR FILE NO.: 27316
FILED: 07/28/2004, 17:06

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rulemaking is necessary because Diabetes Self-Management Training is a component of the Utah Medicaid State Plan and teaches individuals how to successfully manage and control diabetes.

SUMMARY OF THE RULE OR CHANGE: This is a new rule for Diabetes Self-Management Training.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 26-18-3 and 42 CFR 440.130 (October 2003)

ANTICIPATED COST OR SAVINGS TO:

❖ **THE STATE BUDGET:** There is an estimated savings of \$1,100 to the State General Fund and \$2,900 of federal funds because of an estimated 5 to 1 benefit cost ratio of diabetes self-management training programs.

❖ **LOCAL GOVERNMENTS:** There is no cost to local governments as a result of this rulemaking because the program is solely funded by state and federal dollars.

❖ **OTHER PERSONS:** Qualified providers that participate in diabetes self-management training programs may experience \$1,000 in additional revenue from additional services they provide.

COMPLIANCE COSTS FOR AFFECTED PERSONS: A qualified provider may experience an average increase in revenue of \$35 for additional services provided.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The Department believes that this rule will reduce utilization costs that come from office visits, emergency room visits, and hospital visits. Patient compliance with recommended regimens should increase with a treatment plan that includes self-care, diet, and exercise. Scott D. Williams, MD, Executive Director

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 at the above address, by phone at 801-538-6641, by FAX at 801-538-6099, or by Internet E-mail at cdevashrayee@utah.gov

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THIS RULE MAY BECOME EFFECTIVE ON: 09/15/2004

AUTHORIZED BY: Scott D. Williams, Executive Director

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

R414-90. Diabetes Self-Management Training.

R414-90-1. Introduction and Authority.

Diabetes self-management training is an educational program that teaches individuals how to successfully manage and control diabetes. Diabetes self-management training is a component of the Utah Medicaid State Plan and is authorized by 42 CFR 440.130, October 2003 ed., and Utah Code Section 26-18-3.

R414-90-2. Client Eligibility Requirements.

Diabetes self-management training is available to Traditional Medicaid clients, Non-Traditional Medicaid clients, and Primary Care Network (PCN) clients who are diabetic and receive a physician referral for services.

R414-90-3. Program Access Requirements.

(1) Diabetes self-management training is limited to services approved by a physician, under a comprehensive plan that is essential to ensure successful diabetes self management by the individual patient.

(2) Qualified providers for the diabetes self-management training program include registered nurses, registered pharmacists and certified dietitians licensed by the state. These providers are required to be certified or recognized by the American Association of Diabetes Educators (AADE) or the Utah Department of Health as diabetes educators.

(3) Diabetes self-management training services provided by a home health agency, may only be provided by a licensed health care provider who is certified by an American Diabetes Association program or recognized by the Utah Department of Health.

(4) Home Health Agency participation in diabetes self-management training is limited to providing services to the patient who is receiving other skilled services in the home based on physician order and plan of care, when the home is the most appropriate site for the care provided.

R414-90-4. Service Coverage.

(1) Patient assessment for the diabetes self-management program includes a review of medical history, risk factors, health status, resource utilization, knowledge and skill level, and cultural barriers to effective diabetes self-management.

(2) Diabetes self-management training is limited to a maximum of 10 hours of outpatient services.

(3) Diabetes self-management training is limited to training presented by a certified program that meets all of the standards of the National Diabetes Advisory Board. The program must also be recognized by the American Association of Diabetes Educators or be certified by the Utah Department of Health.

(4) Diabetes self-management training includes group sessions, but must allow for direct, face to face interaction between the educator and the patient.

(5) Diabetes self-management training must be sufficient in length to meet the goals of the basic comprehensive plan of care. Individual sessions must be sufficient in number and designed to meet the individual's cultural and learning needs.

(6) A maximum of 10 sessions per year may be approved by a physician and through prior authorization.

(7) Repeating any or all of a diabetes self-management program is limited to new conditions or a change in the health status of the client that warrants the need for new training.

(8) The following services are also covered:

(a) annual eye examination that includes dilation;

(b) annual physical;

(c) glycosylated hemoglobin laboratory test with foot examination;

(d) blood sugar review; and

(e) blood pressure reading every 3 to 4 months.

(9) Diabetes self-management training does not cover charges for facility use.

R414-90-5. Reimbursement.

Medicaid payments for approved diabetes self-management training are based on the established Medicaid fee schedule, unless a lower amount is billed. The fee schedule was established after internal and external consultation with diabetes experts. Adjustments to the schedule are made in accordance with appropriations and to produce efficient and effective services.

KEY: Medicaid

2004

26-1-5

26-18-3



Health, Health Care Financing,
Coverage and Reimbursement Policy
R414-140
Choice of Health Care Delivery
Program

NOTICE OF PROPOSED RULE

(New Rule)

DAR FILE NO.: 27314

FILED: 07/28/2004, 16:47

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This proposed new rule adopts existing policies into rule. It also proposes to restrict the right of Medicaid health plan enrollees to change plans except for good cause or during an annual open enrollment period.

SUMMARY OF THE RULE OR CHANGE: This is a proposed new rule for the Choice of Health Care Delivery Program whose Medicaid waiver limits freedom of choice in choosing a health care provider. The waiver requires Medicaid clients living in urban counties with a population greater than 175,000 to select a health plan that contracts with the Department to provide all services included in the Choice of Health Care Delivery Program waiver. This rule lists eligible groups for the waiver. The rule restricts the disenrollment rights of Medicaid

health plan enrollees for up to 12 months unless a client can demonstrate good cause for disenrolling or moves out of the health plan's service area or becomes ineligible. During the first three months of the client's initial enrollment with the health plan, the client may request to disenroll (switch health plans) without cause. There will be an annual open enrollment period during which clients may switch health plans. This rule also lists service coverage, addresses qualified providers, and explains reimbursement methodology for this program.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 26-1-5 and 26-18-3; and 42 USC 1396n(b)

ANTICIPATED COST OR SAVINGS TO:

- ❖ THE STATE BUDGET: There is no impact to the state budget associated with this filing because any implementation costs created by this program are offset by savings due to the continuity of care for health plan enrollees.
- ❖ LOCAL GOVERNMENTS: There is no budget impact to local governments because any implementation costs created by this program are offset by savings due to the continuity of care for health plan enrollees.
- ❖ OTHER PERSONS: There is no budget impact to providers because any implementation costs created by this program are offset by savings due to the continuity of care for health plan enrollees. Costs for Medicaid recipients should not be affected.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for affected persons because any implementation costs created by this program are offset by savings due to the continuity of care for health plan enrollees.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Providers should experience lower administrative costs under this rule due to the restriction on changing providers. It is hoped that this savings will offset and costs to administer the restriction. Scott D. Williams, MD Executive Director

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.

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THIS RULE MAY BECOME EFFECTIVE ON: 09/15/2004

AUTHORIZED BY: Scott D. Williams, Executive Director

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

R414-140. Choice of Health Care Delivery Program.

R414-140-1. Introduction and Authority.

This rule outlines the Choice of Health Care Delivery Program that operates under a freedom-of-choice waiver program authorized under 42 USC 1396n(b). This program provides access to quality and cost-effective health care. This rule is required by Utah Code Subsection 26-18-3(2)(a).

R414-140-2. Definitions.

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

(1) The "Choice of Health Care Delivery Program" (CHCDP) is a freedom-of-choice waiver program that allows the Department to require certain groups of Medicaid clients living in Davis, Salt Lake, Utah, and Weber counties to select a health plan that provides services in accordance with the program's waiver. The waiver limits freedom of choice in choosing a health care provider.

(2) An "Enrollee" in the CHCDP is a Medicaid client who lives in an urban county and is enrolled in a health plan.

(3) A "Health Plan" in the CHCDP is a federally defined prepaid inpatient health plan, a federally defined primary care case management system or a federally defined managed care organization under contract with the Utah Department of Health to provide health care services to enrollees.

(4) A "Managed Care Organization" (MCO) is an entity that has a comprehensive risk contract with the Department to make the services it provides to its Medicaid enrollees as accessible (in terms of timeliness, amount, duration, and scope) as those services are to other Medicaid clients within the area served by the entity. The CHCDP requires MCOs to provide or arrange for services described in the CHCDP.

(5) "Prepaid Inpatient Health Plan" (PIHP) is an entity that contracts with the Department under a non-risk arrangement to provide services described in the CHCDP to Medicaid enrollees.

(6) "Primary Care Case Management" (PCCM) is a system under which a physician or other provider contracts with the State to furnish case management services and to provide access to services described in the CHCDP.

(7) "Section 1931" is the section of the Social Security Act that raises the income limits for Medicaid eligibility.

(8) "Urban county" means a county with a population greater than 175,000.

(9) "1115 Demonstration for the Primary Care Network of Utah" is a statewide demonstration waiver that expands Medicaid coverage to adults ages 19 and older who would not otherwise qualify for Medicaid. The two groups of individuals covered under the 1115 Demonstration are Primary Care Network individuals and Non-Traditional Medicaid individuals. Primary Care Network individuals are those who meet certain income requirements who would not otherwise qualify for Medicaid. Non-Traditional Medicaid individuals are those who are ages 19 and older and are not elderly, disabled or pregnant.

R414-140-3. Requirement to Select a Health Plan.

(1) The following Medicaid clients living in urban counties are required to select a health plan:

- (a) Section 1931 children under the age of 19;
- (b) pregnant women;
- (c) blind or disabled children and adults;
- (d) aged populations;
- (e) foster care children; and
- (f) Non-Traditional Medicaid enrollees covered under the 1115 Demonstration for the Primary Care Network of Utah.

R414-140-4. Restrictions on Changes in Enrollment.

(1) The Department must give Medicaid clients a choice of at least two health plans. Each new applicant for Medicaid in the urban counties is offered an orientation about Medicaid and the Choice of Health Care Delivery Program. A health program representative employed by the Department conducts the orientation and also enrolls Medicaid clients in a health plan. During the orientation the clients are presented with health plan options.

(2) The Department restricts the disenrollment rights of enrollees who are required to enroll with a health plan in accordance with the regulations at 42 CFR 438.56. Disenrollment rights are restricted for a period of up to 12 months with the following exceptions:

- (a) during the first three months of the enrollee's initial enrollment with a health plan, the enrollee may select a different health plan without cause;
 - (i) if the enrollee moves out of the health plan's service area;
 - (ii) if the enrollee requests to select a different health plan for good cause and the Department approves the request; or
 - (iii) if the enrollee chooses a different health plan during the Department's annual disenrollment period.

R414-140-5. Service Coverage.

(1) Health plans shall provide all medically necessary services covered under the State Medicaid Plan except:

- (a) dental services;
- (b) chiropractic services;
- (c) long term care services in skilled nursing facilities longer than 30 days with the exception of clients enrolled in the Medicaid Long Term Care Managed Care Program;
- (d) psychological services;
- (e) services covered under the Prepaid Mental Health Plan;
- (f) substance abuse treatment services; and
- (g) transportation services;

(2) Medicaid enrollees who are covered under the Non-Traditional Medicaid Plan are limited to the scope of services as defined in the 1115 Demonstration for the Primary Care Network of Utah.

R414-140-6. Qualified Providers.

The Department selects managed care organizations, prepaid inpatient health plans or primary care case management systems through an open cooperative procurement process in which any qualifying MCO, PIHP or PCCM system may request to contract with the Department to provide services covered under the CHCDP.

R414-140-7. Reimbursement Methodology.

The PIHPs are paid under a non-risk arrangement as described in 42 CFR 447.362. The Department's payments to the health plans

may not exceed what the Department would have paid on a fee-for-service basis for services furnished to health plan enrollees plus the net savings of administrative costs the Department achieves by contracting with the health plans instead of purchasing the services on a fee-for-service basis. The PCCM providers are paid under a fee-for-service arrangement. In addition, a fee is paid to cover the provision of case management services.

KEY: Medicaid**2004****26-1-5****26-18-3**

Health, Health Care Financing, Coverage and Reimbursement Policy

R414-504

Nursing Facility Payments

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 27325

FILED: 08/02/2004, 14:10

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rulemaking is necessary to implement the nursing facility reimbursement plan for FY 2005.

SUMMARY OF THE RULE OR CHANGE: This rule amends the provision for the phasing-out of property as a separate component of the reimbursement rate. It specifies that the property payment will continue under the current methodology until at least September 15, 2004. This provision is pending federal approval of a request to the federal government to allow implementation of the Utah Nursing Care Facility Assessment Act and new rates calculated on the basis of the assessment. On September 15, 2004 (or retroactively upon implementation of the assessment if that occurs after September 15, 2004), the property component of the reimbursement rate will be calculated using a fair rental value methodology described by the rule. The rule retains the provision that the case-mix rate and other nonproperty components of the total reimbursement rate that became effective on July 2, 2004, will be the same as the rate in effect on June 30, 2004.

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

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: The costs involved in this rulemaking were already accounted for in Rule R414-401, Nursing Care Facility Assessment, and are as follows: Budget neutral due to collection of \$10,100,000 from nursing facilities and a draw down of federal matching funds in the amount of approximately \$26,000,000. (DAR NOTE: The proposed new

rule of R414-401 was published in the June 1, 2004, issue of the Bulletin under DAR No. 27143, and was effective 07/02/2004.)

❖ LOCAL GOVERNMENTS: The costs involved in this rulemaking were already accounted for in Rule R414-401. There is no budget impact to local governments because local governments do not fund nursing care facilities.

❖ OTHER PERSONS: The costs involved in this rulemaking were already accounted for in Rule R414-401 and are as follows: there is an enhanced revenue of approximately \$26,000,000 for nursing facility providers as a result of federal matching funds.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The costs involved in this rulemaking were already accounted for in Rule R414-401 and are as follows: compliance costs include a collection of \$6.18 per non-Medicare patient day from each nursing facility or a total of \$10,100,000. This collection will be used as state funds to draw down about \$26,000,000 in federal funds. 99% of all facilities will gain from this process. The amount of gain depends on the number of Medicaid patients in the facility.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Property reimbursement in the nursing home rate has been based on reported costs, rather than the value of the property. It is hoped that this new system of basing reimbursement for property on fair rental value will give owners an incentive to renovate and upgrade again physical plants and will lead to better living environments for residents. This should have a positive fiscal impact on regulated businesses. Scott D. Williams, MD, Executive Director

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 09/14/2004.

THIS RULE MAY BECOME EFFECTIVE ON: 09/15/2004

AUTHORIZED BY: Scott D. Williams, Executive Director

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

R414-504. Nursing Facility Payments.

R414-504-1. Introduction.

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

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

R414-504-2. Definitions.

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

(1) "Behaviorally complex resident" means a long-term care resident with a severe, medically based behavior disorder, including traumatic brain injury, dementia, Alzheimer's, Huntington's Chorea, which causes diminished capacity for judgment, retention of information or decision-making skills, or a resident, who meets the Medicaid criteria for nursing facility level of care and who has a medically-based mental health disorder or diagnosis and has a high level resource use in the nursing facility not currently recognized in the case mix.

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

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

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

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

(6) "Nursing Costs" means the most current costs from the annual FCP report reported on lines 070-012 Nursing Admin Salaries and Wages; 070-013 Nursing Admin Tax and Benefits; 070-040 Nursing Direct Care Salaries and Wages; 070-041 Nursing Direct Care Tax and Benefits, and 070-050 Purchased Nursing Services.

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

(8) "Patient day" means the care of one patient during a day of service, excluding the day of discharge.

(9) "Property costs" means the most current property costs from the annual FCP report reported on lines 230 (Rent and Leases Expense), 240 (Real Estate and Personal Property Taxes), 250 (Depreciation - Building and Improvement), 260 (Depreciation - Transportation Equipment), 270 (Depreciation - Equipment), 280 (Interest - Mortgage, Personal Property Furniture and Equipment - Small Items), 300 (Property Insurance). Under a fair rental value (FRV) system, a facility is reimbursed on the basis of the estimated current value of its capital assets in lieu of direct reimbursement for depreciation, amortization, interest, and rent/lease expenses. The FRV system establishes a nursing facility's bed value based on the age of the facility and total square footage.

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

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

(12) "Sole community provider" means a facility that is not an urban provider and is not within 30 paved road miles of another existing facility and is the only facility:

(a) within a city, if the facility is located within the incorporated boundaries of a city; or

(b) within the unincorporated area of the county if it is located in an unincorporated area.

(13) "Urban provider" means a facility located in a county of more than 90,000 population.

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

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

(1) ~~[Effective January 1, 2003, a]~~ Approximately 5[0]2% of total payments in aggregate to nursing facilities for nursing care level I, II and III Medicaid patients are based on a prospective facility case mix rate. In addition, these facilities shall be paid a flat basic operating expense payment equal to approximately ~~[38]~~29% of the total payments. The balance of the total payments will be paid in aggregate to facilities as required by R414-504-3 based on other authorized factors, including property and behaviorally complex residents, in the proportion that the facility qualifies for the factor.

(2) Pending federal approval of ~~[a]the Medicaid rate adjustment, the [State Plan Amendment implementing]request to allow the implementation of~~ the Utah Nursing Care Facility Assessment Act, and consequent rules, the case mix rate in effect on July 2, 2004, as well as other components of the total rate will be the same as those in effect on June 30, 2004.

(3) Upon federal approval of the nursing care facility rate adjustment and the assessment pursuant to R414-504-3(2)~~[State Plan Amendment]~~, rate components will be adjusted retroactively to July 2, 2004, to reflect the additional funding made available. The adjusted rate will be further adjusted retroactive to September 15, 2004 to include the application of a Fair Rental Value reimbursement system for property as addressed in R414-504-3(7).

(4) The Department calculates each nursing facility's case mix index quarterly based upon the previous 3-~~[12-]~~month moving average case mix history. The newly calculated case mix index is applied to the case mix rate one month after the end of the quarter.

(5) A facility may apply for a special add-on rate for behaviorally complex residents by filing a written request with the Division of Health Care Financing. The Department may approve an add-on rate if an assessment of the acuity and needs of the patient demonstrates that the facility is not adequately reimbursed by the RUGS score for that patient. The rate is added on for the specific resident's payment and is not subsumed as part of the facility case

mix rate. The Resident Assessment Section will make the determination as to qualification for any additional payment. The Division of Health Care Financing shall determine the amount of any add-on.

(6) Property costs are paid separately from the RUGS rate.

~~[(a)]~~ Each facility's reimbursement interim rate effective July 2, 2004, includes a property payment of \$11.19 per patient day.

~~[(b)]~~ A facility with property costs greater than \$11.19 per patient day as reported on the most recent FCP may receive a property differential payment, as follows:

(i) For facilities with the most recent FCP-reported occupancy greater than 75%, the property differential is the FCP-reported property cost divided by the sum of the number of Medicaid patient days and non-Medicaid patient days from which the \$11.19 base is subtracted. This can be algebraically stated as: (FCP-reported property cost / (total number of Medicaid patient days + non-Medicaid patient days)) - \$11.19 = property differential.

(ii) For facilities with an FCP-reported occupancy less than 75%, the property differential is the FCP-reported property cost divided by the number of licensed beds times 365 times .75 from which the \$11.19 base is subtracted. This can be algebraically stated as: (FCP-reported property cost / (total number of licensed beds x 365 x .75)) - \$11.19 = property differential.

~~[(e)]~~ Regardless of the result produced under subsection (b), the property differential payment shall not exceed \$8.81 per patient day ~~[from the effective date of this rule until December 31, 2004. Regardless of the result produced under subsection (b), beginning January 1, 2005, the property differential shall not exceed \$4.40. The amount reduced beginning January 1, 2005 from property payments shall be shifted to other components of the rate and distributed to facilities].~~

(8) Upon federal approval, property costs will be calculated and reimbursed as a component of the facility rate based on an FRV System, effective September 15, 2004.

(a) Under this FRV system, the Department reimburses a facility based on the estimated current value of its capital assets in lieu of direct reimbursement for depreciation, amortization, interest, and rent or lease expenses. The FRV system establishes a nursing facility's bed value based on the age of the facility and total square footage.

(i) The initial age of each nursing facility used in the FRV calculation is determined as of September 15, 2004, using each facility's year of construction.

(ii) The age of each facility is adjusted each July 1 to make the facility one year older.

(iii) The age is reduced for replacements, major renovations, or additions placed into service since the facility was built, provided there is sufficient documentation to support the historical changes.

(A) If a facility adds new beds, these new beds are averaged into the age of the original beds to arrive at the facility's age.

(B) If a facility completed a major renovation (defined as a project with capitalized cost equal to or greater than \$500 per bed) or replacement project, the cost of the project is represented by an equivalent number of new beds

(I) The renovation or replacement project must have been completed during a 24-month period and reported on the FCP (due March 31st) for the calendar year prior to a July 1 rate year and be related to the reasonable functioning of the nursing facility. Renovations unrelated to either the direct or indirect functioning of the nursing facility shall not be used to adjust the facility's age.

(II) The equivalent number of new beds is determined by dividing the cost of the project by the accumulated depreciation per bed of the facility's existing beds immediately before the project.

(III) The equivalent number of new beds is then subtracted from the total actual beds. The result is multiplied by the difference in the year of the completion of the project and the age of the facility, which age is based on the initial construction year or the last reconstruction or renovation project. The product is then divided by the actual number of beds to arrive at the number of years to reduce the age of the facility.

(b) A nursing facility's fair rental value per diem is calculated as follows:

As used in this subsection (b), "capital index" is the percent change in the nursing home "Per bed or person, total cost" row and "3/4" column as found in the two most recent annual R.S. Means Building Construction Cost Data as adjusted by the weighted average total city cost index for Salt Lake City, Utah.

(i) The buildings and fixtures value per licensed bed is \$50,000, which is based upon a standard facility size of at least 450 square feet determined using the R.S. Means Building Construction Cost Data adjusted by the weighted average total city cost index for Salt Lake City, Utah. To this \$50,000 is added 10% (\$5,000) for land and 10% (\$5,000) for movable equipment. Each nursing facility's total licensed beds are multiplied by this amount to arrive at the "total bed value." The total bed value is trended forward by multiplying it by the capital index and adding it to the total bed value to arrive at the "newly calculated total bed value." The newly calculated total bed value is depreciated, except for the portion related to land, at 1.50 percent per year according to the weighted age of the facility. The maximum age of a nursing facility shall be 35 years. Therefore, nursing facilities shall not be depreciated to an amount less than 47.50 percent or 100 percent minus (1.50 percent times 35) of the newly calculated bed value. There shall be no recapture of depreciation.

(ii) A nursing facility's annual FRV is calculated by multiplying the facility's newly calculated bed value times a rental factor. The rental factor is the sum of the 20-year Treasury Bond Rate as published in the Federal Reserve Bulletin using the average for the calendar year preceding the rate year and a risk value of 3 percent. Regardless of the result produced in this subsection (ii), the rental factor shall not be less than 9 percent or more than 12 percent.

(iii) the facility's annual FRV is divided by the greater of:

(A) the facility's annualized actual resident days during the cost reporting period; and

(B) 75 percent of the annualized operational bed capacity of the facility.

(iv) The FRV per diem determined under this fair rental value system shall be no lower than \$8 per patient day.

(v) The FRV per diem determined under this fair rental value system shall be phased-in using a hold-harmless method over a one-year period as follows:

(A) Nursing facility property rates are calculated under the fair rental value system and compared to rates in effect on July 2, 2004.

(B) If the fair rental value system property rate is less than the nursing facility's July 2, 2004 rate, the nursing facility's rate is adjusted to additionally pay the nursing facility the difference between the September 15, 2004 rate and the July 2, 2004 rate, but not to exceed \$5 per patient day; and

(C) the hold harmless method expires on June 30, 2005.

(c) A pass-through component of the rate is applied and is calculated as follows:

(i) As used in this subsection (c), "property tax and property insurance index" is the percent change in the combined property tax and property insurance costs reported by the facility on its two most recent FCPs.

(ii) For a newly constructed facility that has not made two FCP reports, the property tax and property insurance index is the average percent change in the combined property tax and property insurance costs reported by all facilities on their two most recent FCPs.

(iii) The property tax and property insurance pass-through is trended forward by multiplying it by the property tax and property insurance index and adding it to the combined property tax and property insurance costs as reported on the most recent FCP to arrive at the pass-through amount.

(iv) The nursing facility's per diem property tax and property insurance cost is determined by dividing the facility's pass-through amount by the facility's actual total patient days.

(7)2) Newly constructed facilities' case mix component of the rate shall be paid at the average rate. This average rate shall remain in place for a new facility for six months, whereupon the provider's case mix index and property payment is established. At this point, the Department shall issue a new case mix adjusted rate. The property payment to the facility is controlled by R414-504-3(6). Prior to implementation of a fair rental value system, [A] a newly constructed facility's property payment may not exceed \$20.00 per patient day.

(8)10) An existing facility acquired by a new owner will continue at the same case mix index and property cost payment established for the facility under the previous ownership for the remainder of the quarter. Prior to implementation of a fair rental value system, [F] the new owners property payment may not exceed \$20.00 per patient day.

(9)11)(a) A sole community provider that is financially distressed may apply for a payment adjustment above the case mix index established rate. The maximum increase will be the lesser of the facility's reasonable costs (as defined in CMS publication 15-1, Section 2102.2), or 7.5% above the average of the most recent FCP Medicaid daily rate for all Medicaid residents in all freestanding nursing facilities in the state. The maximum duration of this adjustment is 12 months.

(b)a) The application shall propose what the adjustment should be and include a financial review prepared by the facility documenting:

(i) the facility's income and expenses for the past 12 months; and

(ii) steps taken by the facility to reduce costs and increase occupancy.

(e)b) Financial support from the local municipality and county governing bodies for the continued operation of the facility in the community is a necessary prerequisite to an acceptable application. The Department, the facility, and the local governing bodies may negotiate the amount of the financial commitment from the governing bodies, but in no case may the local commitment be less than 50% of the state share required to fund the proposed adjustment. Any continuation of the adjustment beyond 6 months requires a local commitment of 100% of the state share for the rate increase above the base rate. The applicant shall submit letters of commitment from the applicable municipality or county, or both, committing to make an intergovernmental transfer for the amount of the local commitment.

(~~d~~c) The Department may conduct its own independent financial review of the facility prior to making a decision whether to approve a different payment rate.

(~~e~~d) If the Department determines that the facility is in imminent peril of closing, it may make an interim rate adjustment for up to 90 days.

(~~f~~e) The Department's determination shall be based on maintaining access to services on and maintaining economy and efficiency in the Medicaid program.

(~~g~~f) If the facility desires an adjustment for more than 90 days, it must demonstrate that:

(i) the facility has taken all reasonable steps to reduce costs, increase revenue and increase occupancy;

(ii) despite those reasonable steps the facility is currently losing money and forecast to continue losing money; and

(iii) the amount of the approved adjustment will allow the facility to meet expenses and continue to support the needs of the community it serves, without unduly enriching any party.

(~~h~~g) If the Department approves an interim or other adjustment, it shall notify the facility when the adjustment is scheduled to take effect and how much contribution is required from the local governing bodies. Payment of the adjustment is contingent on the facility obtaining a fully executed binding agreement with local governing bodies to pay the contribution to the Department.

(~~i~~h) The Department may withhold or deny payment of the interim or other adjustment if the facility fails to obtain the required agreement prior to the scheduled effective date of the adjustment.

(~~10~~12) A provider may challenge the rate set pursuant to this rule using the appeal in R410-14. A provider must exhaust administrative remedies before challenging rates in any other forum.

(~~11~~13) In developing payment rates, the Department may adjust urban and non-urban rates to reflect differences in urban and non-urban labor costs. The urban labor costs reimbursement cannot exceed 106% of the non-urban labor costs. Labor costs are as reported on the most recent FCP but do not include FCP-reported management, consulting, director, and home office fees.

R414-504-4. Quality Improvement Incentive.

Upon federal approval of the Nursing Care Facilities State Plan Amendment, funds in the amount of \$500,000 shall be set aside annually to reimburse facilities that have a quality improvement plan and have no violations that are at an "immediate jeopardy" level, as determined by the Department, at the most recent re-certification survey and during the incentive period. The Department shall distribute incentive payments to qualifying facilities based on the proportionate share of the total Medicaid patient days in qualifying facilities. If a facility appeals the determination of a survey violation, the incentive payment will be withheld pending the final administrative appeal. On appeal, if violations are found not to have occurred at a severity level of "immediate jeopardy" or higher, the incentive payment will be paid to the facility. If the survey findings are upheld, the remaining incentive payments will be distributed to all qualifying facilities.

KEY: Medicaid

[July 2,] 2004

26-1-5

26-18-3



Human Services, Child and Family Services **R512-306** Independent Living Services, Education and Training Voucher Program

NOTICE OF PROPOSED RULE

(New Rule)

DAR FILE NO.: 27321

FILED: 08/02/2004, 10:00

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: To implement the Education and Training Voucher (ETV) Program which assists foster individuals in making the transition to self-sufficiency in adulthood. The ETV Program provides financial resources through material benefits for postsecondary education and vocational training.

SUMMARY OF THE RULE OR CHANGE: This is a new program that provides educational training vouchers for individuals in Division foster care. As individuals leave foster care due to age, this program will assist them to obtain an education and make the transition to independence. (DAR NOTE: A corresponding 120-day (emergency) rule was published in the July 15, 2004, issue of the Bulletin under DAR No. 27243, and was effective 06/22/2004.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 62A-4a-105 and Pub. L. No. 107-133

THIS RULE OR CHANGE INCORPORATES BY REFERENCE THE FOLLOWING MATERIAL: Pub. L. No. 107-133

ANTICIPATED COST OR SAVINGS TO:

❖ **THE STATE BUDGET:** This program will implement this new federal grant program requiring 20% state match (\$16,000) which is already in the Division's budget.

❖ **LOCAL GOVERNMENTS:** After careful review, there will be no impact on local government because the money for the program is funded through federal and state funds.

❖ **OTHER PERSONS:** Person affected by this rule would be individuals approved for educational vouchers. Costs would be minimal, only those involved with applying and how many would apply are not known at this time.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Minimal--\$10 or less, cost might include postage, transportation, and/or long distance calls as part of the application process.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The training vouchers for this program may be used at public or private colleges or public or private technical institutes.

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

HUMAN SERVICES
CHILD AND FAMILY SERVICES
Room 225
120 N 200 W
SALT LAKE CITY UT 84103-1500, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Steven Bradford at the above address, by phone at 801-538-8210, by FAX at 801-538-3993, or by Internet E-mail at sbradford@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 09/14/2004.

THIS RULE MAY BECOME EFFECTIVE ON: 09/15/2004

AUTHORIZED BY: Richard Anderson, Director

R512. Human Services, Child and Family Services.

R512-306. Independent Living Services, Education and Training Voucher Program.

R512-306-1. Purpose and Authority.

1) The Education and Training Voucher Program (ETV) assists foster individual's make the transition to self-sufficiency in adulthood. The Education and Training Voucher Program provides the financial resources for postsecondary education and vocational training necessary to obtain employment or to support the individual's employment goals.

2) The Education and Training Voucher Program is authorized by Pub. L. No. 107-133, which is incorporated by reference. 20 USC 1087kk and 20 USC 108711 (2001) are also incorporated by reference.

R512-306-2. Definitions.

1) The following terms are defined for the purposes of this rule:

a) Institution of higher education means a school that:

i. Awards a bachelor's degree or not less than a two-year program that provides credit towards a degree, or

ii. Provides not less than one year of training towards gainful employment, or

iii. Is a vocational program that provides training for gainful employment and has been in existence for at least two years, and that also meets all of the following:

iv. Admits as regular students only persons with a high school diploma or equivalent; or who are beyond the age of compulsory school attendance (Section 53A-11-101 and 53A-11-102).

v. Public or non-profit facility.

vi. Accredited or pre-accredited by a recognized accrediting agency that the Secretary of Education determines to be reliable and is authorized to operate in the state.

b) Satisfactory progress means maintaining at least a C grade average or 2.0 on a 4.0 scale on a cumulative basis or equivalent passing status as determined by the educational institution.

c) GED means General Education Development.

d) Division means Division of Child and Family Services.

e) Foster care means individual in the custody of the Department of Human Services/Division of Child and Family Services and/or Indian Tribes.

f) Full-time as defined by the educational institution.

R512-306-3. Scope of Program.

1) To be eligible for the Education and Training Voucher Program, an individual must meet all of the following requirements:

a) An individual in foster care who has not yet attained 21 years of age, or

b) An individual no longer in foster care who attained 18 years of age while in foster care and who has not yet attained 21 years of age, or

c) An individual adopted from foster care after attaining 16 years of age and who has not yet attained 21 years of age.

d) Have graduated from high school or earned a GED;

e) Have an individual educational assessment and individual education plan completed by DCFS or their designee;

f) Submit a completed application for the Education and Training Voucher Program;

g) Be accepted to a qualified college, university, or vocational program;

h) Apply for and accept available financial aid from other sources before obtaining funding from the Education and Training Voucher Program;

i) Enroll as a full-time student in the college, university or vocational program; and

j) Maintain a 2.0 cumulative grade point average on a 4.0 scale or equivalent as determined by the educational institution.

2) The application and attachments will be reviewed and approved by regional independent living program staff or their designee. Individuals meeting all requirements will be accepted for program participation when available ETV funding for this purpose permits. If demand exceeds available funding, the Division may establish a waiting list for funding or may approve applications for lesser amounts of funding. The individual will receive written notice of approval or denial of the application. If denied or terminated, a written reason for denial will be provided and will include instructions about how to appeal the decision.

3) Individual may participate in the Employment and Training Voucher Program until the completion of the degree or vocational program or age 21, with one exception. If enrolled in the ETV program on the date age 21 is attained, the individual may continue in the program until age 23 as long as the individual is attending an accredited or pre-accredited college, university, or vocational program full-time, is making satisfactory progress, and funding continues to be available.

4) The individual must provide ongoing documentation of full-time enrollment, satisfactory progress as detailed in the individual education plan, additional requests for funding, and any changes in total costs for attendance or other financial aid to the Division in order to continue receiving benefits under the program.

5) A individual under age 21 who has previously been denied acceptance to the program or who lost eligibility for the program due to not making satisfactory progress or not attending full-time may reapply for the program.

6) If an application for benefits under the Education and Training Vouches program is denied, the applicant will have the right to appeal the decision through an administrative hearing in accordance with Section 63-46b-3 et seq.

7) An individual may receive vouchers up to a maximum amount of \$5,000 per year through the Education and Training Voucher Program.

a) In accordance with 20 USC 1087kk, the total amount awarded may not exceed the total cost of attendance, as described in R512-306-4, minus expected contributions from the individual's family and minus estimated financial assistance from other State or Federal grants or programs.

b) In accordance with 42 USC 677(i)(5), the amount of benefits received through the Education and Training Voucher Program may be disregarded in determining a individual's eligibility for, or amount of, any other Federal or Federally supported assistance.

c) Awards are subject to the availability of Division ETV funds appropriated for this program.

R512-306-4. Cost of Attendance.

1) The cost of attendance, is authorized in 20 USC 1087ll.

KEY: foster care, independent living

2004

62A-4a-105



Public Safety, Fire Marshal **R710-2** Rules Pursuant to the Utah Fireworks Act

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 27324

FILED: 08/02/2004, 14:01

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Utah Fire Prevention Board met and proposed that Rule R710-2 be amended. The purpose of the amendment is to establish a minimum age to sell fireworks and to allow a metal container to be placed next to the selling site for storage.

SUMMARY OF THE RULE OR CHANGE: The Utah Fire Prevention Board met in a regularly scheduled Board meeting on July 13, 2004, and proposed to amend the rule as follows: 1) in Subsection R710-2-3(3.4), the Board proposes that anyone wishing to sell fireworks at retail locations must be at least 16 years of age to do so; and 2) in Subsections R710-2-3(3.5) and R710-2-9(9.2.1.3.7), the Board proposes to allow a metal storage container to be placed adjacent to the temporary stand, trailer, or tent for storage of product to be sold.

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

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: There is no anticipated cost or savings to the state budget because these proposed amendments do not effect the state budget.

❖ LOCAL GOVERNMENTS: There is no anticipated cost or savings to local government because these proposed amendments do not effect local government.

❖ OTHER PERSONS: There is no anticipated cost or savings to other persons because these proposed amendments do not effect other persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There is no compliance cost for affected persons from the enactment of these proposed rule amendments.

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

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

PUBLIC SAFETY

FIRE MARSHAL

Room 302

5272 S COLLEGE DR

MURRAY UT 84123-2611, or

at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Brent Halladay at the above address, by phone at 801-284-6352, by FAX at 801-284-6351, or by Internet E-mail at bhallada@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 09/14/2004.

THIS RULE MAY BECOME EFFECTIVE ON: 09/15/2004

AUTHORIZED BY: Gary A. Wise, State Fire Marshal

R710. Public Safety, Fire Marshal.

R710-2. Rules Pursuant to the Utah Fireworks Act.

R710-2-3. General Requirements.

3.1 No person shall engage in any type of retail storage or sale of class C common state approved explosives, without first having obtained a license to sell fireworks from the authority having jurisdiction, if required.

3.2 If a municipality or county in which fireworks are offered for sale, requires a seller to obtain a license, it shall be available at the store or stand for presentation upon request to authorized public safety officials.

3.3 All fireworks retail sales locations shall be under the direct supervision of a responsible person who is 18 years of age or older.

3.4 Those selling fireworks at retail sales locations shall be at least 16 years of age or older.

3.5 A salesperson shall remain at the sales location at all times unless suitable locking devices or secured metal storage containers are provided to prevent the unauthorized access to the merchandise by others[~~, or the merchandise is removed~~].

3.[4]6 Class C common state approved explosives shall not be sold to any person under the age of 16 years, unless accompanied by an adult.

3.[5]7 All retail sales locations shall be kept clear of dry grass or other combustible material for a distance of at least 25 feet in all directions.

3.[6]8 Storage of class C common state approved explosives shall not be located in residences to include attached garages.

3.[7]9 "No Smoking" signs shall be conspicuously posted at all sales and storage locations.

3.[8]10 A sign, clearly visible to the general public, shall be posted at all fireworks sales locations, indicating the legal dates for discharge of fireworks.

3.[9]11 All retail sales locations shall be equipped with an approved, portable fire extinguisher having a minimum 2A rating.

R710-2-9. Amendments and Additions.

9.1 The following are amendments and additions to the codes and standards adopted to regulate class C common state approved explosives, placement and discharge of display fireworks, and importer, wholesaler, display or special effects operator licenses, as adopted in Section 1 of these rules:

9.2 ~~[UFC]IFC, Chapter 33, Section [7802-3]3301.2.1 and 3301.2.2~~ is deleted, and ~~[amended]~~rewritten to read as follows:

9.2.1 For the following periods of time: June 1 through July 31; December 1 through January 5; and 30 days before and up to 5 days after the Chinese New Year; class C common state approved explosives may be stored for retail sale as follows:

9.2.1.1 The retail seller shall notify the local fire authority to where the class C common state approved explosives are to be stored.

9.2.1.2 Class C common state approved explosives shall not be stored in residences to include attached garages.

9.2.1.3 The local fire authority shall approve the storage site of the class C common state approved explosives and may use the following guidelines for acceptable places of storage:

9.2.1.3.1 In self storage units where the owner allows it.

9.2.1.3.2 In a temporary stand or trailer used for the retail sales of Class C common state approved explosives, which must be locked or secured when not open for business.

9.2.1.3.3 In a locked or secured truck, trailer, or other vehicle at an approved location.

9.2.1.3.4 In a locked or secured container, garage, shed, barn, or other building, which is detached from an inhabited building.

9.2.1.3.5 Wholesalers warehouse.

9.2.1.3.6 An approved Group M occupancy.

9.2.1.3.7 In a locked or secured metal container adjacent to the temporary stand, trailer or tent that is acceptable to the authority having jurisdiction.

9.2.1.3.[7]8 Any other structure or location approved by the authority having jurisdiction.

9.2.2 All other periods of time, except those stated in Section 9.2(1) of these rules, the storage, use, and handling of fireworks are prohibited, except as follows:

9.2.2.1 The storage and handling of fireworks are allowed as required in IFC, Chapter 33 and these rules.

9.2.2.2 The use of fireworks for display is allowed as set forth in IFC, Chapter 33 and these rules.

KEY: fireworks

[January 2, 2004] September 15, 2004

Notice of Continuation June 11, 2002

53-7-204

Public Safety, Fire Marshal **R710-5**

Automatic Fire Sprinkler System Inspecting and Testing

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 27326

FILED: 08/02/2004, 15:11

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Utah Fire Prevention Board met and proposed that Rule R710-5 be amended. The purpose of the amendment was to correct a mistake in the last filing and remove newly installed systems from the requirement to be inspected.

SUMMARY OF THE RULE OR CHANGE: The Fire Prevention Board met on July 13, 2004, and proposed by motion that the following amendments to Rule R710-5 be made as follows: 1) in Subsection R710-5-3(3.5), the Board proposes to remove the designation of NICET II from this section because it was mistakenly placed there; and 2) Subsection R710-5-6(6.4) is a new subsection that allows newly installed systems to be exempt from the inspection requirement for a one-year period of time.

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

ANTICIPATED COST OR SAVINGS TO:

❖ **THE STATE BUDGET:** There is no aggregate anticipated cost or savings to the state budget because these proposed amendments do not effect the state budget.

❖ **LOCAL GOVERNMENTS:** There is no aggregate anticipated cost or savings to local government because these proposed amendments do not effect local government.

❖ **OTHER PERSONS:** There is no aggregate anticipated cost to other persons because these amendments do not initiate a cost to complete. There is an aggregate anticipated savings to other persons because the proposed allowance to exempt the inspection requirement for the first year will save several hundred dollars inspection cost to each system. The total aggregate anticipated savings is impossible to calculate due to the fact that the number of newly installed systems is unknown.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There is no compliance cost for affected persons to complete these proposed amendments.

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

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

Brent Halladay at the above address, by phone at 801-284-6352, by FAX at 801-284-6351, or by Internet E-mail at bhallada@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 09/14/2004.

THIS RULE MAY BECOME EFFECTIVE ON: 09/15/2004

AUTHORIZED BY: Gary A. Wise, State Fire Marshal

R710. Public Safety, Fire Marshal.

R710-5. Automatic Fire Sprinkler System Inspecting and Testing.

R710-5-3. Certificates of Registration.

3.1 Required Certificates of Registration.

No person shall engage in the inspecting and testing of automatic fire sprinkler systems without first receiving a certificate of registration issued by the SFM. The following groups are exempted from the requirements of this part:

3.1.1 The AHJ that is performing the initial installation acceptance testing of the automatic fire sprinkler system or ongoing inspections to verify compliance with the adopted NFPA standards and these rules.

3.1.2 The building owner or designee that performs additional periodic inspections beyond the annual inspection required in Section 6.2 of these rules, to satisfy requirements set by company policy, insurance, or risk management.

3.2 Application.

3.2.1 Application for a certificate of registration to inspect and test automatic fire sprinkler systems shall be made in writing to the SFM on forms provided the SFM. The applicant shall sign the application. The SFM or his deputies may request picture identification of the applicant for a certificate of registration.

3.2.2 The applicant shall indicate on the application which of the four technician levels the applicant will apply for:

3.2.2.1 Technician I

3.2.2.2 Technician II

3.2.2.3 Technician III

3.2.2.4 Master Technician

3.2.3 The application for a certificate of registration shall be accompanied with proof of public liability insurance from the

certificate holder or employing concern. A public liability insurance carrier showing coverage of at least \$100,000 for each incident, and \$300,000 in total coverage shall issue the public liability insurance. The certificate of registration holder shall notify the SFM within 30 days after the public liability insurance coverage required is not longer in effect for any reason.

3.3 Technician Examination.

The SFM shall require all applicants for a certificate of registration as a technician to complete the following:

3.3.1 Technician I shall pass a written examination on wet pipe sprinkler systems, antifreeze sprinkler systems, and standpipes, and complete the manipulative skills task book.

3.3.2 Technician II shall pass all the requirements listed for Technician I; pass a written examination on dry pipe sprinkler systems, deluge sprinkler systems, preaction sprinkler systems, combined dry pipe-preaction systems, fire pumps, and water storage tanks, and complete the manipulative skills task book.

3.3.3 Technician III shall pass all the requirements listed for Technician I and II; pass a written examination on water spray fixed systems, foam-water sprinkler systems, and foam-water spray systems, and complete the manipulative skills task book.

3.3.4 Master Technician shall have successfully completed and be certified as NICET III in Inspection and Testing of Water-based Systems, and complete the manipulative skills task book.

3.4 To successfully complete the written examination the applicant must obtain a minimum of seventy percent (70%) in each examination taken. To successfully complete the manipulative skills task book, all required skill tasks shall be signed as completed by a person duly qualified or certified in that skill.

3.5 As required in 3.3.4, those applicants that have successfully completed the requirements of [~~NICET II or~~]NICET III, in Inspection and Testing of Water-based Systems, and that corresponds to the work to be performed by the applicant, shall have the requirement for initial written examination waived, after appropriate documentation is provided to the SFM by the applicant.

3.6 Issuance.

Following receipt of the properly completed application, compliance with Section 3.3 of these rules, the SFM shall issue a certificate of registration.

3.7 Original and Renewal Valid Date.

Original certificates of registration shall be valid for one year from the date of application. Thereafter, each certificate of registration shall be renewed annually and renewals shall be valid for one year from issuance.

3.8 Renewal Date.

Application for renewal shall be made as directed by the SFM.

3.9 Re-examination.

Every holder of a valid certificate of registration shall take a re-examination every three years, from date of original certificate, to comply with the provisions of Section 3.3 of these rules as follows:

3.9.1 The re-examination to comply with the provisions of Section 3.3 of these rules shall consist of an open book examination for each level of certification, to be mailed to the certificate holder at least 60 days before the renewal date.

3.9.2 The re-examination will consist of questions that focus on changes in the last three years to the adopted NFPA standards, the statute, and the adopted administrative rules. The re-examination may also consist of questions that focus on practices of concern as noted by the Board or the SFM.

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

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

3.10 Refusal to Renew.

The SFM may refuse to renew any certificate of registration in the same manner and for any reason that he is authorized, pursuant to Section 7, to deny an original certificate of registration. The applicant shall, upon such refusal, have the same rights as are granted by Section 7 of these rules to an applicant for an original certificate of registration, which has been denied by the SFM.

3.11 Inspection.

The holder of a certificate of registration shall submit such certificate for inspection, upon request of the AHJ.

3.12 Type.

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

3.12.1 Technician I: A person who is engaged in the inspection and testing of wet pipe sprinkler systems, antifreeze sprinkler systems, and standpipes.

3.12.2 Technician II: A person who is engaged in the inspection and testing of dry pipe sprinkler systems, deluge sprinkler systems, preaction sprinkler systems, combined dry pipe-preaction systems, fire pumps and water storage tanks.

3.12.3 Technician III: A person who is engaged in the inspection and testing of foam-water sprinkler systems, foam-water spray systems, and water spray fixed systems.

3.12.4 Master Technician: A person who has obtained NICET III certification in Inspection and Testing of Water-based Systems.

3.13 Change of Address.

Any change in home address of any holder of a valid certificate of registration shall be reported in writing, by the registered person to the SFM within 30 days of such change.

3.14 Duplicate.

A duplicate certificate of registration may be issued by the SFM to replace any previously issued certificate, which has been lost or destroyed.

3.15 Minimum Age.

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

3.16 Restrictive Use.

3.16.1 A certificate of registration may be used for identification purposes only as long as such certificate remains valid.

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

3.17 Right to Contest.

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

3.17.2 Every contention as to the validity of individual questions of an examination shall be made within 48 hours after taking said examination.

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

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

3.18 Non-Transferable.

Certificates of Registration shall not be transferable. The person to whom issued shall carry individual certificates of registration.

3.19 Certificate of Registration Identification.

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

3.20 New Employees

New or existing employees desiring to attain a Certificate of Registration may perform the various acts required while under the constant direct supervision of a person holding a valid certificate of registration for a period not to exceed 60 days from the initial date of employment or beginning service in the field.

R710-5-6. Amendments and Additions.

6.1 Service.

At the time of service, all servicing shall be done in accordance with the adopted NFPA standard, adopted statutes, and these rules.

6.2 Frequency

Automatic fire sprinkler systems, standpipes, and fire pumps shall be inspected annually by a person holding a certificate of registration as required in Section 3.1 of these rules.

6.3 Accepted Forms

One of the two forms listed in NFPA, Standard 25, Annex B, B.1, or a similar equivalent approved by the SFM shall be used as the accepted forms for testing and inspecting fire sprinkler systems.

6.4 New Systems

Newly installed automatic fire sprinkler systems, standpipes, and fire pumps are exempt from the annual testing requirement required in Section 6.2 of these rules, for one year from the approval date of the initial installation acceptance testing.

KEY: automatic fire sprinklers
~~March 3, 2004~~ **September 15, 2004**
 53-7-204



Public Safety, Peace Officer Standards and Training **R728-502** Procedure for POST Instructor Certification

NOTICE OF PROPOSED RULE

(New Rule)

DAR FILE NO.: 27317

FILED: 07/29/2004, 15:49

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This amendment provides for orderly administration of In-Service Training statute.

SUMMARY OF THE RULE OR CHANGE: This proposed rule reimplements a similar rule which expired. (DAR NOTE: Rule R728-502 expired 07/03/2003; see filing under DAR No. 26445.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 53-6-105

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: Does not affect the state budget. Peace Officer Standards and Training (POST) receives their budget from the Special Service Fund. This rule simply describes the procedure for POST Instructor Certification. This would not require any changes to POST's budget.

❖ LOCAL GOVERNMENTS: Does not affect local government. POST does not get any budget or funding from local government. This rule simply describes the procedure for POST Instructor Certification. Employees of local government will not be charged for this change in procedure.

❖ OTHER PERSONS: Does not affect any other persons. This rule simply describes the procedure for a POST Instructor Certification. No other individuals will be charged for these procedural changes for POST Instructor Certification.

COMPLIANCE COSTS FOR AFFECTED PERSONS: No one will be charged for these procedural changes for POST Instructor Certification.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: No fiscal impact expected.

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

PUBLIC SAFETY
PEACE OFFICER STANDARDS AND TRAINING
4525 S 2700 W
SALT LAKE CITY UT 84119, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Bonnie Braegger or Kenneth R. Wallentine at the above address, by phone at 801-965-4099 or 801-957-8531, by FAX at 801-965-4619 or 801-965-4519, or by Internet E-mail at bbraegger@utah.gov or kenwallentine@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 09/14/2004.

THIS RULE MAY BECOME EFFECTIVE ON: 09/15/2004

AUTHORIZED BY: Kenneth R. Wallentine, Administrative Counsel

R728. Public Safety, Peace Officer Standards and Training.
R728-502. Procedure for POST Instructor Certification.

R728-502-1. Authority.

This rule is authorized by Section 53-6-105 which gives the director of POST the authority to establish minimum requirements for the certification of training instructors.

R728-502-2. POST Certified Instructors Authority and Duties.

A. POST certified instructors will be authorized to teach POST sponsored classes to include Basic Training, In-Service, and Regional classes.

B. Instructors shall be required to become familiar with POST's most up-to-date Student Performance Objectives and to insure their instruction is not in conflict with the Student Performance Objectives.

C. Only POST certified instructors may teach in Basic Training classes, including satellite academy Basic Training programs. Exceptions must be approved by the Basic Training Bureau Chief or POST staff assigned as the satellite academy liaison.

R728-502-3. Requirements to become a POST Certified Instructor.

A. Applicants must possess five years of experience as a full-time peace officer, and complete an approved instructor development course; or

B. Have three years experience as a full-time sworn peace officer, and associate degree, and complete an approved instructor development course; or

C. Have two years experience as a full-time sworn peace officer, a bachelor's degree, and complete an approved instructor development course; or

D. Have specialized training and or expertise in an area which, the Director of POST determines to, would be beneficial in the training of law enforcement officers.

R728-502-4. Application For Instructor Certification.

A. A completed Application for POST Instructor Development School must be submitted to the POST In-Service Bureau. The application must include:

1. Documentation of years of experience.

2. Letter of recommendation from the applicant's chief administrative officer.

3. Documentation of special training.

B. All applications for instructor status will be reviewed by the POST In-Service Bureau. If the application is approved, the applicant may attend a POST approved Instructor Development Course. POST Instructor Certification will be granted upon completion of the following requirements:

1. The applicant will successfully complete a POST approved Instructor Development Course. This will include demonstrating to the course instructor the ability to develop a lesson plan that follows the style and format taught in the POST Instructor Development Course.

2. The applicant has signed the POST Performance Objectives Agreement. (POST Form 77/01/89) This certifies the student has received, read, and understood the current POST approved performance objectives, and the student agrees to teach the approved POST performance objectives in the classroom.

R728-502-5. Lesson Plans.

Prior to providing instruction in Basic Training, In-Service, or Regional classes sponsored by POST, an instructor shall file a lesson plan with the Basic Training Bureau Chief or In-Service Bureau

Chief. Lesson plans for Basic Training and In-Service classes shall follow POST Basic Training Learning Objectives, and shall be in a form identical or substantially similar to the approved Basic Training lesson plan format. Lesson plans shall be accompanied with supporting materials, such as computer based slide shows or videos, where used in the class instruction. Lesson plans for In-Service Career Development Courses shall also include an examination or quiz. When the class material is addressed in POST Basic Training examinations or quizzes, the instructor may be required to submit test items.

R728-502-6. Guest Instructors.

Guest instructors are not required to meet the certification requirements outlined above. Guest instructors should generally be licensed professionals, such as physicians, mental health therapists, and attorneys, or law enforcement professionals with substantial expertise and qualifications in a discrete subject matter. Guest instructor status will generally be granted only for a single class. Guest instructors shall comply with POST class room decorum and dress standards.

R728-502-7. Department In-Service Instructors.

Departments are not required to utilize POST certified instructors in their in-service training programs. This gives departments the ability to formulate training programs designed to meet their needs utilizing the local resources. In such instances, the department sponsoring the training will be solely responsible for the content of the class and the qualifications of the instructor.

R728-502-8. Special Instructor Schools.

A. Instructors shall complete special instructor schools before they teach technical and high liability law enforcement subjects, such as:

1. Firearms Instructor School
2. Defensive Tactics Instructor School (DT)
3. Emergency Vehicle Operation Instructor School (EVO)
4. Radar Instructor School

B. Completion of a specialty instructor school does not automatically qualify an officer to instruct a POST sponsored class; the officer must also complete a POST approved Instructor Development Course to be qualified to teach a POST sponsored class.

R728-502-9. Special Instructor In-Service Requirements.

A. Special instructors teaching in POST Basic Training programs, including satellite academy programs, shall be subject to the following In-Service requirements:

1. Basic Training Firearms Instructors must complete a minimum of 16 hours of instructor training in each training year. The instructor training requirement may be satisfied through participation as an instructor or student in POST Firearms Instructor In-Service Training (handgun and/or long gun), Law Enforcement Training Camp, International Association of Law Enforcement Firearms Instructor training conferences, Utah Department of Public Safety Firearms Instructor In-Service courses, and similar conferences and workshops, subject to approval of the In-Service Bureau Chief.

2. Defensive Tactics Instructors must attend no fewer than two quarterly DT instructor in-service sessions presented by the POST DT program coordinator. Defensive Tactics Instructors may also be

required to attend in-service training at POST when DT program changes are effected from time to time.

3. Emergency Vehicle Operation Instructors must attend the annual POST EVO Instructor re-certification course.

B. Special instructors teaching only in department in-service programs are not subject to this requirement.

KEY: law enforcement officers, instructor certification, in-service training

2004

53-6-105



Workforce Services, Workforce
Information and Payment Services
R994-310
Coverage

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 27318

FILED: 07/30/2004, 13:22

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The changes are made to reflect statutory changes made in S.B. 5, 2004 General Session. (DAR NOTE: S.B. 5 is found at UT L 2004 Ch 7, and was effective 07/01/2004.)

SUMMARY OF THE RULE OR CHANGE: Previously only those employers who paid wages of \$140 per quarter or more were subject to the Employment Security Act. Under the amendment in S.B. 5, all employers who pay wages are subject to the Act.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 35A-4-310

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: There are no costs or savings to the State budget because unemployment is a federally-funded program. The State's unemployment liability will remain unchanged.

❖ LOCAL GOVERNMENTS: There are no costs or savings to local governments because this is a federally-funded program. Local government's unemployment liability will remain the same.

❖ OTHER PERSONS: There are no costs or savings to any person as a result of this change. The change is being made to comply with State law.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs associated with this change.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: It is not anticipated that there will be any fiscal impact on any business by this rule as there

are no businesses currently paying less than \$140 per quarter in wages. Additionally, since this rule change is only being made to reflect the change made in statute, it is assumed that any costs which might be associated with this change were contemplated in the statutory change which is identical.

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

WORKFORCE SERVICES
WORKFORCE INFORMATION
AND PAYMENT SERVICES
140 E 300 S
SALT LAKE CITY UT 84111-2333, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Suzan Pixton at the above address, by phone at 801-526-9645, by FAX at 801-526-9211, or by Internet E-mail at spixton@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 09/15/2004.

THIS RULE MAY BECOME EFFECTIVE ON: 09/16/2004

AUTHORIZED BY: Raylene G. Ireland, Executive Director

R994. Workforce Services, Workforce Information and Payment Services.

R994-310. Coverage.

R994-310-102. Terminating Coverage.

(1) ~~Coverage will be terminated in two ways:~~

~~(a) Upon written request from the employing unit, coverage shall be terminated when the employing unit has paid wages less than \$140 in each of the four calendar quarters of the preceding calendar year.~~

~~(b) Coverage will automatically be terminated [only] if the employing unit has paid no wages in the preceding calendar year.~~

(2) If within the calendar year after coverage is terminated an employer becomes subject to the Act again, the termination will be canceled ~~or the employer's account will be re-opened. [The employer is then responsible for filing delinquent reports caused by the cancellation of the termination and those reports are due 30 days after it is determined that the employer is subject again.]~~

(3) If the Department determines that the termination was not bona fide, but an attempt to manipulate the rate provisions of the Act, the termination will be canceled and the employer will be assigned ~~his~~it's earned rate.

R994-310-103. Elections to Become Covered.

An employing unit's election to become covered under the Act for either the entire employing unit or for services which do not constitute employment as defined in the Act, may be approved by the Executive Director ~~[of the Department]~~or designee.

KEY: unemployment compensation, coverage*

~~1989~~2004

Notice of Continuation July 14, 2004

35A-4-310

▼ _____ ▼

End of the Notices of Proposed Rules Section

FIVE-YEAR NOTICES OF REVIEW AND STATEMENTS OF CONTINUATION

Within five years of an administrative rule's original enactment or last five-year review, the responsible agency is required to review the rule. This review is designed to remove obsolete rules from the *Utah Administrative Code*.

Upon reviewing a rule, an agency may: repeal the rule by filing a PROPOSED RULE; continue the rule as it is by filing a NOTICE OF REVIEW AND STATEMENT OF CONTINUATION (NOTICE); or amend the rule by filing a PROPOSED RULE and by filing a NOTICE. By filing a NOTICE, the agency indicates that the rule is still necessary.

NOTICES are not followed by the rule text. The rule text that is being continued may be found in the most recent edition of the *Utah Administrative Code*. The rule text may also be inspected at the agency or the Division of Administrative Rules. NOTICES are effective when filed. NOTICES are governed by *Utah Code* Section 63-46a-9 (1998).

Administrative Services, Facilities Construction and Management

R23-3

Planning and Programming for Capital Projects

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE No.: 27313
FILED: 07/28/2004, 16:33

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 63A-5-103 directs the State Building Board to administer the planning process for state capital facility requests and to a Five-Year Building Plan. Subsection 63A-5-103(3)(b) authorizes the Building Board to make rules governing information required by that section. Subsection 63A-5-103(1)(e) also authorizes the Building Board to make rules necessary for the discharge of its duties and the duties of the Division of Facilities Construction and Management (DFCM). Section 63A-5-204 requires DFCM to administer the planning and construction of state facility projects. Section 63A-5-211 provides for a Planning Fund to be administered by DFCM. Rule R23-3 implements these statutes by providing additional guidance regarding the approval and administration of planning efforts and the use of the Planning Fund.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The continuation of this rule is necessary to provide for the administrative requirements and procedures noted under the "concise explanation of

statutory provisions" above. The rule provides further definition to statutory requirements associated with planning of state facilities.

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 801-538-3267, or by Internet E-mail at knye@utah.gov

AUTHORIZED BY: Keith Stepan, Director

EFFECTIVE: 07/28/2004



Insurance, Administration

R590-192

Unfair Accident and Health and Income Replacement Claims Settlement Practices Rule

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE No.: 27319
FILED: 07/30/2004, 14:23

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 via the following code sites: Section 31A-2-201 which empowers the

commissioner to administer and enforce Title 31A and to make rules to implement the provisions of this title. Subsections 31A-2-202(4) and (6) require the prompt and accurate response to department inquiries as found in Section R590-192-11 of the rule. Subsection 31A-26-301(1) allows the commissioner to write a rule regarding the timely payment of claims, the kind of notice and proof of loss that will be used, the manner in which an insurer may deny a claim, and what interest rate may be charged on a late claim payment. Section R590-192-9 of the rule provides standards for the timely payment of claims, Section R590-192-7 outlines the requirements for the proof of loss, and Subsection R590-192-12(15) provides instructions on the payment of interest on a late claim payment. Section 31A-26-303(4) authorizes a rule to define unfair claims settlement practices or acts. Section R590-192-12 of the rule provides specific unfair methods, and deceptive acts and practices. Subsection 31A-21-312(5) relates to the promulgation of a proof and notice of loss. Sections R590-192-7 and R590-192-8 of the rule provides guidelines for notices and proof of loss.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: April through June of 2003 the department had a hearing and comment period for proposed changes to this rule. We received about three comments. One we satisfied by making further changes to the rule and the other two were from the same association requesting the disability claim procedures be put in a separate section of the rule. After talking with the association, the department decided not to make further changes to the rule

since this had not be an issue before. If it became an issue, then the department would make changes in the 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 a major consumer protection regulation. It sets parameters and timelines for payments of health insurance claims, and therefore should be continued. It was last updated to conform with federal regulations in 2003.

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: 07/30/2004



End of the Five-Year Notices of Review and Statements of Continuation Section

NOTICES OF RULE EFFECTIVE DATES

These are the effective dates of PROPOSED RULES or CHANGES IN PROPOSED RULES published in earlier editions of the *Utah State Bulletin*. These effective dates are at least 31 days and not more than 120 days after the date the following rules were published.

Abbreviations

AMD = Amendment
CPR = Change in Proposed Rule
NEW = New Rule
R&R = Repeal and Reenact
REP = Repeal

Alcoholic Beverage Control

Administration

No. 27201 (AMD): R81-2-9. Accepting Credit Cards as Payment for Liquor.
Published: June 15, 2004
Effective: August 2, 2004

Commerce

Occupational and Professional Licensing

No. 27020 (AMD): R156-38. Residence Lien Restriction and Lien Recovery Fund Rules.
Published: April 15, 2004
Effective: July 26, 2004

No. 27020 (CPR): R156-38. Residence Lien Restriction and Lien Recovery Fund Rules.
Published: June 15, 2004
Effective: July 26, 2004

Real Estate

No. 27098 (AMD): R162-106-8. Draft Reports.
Published: May 1, 2004
Effective: July 28, 2004

Education

Administration

No. 27202 (NEW): R277-402. Online Testing.
Published: June 15, 2004
Effective: July 16, 2004

No. 27203 (NEW): R277-418. School Professional Development Days Pilot Program.
Published: June 15, 2004
Effective: July 16, 2004

No. 27204 (AMD): R277-422. State Supported Voted Leeway.
Published: June 15, 2004
Effective: July 16, 2004

No. 27206 (AMD): R277-501. Educator Licensing Renewal.
Published: June 15, 2004
Effective: July 16, 2004

No. 27207 (AMD): R277-502. Educator Licensing and Data Retention.
Published: June 15, 2004
Effective: July 16, 2004

No. 27208 (REP): R277-510. Special Subject Certification for Small Secondary Schools.
Published: June 15, 2004
Effective: July 16, 2004

No. 27213 (REP): R277-511. Eminence or Special Qualification Authorization for Teaching in the Public Schools.
Published: June 15, 2004
Effective: July 16, 2004

No. 27209 (REP): R277-512. Letters of Authorization.
Published: June 15, 2004
Effective: July 16, 2004

No. 27210 (AMD): R277-520. Appropriate Licensing and Assignment of Teachers.
Published: June 15, 2004
Effective: July 16, 2004

No. 27211 (AMD): R277-522. Entry Years Enhancements (EYE) for Quality Teaching - Level 1 Utah Teachers.
Published: June 15, 2004
Effective: July 16, 2004

Health

Health Care Financing, Coverage and Reimbursement Policy

No. 27189 (AMD): R414-1-14. Utilization Control.
Published: June 15, 2004
Effective: July 19, 2004

No. 27216 (AMD): R414-306. Program Benefits.
Published: June 15, 2004
Effective: July 19, 2004

Health Systems Improvement, Licensing

No. 27186 (AMD): R432-100-17. Perinatal Services.
Published: June 15, 2004
Effective: July 19, 2004

NOTICES OF RULE EFFECTIVE DATES

Human Services

Recovery Services

No. 27182 (AMD): R527-475. State Tax Refund Intercept.

Published: June 15, 2004

Effective: July 21, 2004

Insurance

Administration

No. 27191 (REP): R590-204. Adoption Indemnity Benefit.

Published: June 15, 2004

Effective: July 27, 2004

Natural Resources

Parks and Recreation

No. 27183 (NEW): R651-411. OHV Use in State Parks.

Published: June 15, 2004

Effective: July 19, 2004

No. 27181 (AMD): R651-601-17. Definitions.

Published: June 15, 2004

Effective: July 19, 2004

No. 27184 (AMD): R651-611. Fee Schedule.

Published: June 15, 2004

Effective: July 19, 2004

No. 27185 (AMD): R651-615-7. Motorized Transportation Devices.

Published: June 15, 2004

Effective: July 19, 2004

Tax Commission

Administration

No. 27155 (AMD): R861-1A-37. Provisions Relating to

Disclosure of Commercial Information Pursuant to Utah Code Ann. Section 59-1-404.

Published: June 1, 2004

Effective: August 2, 2004

Property Tax

No. 27190 (AMD): R884-24P-24. Form for Notice of Property Valuation and Tax Changes Pursuant to Utah Code Ann. Sections 59-2-918 through 59-2-924.

Published: June 15, 2004

Effective: August 2, 2004

Transportation

Operations, Maintenance

No. 27111 (AMD): R918-4. Using Volunteer Groups for the Adopt-a-Highway Program.

Published: May 15, 2004

Effective: July 20, 2004

Preconstruction

No. 27156 (AMD): R930-3. Highway Noise Abatement.

Published: June 1, 2004

Effective: July 20, 2004

Workforce Services

Workforce Information and Payment Services

No. 27193 (AMD): R994-401-207. Retirement or Disability Retirement Income.

Published: June 15, 2004

Effective: July 19, 2004

No. 27192 (AMD): R994-405. Ineligibility for Benefits.

Published: June 15, 2004

Effective: July 19, 2004

End of the Notices of Rule Effective Dates Section

RULES INDEX BY AGENCY (CODE NUMBER) AND BY KEYWORD (SUBJECT)

The *Rules Index* is a cumulative index that reflects all effective changes to Utah's administrative rules. The current *Index* lists changes made effective from January 2, 2004, including notices of effective date received through August 2, 2004, the effective dates of which are no later than August 15, 2004. 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: 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. 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).

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/>).

RULES INDEX - BY AGENCY (CODE NUMBER)

ABBREVIATIONS

AMD = Amendment	NSC = Nonsubstantive rule change
CPR = Change in proposed rule	REP = Repeal
EMR = Emergency rule (120 day)	R&R = Repeal and reenact
NEW = New rule	5YR = Five-Year Review
EXD = Expired	

CODE REFERENCE	TITLE	FILE NUMBER	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
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R23-29	Across the Board Delegation	26991	5YR	03/10/2004	2004-7/35
<u>Finance</u>					
R25-7	Travel-Related Reimbursements for State Employees	27120	AMD	07/01/2004	2004-10/4
R25-7-6	Reimbursements for Meals	27164	AMD	07/02/2004	2004-11/4
<u>Fleet Operations, Surplus Property</u>					
R28-3	Utah State Agency for Surplus Property Adjudicative Proceedings	26843	AMD	02/12/2004	2004-1/4
<u>Records Committee</u>					
R35-1	State Records Committee Appeal Hearing Procedures	27277	5YR	07/02/2004	2004-15/63
R35-1	State Records Committee Appeal Hearing Procedures (5YR EXTENSION)	26973	NSC	07/02/2004	Not Printed

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R35-4	Compliance with State Records Committee Decisions and Orders	27280	5YR	07/02/2004	2004-15/64
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R35-6	Expedited Hearings	27282	5YR	07/02/2004	2004-15/65
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R58-20-5	Facilities	26989	AMD	05/04/2004	2004-7/3
R58-21	Trichomoniasis	26891	AMD	03/04/2004	2004-3/4
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R68-20-1	Authority	26949	AMD	04/01/2004	2004-5/2
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R70-310	Grade A Pasteurized Milk	27149	AMD	07/02/2004	2004-11/6
R70-310	Grade A Pasteurized Milk	27286	5YR	07/09/2004	2004-15/66
R70-330	Raw Milk for Retail	27069	AMD	06/02/2004	2004-9/4
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R81-1-21	Beer Advertising in Event Venues	27028	AMD	06/01/2004	2004-8/6
R81-1-22	Diplomatic Embassy Shipments and Purchases	27029	AMD	06/01/2004	2004-8/8
R81-1-23	Sales Restrictions on Products of Limited Availability	27030	AMD	06/01/2004	2004-8/10
R81-2-1	Special Orders of Liquor by Public	27031	AMD	06/01/2004	2004-8/11
R81-2-2	Liquor Returns, Refunds and Exchanges	27032	AMD	06/01/2004	2004-8/12
R81-2-7	Minors on Premises	27033	AMD	06/01/2004	2004-8/14
R81-2-8	Accepting Checks as Payment for Liquor	27034	AMD	06/01/2004	2004-8/14
R81-2-9	Accepting Credit Cards as Payment for Liquor	27035	AMD	06/01/2004	2004-8/16
R81-2-9	Accepting Credit Cards as Payment for Liquor	27201	AMD	08/02/2004	2004-12/3
R81-2-10	State Store Hours	27036	AMD	06/01/2004	2004-8/17
R81-2-11	Industry Members in State Stores	27037	AMD	06/01/2004	2004-8/18
R81-3-5	Special Orders of Liquor by Public	27038	AMD	06/01/2004	2004-8/19
R81-3-6	Liquor Returns, Refunds and Exchanges	27039	AMD	06/01/2004	2004-8/20
R81-3-14	Type 5 Package Agencies	27040	AMD	06/01/2004	2004-8/22
R81-3-16	Minors on Premises	27041	AMD	06/01/2004	2004-8/23
R81-3-17	Consignment Inventory Package Agencies	27042	AMD	06/01/2004	2004-8/24
R81-3-18	Type 4 Package Agency Room Service - Mini-Bottle/187 ml Wine Sales	27043	AMD	06/01/2004	2004-8/25
R81-3-19	Credit Cards	27044	AMD	06/01/2004	2004-8/26
R81-4D-13	On-Premise Banquet License Room Service - Mini-Bottle/187 ml Wine Sales	27045	AMD	06/01/2004	2004-8/27
R81-6-6	Religious Wine Permits	27046	AMD	06/01/2004	2004-8/29
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R152-21	Credit Services Organizations Act Rules	27238	5YR	06/15/2004	2004-13/67
R152-34	Postsecondary Proprietary School Act Rules	26905	AMD	05/20/2004	2004-4/2
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R156-1-106	Division - Duties, Functions, and Responsibilities	26805	AMD	01/20/2004	2003-24/4
R156-5a	Podiatric Physician Licensing Act Rules	26917	5YR	01/27/2004	2004-4/74
R156-17a-612	Operating Standards - Pharmaceutical Wholesaler/Distributor and Pharmaceutical Manufacturer located in Utah	26754	CPR	02/19/2004	2004-2/10
R156-17a-612	Operating Standards - Pharmaceutical Wholesaler/Distributor and Pharmaceutical Manufacturer located in Utah	26754	AMD	02/19/2004	2003-22/11
R156-22-503	Administrative Penalties	26859	NSC	01/01/2004	Not Printed
R156-26a-303b	Renewal and Reinstatement Requirements - Continuing Professional Education (CPE)	26786	AMD	01/06/2004	2003-23/7
R156-26a-303b	Renewal and Reinstatement Requirements - Continuing Professional Education (CPE)	27019	AMD	05/24/2004	2004-8/32
R156-37c	Utah Controlled Substance Precursor Act Rules	26916	5YR	01/27/2004	2004-4/74
R156-38	Residence Lien Restriction and Lien Recovery Fund Rules	26834	AMD	02/03/2004	2004-1/5
R156-38	Residence Lien Restriction and Lien Recovery Fund Rules	27020	AMD	07/26/2004	2004-8/39
R156-38	Residence Lien Restriction and Lien Recovery Fund Rules	27020	CPR	07/26/2004	2004-12/74
R156-39a	Alternative Dispute Resolution Providers Certification Act Rules	26915	5YR	01/27/2004	2004-4/75
R156-44a	Nurse Midwife Practice Act Rules	27224	5YR	06/10/2004	2004-13/67
R156-46a	Hearing Instrument Specialist Licensing Act Rules	27247	5YR	06/24/2004	2004-14/56
R156-47b	Massage Therapy Practice Act Rules	26937	AMD	06/07/2004	2004-5/5
R156-54-302b	Examination Requirements - Radiology Practical Technician	26580	CPR	01/20/2004	2003-24/70
R156-54-302b	Examination Requirements - Radiology Practical Technician	26580	AMD	01/20/2004	2003-18/4
R156-55b	Electricians Licensing Rules	27112	AMD	06/15/2004	2004-10/6
R156-56	Utah Uniform Building Standard Act Rules	26693	AMD	01/01/2004	2003-21/7
R156-56	Utah Uniform Building Standard Act Rules	26866	NSC	01/01/2004	Not Printed
R156-56-707	Statewide Amendments to the IPC	26692	AMD	01/01/2004	2003-21/34
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R156-63	Security Personnel Licensing Act Rules	26888	AMD	03/04/2004	2004-3/5
R156-68	Utah Osteopathic Medical Practice Act Rules	26956	AMD	04/15/2004	2004-6/2
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R156-74	Certified Shorthand Reporters Licensing Act Rules	26927	5YR	02/02/2004	2004-4/75
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R162-201	Residential Mortgage Definitions	27129	NEW	06/29/2004	2004-10/15
R162-202	Residential Mortgage Renewal Period	26837	AMD	02/03/2004	2004-1/10
R162-202	Initial Application	27130	AMD	06/29/2004	2004-10/15
R162-203	Changes to Residential Mortgage Registration Statement	26909	AMD	04/12/2004	2004-4/7
R162-204	Residential Mortgage Record Keeping Requirements	26908	AMD	04/12/2004	2004-4/8
R162-205	Residential Mortgage Unprofessional Conduct	26907	AMD	04/12/2004	2004-4/9
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R162-207	License Renewal	26839	NEW	02/03/2004	2004-1/13
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R162-209	Administrative Proceedings	26906	AMD	04/12/2004	2004-4/10
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R164-11-2	Hearings for Certain Exchanges of Securities	26481	CPR	01/05/2004	2003-23/83
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<u>Administration</u>					
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R277-418	School Professional Development Days Pilot Program	27203	NEW	07/16/2004	2004-12/7
R277-422	State Supported Voted Leeway	27204	AMD	07/16/2004	2004-12/8
R277-425	Budgeting, Accounting, and Auditing for Utah School Districts	26960	5YR	02/26/2004	2004-6/59
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R277-438	Dual Enrollment	27205	5YR	06/01/2004	2004-12/80
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R277-484	Data Standards, Deadlines and Procedures	26688	NSC	01/01/2004	Not Printed
R277-486	Professional Staff Cost Program	26828	NEW	01/15/2004	2003-24/5
R277-501	Educator Licensing Renewal	26980	AMD	04/15/2004	2004-6/5
R277-501	Educator Licensing Renewal	27206	AMD	07/16/2004	2004-12/10
R277-502	Educator Licensing and Data Retention	26827	AMD	01/15/2004	2003-24/6

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R277-511	Eminence or Special Qualification Authorization for Teaching in the Public Schools	27213	REP	07/16/2004	2004-12/19
R277-512	Letters of Authorization	27209	REP	07/16/2004	2004-12/20
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R277-517	Athletic Coaching Certification	26852	AMD	02/05/2004	2004-1/18
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R277-724	Criteria for Sponsors Recruiting Day Care Facilities in the Child and Adult Care Food Program	26829	NEW	01/15/2004	2003-24/11
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R277-734	Standards and Procedures for Adult Education Section 353 Funds	26963	5YR	02/26/2004	2004-6/60
R277-734	Standards and Procedures for Adult Education Section 353 Funds	27001	REP	05/05/2004	2004-7/11
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R277-916	Technology, Life, and Careers, and Work-Based Learning Programs	27212	5YR	06/01/2004	2004-12/81
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R280-201	USOR ADA Complaint Procedure	26872	5YR	01/05/2004	2004-3/43
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R307-110-12	Section IX, Control Measures for Area and Point Sources, Part C, Carbon Monoxide	26896	CPR	05/18/2004	2004-8/87
R307-110-28	Regional Haze	26946	AMD	06/08/2004	2004-5/9
R307-110-31	Section X, Vehicle Inspection and Maintenance Program, Part A, General Requirements	26898	AMD	05/18/2004	2004-3/13
R307-110-31	Section X, Vehicle Inspection and Maintenance Program, Part A, General Requirements	26898	CPR	05/18/2004	2004-8/87
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R307-214	National Emission Standards for Hazardous Air Pollutants	26939	5YR	02/09/2004	2004-5/44
R307-214	National Emission Standards for Hazardous Air Pollutants (5YR EXTENSION)	26887	NSC	02/09/2004	Not Printed
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ABBREVIATIONS

AMD = Amendment
 CPR = Change in proposed rule
 EMR = Emergency rule (120 day)
 NEW = New rule
 EXD = Expired

NSC = Nonsubstantive rule change
 REP = Repeal
 R&R = Repeal and reenact
 5YR = Five-Year Review

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