

UTAH STATE BULLETIN

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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 Declaration: Fire Emergency Declaration

FIRE EMERGENCY DECLARATION

Whereas, the danger from wildland fires is extremely high throughout the State of Utah;

Whereas, fireworks increase the risk of a wildland fire;

Whereas, the public is able to attend and enjoy professional fireworks displays in their communities;

Whereas, many of Utah's cities and counties have urban wildland interface areas that are more susceptible to the dangers of wildland fires;

Whereas, many private residences, public and private infrastructure, critical watershed, and grazing and wildlife habitat are located in the urban wildland interface areas;

Whereas, numerous wildland fires are burning and continue to burn in various areas statewide and present a serious threat to public safety, property, natural resources and the environment;

Whereas, wildland fires are very costly to federal, state, and local governments as well as private citizens; and,

Whereas, immediate action is required to suppress the fires and mitigate post-burn flash floods to protect public safety, property, natural resources and the environment;

Now, Therefore, I, Jon M. Huntsman, Jr., Governor of the State of Utah, on this 17th day of July, 2007, do hereby call for the fire restrictions, including fireworks, implemented statewide by the State Forester continue in effect on state lands, unincorporated lands, and federal lands in conjunction with federal agencies; and,

Additionally, I request that local elected officials ban private fireworks in their jurisdictions.

Jon M. Huntsman, Jr.

Governor

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 3, 2007, 12:00 a.m., and July 16, 2007, 11:59 p.m. are included in this, the August 1, 2007, 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 between paragraphs (.) indicates that unaffected text from within a section was removed to conserve space. Unaffected sections are not printed. 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 August 31, 2007. 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 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 November 29, 2007, the agency may notify the Division of Administrative Rules that it wants to make the PROPOSED RULE effective. The agency sets the effective date. The date may be no fewer than seven calendar days after the close of the public comment period nor more than 120 days after the publication date of this issue of the *Utah State Bulletin*. Alternatively, the agency may file a CHANGE IN PROPOSED RULE in response to comments received. If the Division of Administrative Rules does not receive a NOTICE OF EFFECTIVE DATE 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 Section 63-46a-4; and 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.

**Commerce, Occupational and
Professional Licensing
R156-55a
Utah Construction Trades Licensing Act
Rules**

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 30172

FILED: 07/05/2007, 12:33

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Division and the Construction Services Commission have recently reviewed this rule and are proposing amendments to update the rule to reflect changes in the construction industry and to update statutory citations throughout the rule. Also, amendments were made to Title 58, Chapter 55, in S.B. 255 passed during the 2007 Legislative Session with respect to crane operators. (DAR NOTE: S.B. 255 (2007) is found at Chapter 98, Laws of Utah 2007, and was effective 07/01/2007.)

SUMMARY OF THE RULE OR CHANGE: Throughout the rule, amendments are being proposed to change the rule from plural to singular. In Section R156-55a-102, the definition of an "employee" is changed to include working for a licensed contractor or the substantial equivalent of a licensed contractor as determined by the division. This change is needed to be in compliance with current language used in the experience requirements under Section R156-55a-302b. The definition of "incidental" has also been changed not to exceed ten percent of an overall contract. The current definition of "incidental" is vague. There is no documentation, but the understanding is that years ago through an appeal process a court defined incidental work as thirty percent. It has been determined that this is too high a percentage and ten percent is a more realistic figure. In Section R156-55a-301, changes in this section create new license classifications, eliminate some license classifications, and change existing language to various license classifications as follows: **NEW LICENSE CLASSIFICATIONS:** a) B200-Modular Unit Installation Contractor. Modular built units are very similar to manufactured housing built units that are installed by R200 Factory Built Housing Set Up contractors. Modular units, however, are required to meet local building standards and manufactured housing units are required to meet federal building standards. Modular units were being installed by R200 contractors until it was determined this work was outside the scope of their classification. A R200 contractor, with this new B200 classification, would be able to install modular units without having to meet the qualifications of a B100 General Building Contractor or a R100 Residential and Small Commercial Contractor; b) S202 Solar Photovoltaic Contractor. The previous S215 Solar Energy Systems Contractor license classification is in a subclassification of the S210 General Plumbing Contractor classification. The S202 license classification makes it clear that solar power

installation work has expanded beyond using solar energy to produce hot water. Electricity produced by solar energy used to be considered nonhazardous, but this is no longer the case.

Those currently licensed and doing this type of work, after making application, would be grandfathered into this new S202 classification; c) S222 Overhead and Garage Door Contractor. The addition of this license classifications means that those that install overhead or garage doors would no longer have to be licensed as S220 Carpentry Contractors. This is the same license classification as those that frame residential and commercial type structures; d) S600 General Stucco Contractor. Due to the problems and expense associated with the improper application of stucco, it was determined that stucco needed to be in a separate license classification. Those currently doing stucco work as S270 General Drywall, Stucco and Plastering and S271 Plastering and Stucco contractors, after making application, would be grandfathered into this new S600 classification; and e) S700 Specialty License Contractor. The S700 license classification would limit the contractor under this license classification to a specialized area of construction. Currently those who have a specialty trade often find themselves taking a test and being placed in a license category that has little to do with their trade. **LICENSE CLASSIFICATIONS ELIMINATED:** a) S271 Plastering and Stucco Contractor and S274 Drywall Contractor. These two license classifications would be combined into the S270 General Drywall and Plastering Contractor license classification. Stucco work would be handled under the new S600 General Stucco Contractor classification; and b) S281 Single Ply and Specialty Coating Contractor, S282 Build up Roofing Contractor, S283 Shingle and Shake Roofing Contractor, S284 Tile Roofing Contractor and S285 Metal Roofing Contractor. These license classifications will be combined into the S280 General Roofing Contractor classification. **LICENSE CLASSIFICATIONS CHANGES:** a) R101 Residential and Small Commercial Non Structural Remodeling and Repair. The total value of the project that could be completed under this license classification would be increased from less than \$25,000 to less than \$50,000. There has not been an increase in the value amount for more than fifteen years; b) R200 Factory Built Housing Contractor. This license classification used to be titled Factory Built Housing Set Up. Additional clarification language added to this license classification include "disconnection" and "or removal"; c) I102 General Building Trades Instructor. Subsection 58-55-102(28) is added to this license classification and refers to the R100 Residential and Small Commercial Contractor license classification. Instructors for the most part are involved in the construction of residential structures with their students. This change makes it clear that an instructor can obtain this license classification if he or she is licensed as either a general building contractor or a residential and small commercial contractor. This change reflects present practice; d) S214 Water Conditioning and Potable Water Heater Equipment Contractor. This license classification used to be titled Water Conditioning Equipment Contractor. This change in language is for clarification and reflects present practice that those with this license classification can install potable hot water heaters; e) S215 Solar Thermal Systems Contractor. This license classification is a subclassification of General Plumbing Contractor and

used to be titled Solar Energy Systems Contractor. The change in language makes it clear that this license classification only applies to solar thermal systems and not to solar photovoltaic systems; f) S221 Cabinet, Millwork and Countertop Installation Contractor. This license classification used to be titled Cabinet and Millwork Installation Contractor. The change in language means all countertops can be installed under a single license. It would no longer matter if the countertop is made of Formica, Corian, granite, terrazzo, cement or some other substance; g) S230 Siding Contractor.

This license classification used to be titled Metal and Vinyl Siding Contractor. This change in language allows for the installation of other types of siding; h) S270 General Drywall and Plastering Contractor. This license classification used to be titled General Drywall, Stucco and Plastering Contractor. Stucco has been eliminated from this license classification and a new S600 General Stucco Contractor license classification created; i) S280 General Roofing Contractor. The installation of the roof clamp ring to the roof drain would be included as incidental work. Technically the roof clamp ring is a plumbing fixture and without this change would require installation by a plumber. This work, however, is mostly done by the roofing contractor and this change merely reflects what is occurring in the construction industry; j) S290 General Masonry Contractor, S291 Stone Masonry Contractor, S292 Terrazzo Contractor, S293 Marble, Tile and Ceramic Contractor and S294 Cultured Marble Contractor. Incidental work for these classifications would include the installation of shower pans. Technically, the shower pan is a plumbing fixture and without this change would require installation by a plumber. This work, however, is mostly done by the above mentioned contractors and this change merely reflects what is occurring in the construction industry; k) S330 Landscaping Contractor. Language has been changed in this license classification to clarify pools, tanks and fountains are to be small and decorative and that incidental work, when a part of the prime contract, only applies to patio areas; l) S380 Swimming Pool and Spa Contractor. The term "prefabrication pools" has been included in the language of this license classification; and m) S420 General Fencing, Ornamental Iron and Guardrail Contractor. This license classification used to be titled General Fencing and Guardrail Contractor. Language added to this classification includes ornamental iron and handrails. This change reflects current practice. In Subsection R156-55a-302b(3), added the S220 Carpentry license classification. This would increase the work experience requirement for the S220 classification from two years to four years. Subsection R156-55a-302b(5) outlines qualifications for certain construction trades and is changed to read "Except as set forth in paragraph (6)." Paragraph (6) is a new subsection which requires a current certificate from the North American Board of Certified Energy Practitioners to be licensed as an S202 Solar Photovoltaic Contractor. In Subsection R156-55a-303a(3)(b), the word "professional" has been added to be consistent with Subsection 58-55-501(21) and to clarify the type of continuing education required. Section R156-55a-306a is seldom used and is being deleted in its entirety. Section R156-55a-306b is being renumbered to Section R156-55a-306 since Section R156-55a-306a is being deleted. In Section R156-55a-308b, the words "maintenance" and "cleaning" were added to be consistent with Subsection

58-55-308(2)(a). In Section R156-55a-311, added "or conversion" with respect to a reorganization of a contractor business entity. Section R156-55a-312 pertains to inactive licenses and was somewhat conflicting with Section R156-55a-302b with respect to a licensee's work experience requirements. Presently, the reactivation of an inactive license after two years, except in certain situations, requires the retaking of trade tests. The subsections that refer to testing have been eliminated and replaced with "No license shall be in an inactive status for more than six years" and "prior to a license being activated, a licensee shall meet the requirements of renewal." Subsection R156-55a-501(3) is added which makes it unprofessional conduct to not provide, upon request by the division, proof of insurance coverage within thirty days. Too often contractors have had insurance in place, but have not provided it to the Division until formal action has been taken and an administrative hearing has been scheduled. It is surmised this provision of the rule would rarely be used. However, it would be a useful tool in preventing this type of behavior. In Section R156-55a-503, administrative citation authority was granted by the 2007 Legislature this year, under Subsection 58-55-504(2), for crane operators that operate a crane without proper certification. This violation has been added to the fine schedule. Also, to be in compliance with the code the following language has been added under THIRD OFFENSE: "with a maximum amount not to exceed the maximum fine allowed under Subsection 58-55-503(4) (h)."

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 58-55-101, and Subsections 58-1-106(1)(a), 58-1-202(1)(a), 58-55-308(1), 58-55-102(35), and 58-55-501(21)

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: The Division will incur minimal costs of approximately \$200 to reprint the rule once the proposed changes are made effective. Any costs incurred will be absorbed in the Division's current budget. As a result of the statutory amendment regarding citation authority involving contractors, there may be a positive fiscal impact to the state budget through fines for crane operators found working without certification. Those who operate cranes without proper certification would face administrative fines of \$500 for a first offense and \$1,000 for a second offense. However, the Division is unable to determine how many citations may be issued for crane operators working without proper certification.

❖ LOCAL GOVERNMENTS: The proposed amendments do not apply to local governments; therefore, no costs or savings are anticipated. The proposed amendments only apply to licensed contractors and persons or companies applying for licensure as a contractor in Utah.

❖ OTHER PERSONS: The following comments apply to both small businesses and persons other than businesses: The Division anticipates there should be no negative impact to the public as a result of the proposed changes. With the changes made to the carpentry and roofing classifications, the public should receive a better product. With the changes made to the other license classifications, the public should also have a better understanding of the type of work that can be done by a licensed contractor. The clarification of incidental work to ten

percent of the overall contract would affect an unknown number of contractors; however, it is assumed that the vast majority of contractors are already in compliance with this rule change. Those who operate cranes without proper certification would face administrative fines as mentioned above under "State Budget", but such impact results from statutory amendments and not this rule filing. For a S220 Carpentry license classification, the work experience will increase from two years to four years. However, it is not clear to the Division how many new applicants for licensure could be affected and so it is difficult to determine an aggregate increased cost to the industry as a result of this change. Also, due to varying factors related to obtaining work experience, the Division is unable to determine a cost figure involved in obtaining the additional two years of work experience. Due to the elimination of S271 Plastering and Stucco Contractor and S274 Drywall Contractor license classifications and conversion of S270 General Drywall and Plastering Contractor and S600 General Stucco Contractor license classifications, new applicants for licensure to do plastering and stucco would pay more for licensure than those in the past that held S271 and S274 classifications as follows: 1) they will need to take tests for the S270 and S600 classifications at approximately \$79 each; and 2) if they do both plastering and stucco, they will need to obtain separate S600 and S270 license classifications which would cost an additional \$110 for the additional classification. The Division is not able to determine how many new applicants for licensure are affected by this change and so it is difficult to determine an aggregate increased cost to the industry. Due to the elimination of S281 Single Ply and Specialty Coating, S282 Build Up Roofing, S283 Shingle and Shake Roofing, S284 Tile Roofing, and S285 Metal Roofing license classifications and conversion into the S280 General Roofing Contractor license classification, new applicants for licensure to do roofing work would have to have four years of experience, as opposed to two years for the eliminated classifications, and take an examination at the cost of approximately \$79. The examination was not required for the S281, S282, S284, and S285 classifications. The Division is unable to determine how many new applicants for licensure are affected by this change and so it is difficult to determine an aggregate increased cost to the industry. Also, due to varying factors related to obtaining work experience, the Division is unable to determine a cost figure involved in obtaining the additional two years of work experience. To become licensed as a S202 Solar Photovoltaic Contractor, current certification from the North American Board of Certified Energy Practitioners is required. The cost to make application and take the examination required for certification is currently \$300. The Division is unable to determine how many new applicants for licensure are affected by this change and so it is difficult to determine an aggregate increased cost to the industry for this license classification.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Those who operate cranes without proper certification would face administrative fine as mentioned above under "State Budget", but such impact results from statutory amendments and not this rule filing. For a S220 Carpentry license classification, the

work experience will increase from two years to four years. Due to varying factors related to obtaining work experience, the Division is unable to determine a cost figure involved in obtaining the additional two years of work experience. Due to the elimination of S271 Plastering and Stucco Contractor and S274 Drywall Contractor license classifications and conversion of S270 General Drywall and Plastering Contractor and S600 General Stucco Contractor license classifications, new applicants for licensure to do plastering and stucco would pay more for licensure than those in the past that held S271 and S274 classifications as follows: 1) they will need to take tests for the S270 and S600 classifications at approximately \$79 each; and 2) if they do both plastering and stucco, they will need to obtain separate S600 and S270 license classifications which would cost an additional \$110 for the additional classification. Due to the elimination of S281 Single Ply and Specialty Coating, S282 Build Up Roofing, S283 Shingle and Shake Roofing, S284 Tile Roofing and S285 Metal Roofing license classifications and conversion into the S280 General Roofing Contractor license classification, new applicants for licensure to do roofing work would have to have four years of experience, as opposed to two years for the eliminated classifications, and take an examination at the cost of approximately \$79. The examination was not required for the S281, S282, S284 and S285 classifications. Due to varying factors related to obtaining work experience, the Division is unable to determine a cost figure involved in obtaining the additional two years of work experience for a S280 classification. To become licensed as a S202 Solar Photovoltaic Contractor, current certification from the North American Board of Certified Energy Practitioners is required. The cost to make application and take the examination required for certification is currently \$300.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule filing includes amendments intended to update the rule to the current construction industry standards and to clarify existing procedures. The changes in contractor licensing classifications are not expected to create any costs to current licensees, because transition clauses have been provided. It is not clear how many future applicants might be affected by these classification changes that might require more experience or testing that was not required for license applicants in the past, so it is difficult to determine any costs to the industry. It is expected that both the public and the industry will benefit from the clarifying amendments, but the amount of the benefit is difficult to ascertain. No further fiscal impact to businesses is anticipated beyond those addressed in this rule filing. Francine A. Giani, Executive Director

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

COMMERCE
 OCCUPATIONAL AND PROFESSIONAL LICENSING
 HEBER M WELLS BLDG
 160 E 300 S
 SALT LAKE CITY UT 84111-2316, or
 at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Dennis Meservy at the above address, by phone at 801-530-6375, by FAX at 801-530-6511, or by Internet E-mail at dmeservy@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 08/31/2007

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE: 8/29/2007 at 9:00 AM, Heber Wells Bldg, 160 E 300 S, Conference Room 474 (fourth floor), Salt Lake City, UT.

THIS RULE MAY BECOME EFFECTIVE ON: 09/07/2007

AUTHORIZED BY: F. David Stanley, Director

**R156. Commerce, Occupational and Professional Licensing.
R156-55a. Utah Construction Trades Licensing Act Rule[s].
R156-55a-101. Title.**

Th[ese]is rule[s] shall be known as the "Utah Construction Trades Licensing Act Rule[s]".

R156-55a-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 55, as defined or used in th[ese]is rule[s]:

(1) "Employee", as used in Subsections 58-55-102([40]12)(a) and 58-55-102([42]14), means a person providing labor services in the construction trades who works for a licensed contractor, or the substantial equivalent of a licensed contractor as determined by the division, for compensation who has federal and state taxes withheld and workers' compensation and unemployment insurance provided by the person's employer.

(2) "Incidental[~~to the performance of his licensed craft or trade~~]", as used in Subsection 58-55-102([32]35), means work which:

(a) can be safely and competently performed by the specialty contractor; and

(b) arises from and is directly related to work performed in the licensed specialty classification[;] and does not exceed 10 percent of the overall contract.

~~(c) is substantially less in scope and magnitude when compared to the work performed or to be performed by the specialty contractor in the licensed specialty classification.~~

(3) "Maintenance" means the repair, replacement and refinishing of any component of an existing structure; but, does not include alteration or modification to the existing weight-bearing structural components.

(4) "Mechanical", as used in Subsections 58-55-102([45]18) and 58-55-102([25]28), means the work which may be performed by a S350 HVAC Contractor under S[ub]section R156-55a-301([3]).

(5) "Personal property" means, as it relates to Title 58, Chapter 56, factory built housing and modular construction, a structure which is titled by the Motor Vehicles Division, state of Utah, and taxed as personal property.

(6) "School" means a Utah school district, applied technology college, or accredited college.

(7) "Unprofessional conduct" defined in Title 58, Chapters 1 and 55, is further defined in accordance with S[ub]section 58-1-203([5]) in Section R156-55a-501.

R156-55a-103. Authority.

Th[ese]is rule[s-are] is adopted by the division under the authority of Subsection 58-1-106(1)(a) to enable the division to administer Title 58, Chapter 55.

R156-55a-301. License Classifications - Scope of Practice.

(1) In accordance with Subsection 58-55-301(2), the classifications of licensure are listed and described in this section. The construction trades or specialty contractor classifications listed are those determined to significantly impact the public health, safety, and welfare. A person who is practicing a construction trade or specialty contractor classification which is not listed is exempt from licensure in accordance with Subsection 58-55-305([9]1)(i).

(2) Licenses shall be issued in the following primary classifications and subclassifications:

E100 - General Engineering Contractor. A General Engineering contractor is a contractor licensed to perform work as defined in Subsection 58-55-102(19).

B100 - General Building Contractor. A General Building contractor is a contractor licensed to perform work as defined in Subsection 58-55-102(18).

B200 - Modular Unit Installation Contractor. Set up or installation of modular units as defined in Subsection 58-56-3(11) and constructed in accordance with Section 58-56-13. The scope of the work permitted under this classification includes construction of the permanent or temporary foundations, placement of the modular unit on a permanent or temporary foundation, securing the units together if required and securing the modular units to the foundations. Work excluded from this classification includes installation of factory built housing and connection of required utilities.

R100 - Residential and Small Commercial Contractor. A Residential and Small Commercial contractor is a contractor licensed to perform work as defined in Subsection 58-55-102(28).

R101 - Residential and Small Commercial Non Structural Remodeling and Repair. Remodeling and repair to any existing structure built for support, shelter and enclosure of persons, animals, chattels or movable property of any kind with the restriction that no change is made to the bearing portions of the existing structure, including footings, foundation and weight bearing walls; and the entire project is less than \$[25,000]50,000 in total cost.

R200 - Factory Built Housing [Set Up]Contractor. [Set up]Disconnection, setup, [or]installation or removal of manufactured housing on a temporary or permanent basis. The scope of the work permitted under this classification includes placement of the manufactured housing on a permanent or temporary foundation, securing the units together if required, securing the manufactured housing to the foundation, and connection of the utilities from the near proximity, such as a meter, to the manufactured housing unit and construction of foundations of less than four feet six inches in height. Work excluded from this classification includes site preparation or finishing, excavation of the ground in the area where a foundation is to be constructed, back filling and grading around the foundation, construction of foundations of more than four feet six inches in height and construction of utility services from the utility source to and

including the meter or meters if required or if not required to the near proximity of the manufactured housing unit from which they are connected to the unit.

I101 - General Engineering Trades Instructor. A General Engineering Trades Instructor is a construction trades instructor authorized to teach the construction trades and is subject to the scope of practice defined in Subsection 58-55-102(19).

I102 - General Building Trades Instructor. A General Building Trades Instructor is a construction trades instructor authorized to teach the construction trades and is subject to the scope of practice defined in Subsections 58-55-102(18) or 58-55-102(28).

I103 - Electrical Trades Instructor. An Electrical Trades Instructor is a construction trades instructor authorized to teach the electrical trades and subject to the scope of practice defined in Subsection R156-55a-301(S200).

I104 - Plumbing Trades Instructor. A Plumbing Trades Instructor is a construction trades instructor authorized to teach the plumbing trades and subject to the scope of practice defined in Subsection R156-55a-301(S210).

I105 - Mechanical Trades Instructor. A Mechanical Trades Instructor is a construction trades instructor authorized to teach the mechanical trades and subject to the scope of practice defined in Subsection R156-55a-301(S350).

S200 - General Electrical Contractor. Fabrication, construction, and/or installation of generators, transformers, conduits, raceways, panels, switch gear, electrical wires, fixtures, appliances, or apparatus which utilizes electrical energy.

S201 - Residential Electrical Contractor. Fabrication, construction, and/or installation of services, disconnecting means, grounding devices, panels, conductors, load centers, lighting and plug circuits, appliances and fixtures in any residential unit, normally requiring non-metallic sheathed cable, including multiple units up to and including a four-plex, but excluding any work generally recognized in the industry as commercial or industrial.

S202 - Solar Photovoltaic Contractor. Fabrication, construction, installation, and repair of photovoltaic cell panels and related components including battery storage systems, distribution panels, switch gear, electrical wires, inverters, and other electrical apparatus for solar photovoltaic systems. Work excluded from this classification includes work on any alternating current system or system component.

S210 - General Plumbing Contractor. Fabrication and/or installation of material and fixtures to create and maintain sanitary conditions in buildings, by providing a permanent means for a supply of safe and pure water, a means for the timely and complete removal from the premises of all used or contaminated water, fluid and semi-fluid organic wastes and other impurities incidental to life and the occupation of such premises, and provision of a safe and adequate supply of gases for lighting, heating, and industrial purposes. Work permitted under this classification shall include the furnishing of materials, fixtures and labor to extend service from a building out to the main water, sewer or gas pipeline.

S211 - Boiler Installation Contractor. Fabrication and/or installation of fire-tube and water-tube power boilers and hot water heating boilers, including all fittings and piping, valves, gauges, pumps, radiators, converters, fuel oil tanks, fuel lines, chimney flues, heat insulation and all other devices, apparatus, and equipment related thereto.

S212 - Irrigation Sprinkling Contractor. Layout, fabrication, and/or installation of water distribution system for artificial watering or irrigation.

S213 - Industrial Piping Contractor. Fabrication and/or installation of pipes and piping for the conveyance or transmission of steam, gases, chemicals, and other substances including excavating, trenching, and back-filling related to such work.

S214 - Water Conditioning and Potable Water Heater Equipment Contractor. [Fabrication and/or i]Installation of water conditioning equipment, potable water heaters, and all piping and venting directly associated with the installation of the equipment[and only such pipe and fittings as are necessary for connecting the water conditioning equipment to the water supply system within the premises].

S215 - Solar [Energy]Thermal Systems Contractor. [Fabrication and/or]Construction, repair and/or installation of solar [energy]thermal systems up to the system shut off valve or where the system interfaces with any other plumbing system.

S216 - Residential Sewer Connection and Septic Tank Contractor. Construction of residential sewer lines including connection to the public sewer line, and excavation and grading related thereto. Excavation, installation and grading of residential septic tanks and their drainage.

S217 - Residential Plumbing Contractor. Fabrication and/or installation of material and fixtures to create and maintain sanitary conditions in residential building, including multiple units up to and including a four-plex by providing a permanent means for a supply of safe and pure water, a means for the timely and complete removal from the premises of all used or contaminated water, fluid and semi-fluid organic wastes and other impurities incidental to life and the occupation of such premises, and provision of a safe and adequate supply of gases for lighting and heating purposes. Work permitted under this classification shall include the furnishing of materials, fixtures and labor to extend service from a residential building out to the main water, sewer or gas pipeline. Excluded is any new construction and service work generally recognized in the industry as commercial or industrial.

S220 - Carpentry Contractor. Fabrication for structural and finish purposes in a structure or building using wood, wood products, metal studs, vinyl materials, or other wood/plastic/metal composites as is by custom and usage accepted in the building industry as carpentry.

S221 - Cabinet, ~~and~~ Millwork and Countertop Installation Contractor. On-site construction and/or installation of milled wood products or countertops.

S222 - Overhead and Garage Door Contractor. The installation of overhead and garage doors and door openers.

S230 - [Metal and Vinyl]Siding Contractor. Fabrication, construction, and/or installation of [wood, aluminum, steel or vinyl]siding[s].

S231 - Raingutter Installation Contractor. On-site fabrication and/or installation of raingutters and drains, roof flashings, gravel stops and metal ridges.

S240 - Glass and Glazing Contractor. Fabrication, construction, installation, and/or removal of all types and sizes of glass, mirrors, substitutes for glass, glass-holding members, frames, hardware, and other incidental related work.

S250 - Insulation Contractor. Installation of any insulating media in buildings and structures for the sole purpose of temperature control, sound control or fireproofing, but shall not include mechanical insulation of pipes, ducts or conduits.

S260 - General Concrete Contractor. Fabrication, construction, mixing, batching, and/or installation of concrete and related concrete products along with the placing and setting of screeds for pavement

for flatwork, the construction of forms, placing and erection of steel bars for reinforcing and application of plaster and other cement-related products.

S261 - Concrete Form Setting and Shoring Contractor. Fabrication, construction, and/or installation of forms and shoring material; but, does not include the placement of concrete, finishing of concrete or embedded items such as metal reinforcement bars or mesh.

S262 - Guniting and Pressure Grouting Contractor. Installation of a concrete product either injected or sprayed under pressure.

S263 - Cementitious Coating Systems Resurfacing and Sealing Contractor. Fabrication, construction, mixing, batching and installation of cementitious coating systems or sealants limited to the resurfacing or sealing of existing surfaces, including the preparation or patching of the surface to be covered or sealed.

S270 - General Drywall~~[Stucco]~~ and Plastering Contractor. Fabrication, construction, and~~for~~ installation of drywall, gypsum, wallboard panels and assemblies. Preparation of drywall~~[stucco]~~ or plaster surfaces for suitable painting or finishing.~~[Installation of light weight metal, non-bearing wall partitions, ceiling grid systems, and ceiling tile or panel systems.]~~Application to surfaces of coatings made of plaster, including the preparation of the surface and the provision of a base. This does not include applying stucco to lathe, plaster and other surfaces. Exempted is the plastering of foundations.

~~S271 - Plastering and Stucco Contractor. Application to surfaces of coatings made of stucco or plaster, including the preparation of the surface and the provision of a base. Exempted is the plastering of foundations.]~~

S272 - Ceiling Grid Systems, Ceiling Tile and Panel Systems Contractor. Fabrication and/or installation of wood, mineral, fiber, and other types of ceiling tile and panels and the grid systems required for placement.

S273 - Light-weight Metal and Non-bearing Wall Partitions Contractor. Fabrication and/or installation of light-weight metal and other non-bearing wall partitions.

~~S274 - Drywall Contractor. Fabrication, construction and installation of drywall, gypsum, wallboard panels and assemblies. Preparation of surfaces for suitable painting or finishing. Installation of lightweight metal, non-bearing wall partitions.]~~

S280 - General Roofing Contractor. Application and/or installation of asphalt, pitch, tar, felt, flax, shakes, shingles, roof tile, slate, and any other material or materials, or any combination of any thereof which use and custom has established as usable for, or which are now used as, water-proof, weatherproof, or watertight seal or membranes for roofs and surfaces; and roof conversion. Incidental work includes the installation of roof clamp ring to the roof drain.

~~S281 - Single Ply and Specialty Coating Contractor. Application of solutions of rubber, latex, or other materials or single ply material to surfaces to prevent, hold, keep, and stop water, other liquids, derivatives, compounds, and solids from penetrating and passing such materials thereby gaining access to material or space beyond such waterproofing.~~

~~S282 - Build-up Roofing Contractor. Application of solutions of rubber, latex, asphalt, pitch, tar, or other materials in conjunction with the application of layers, felt, or other material to a roof or other surface.~~

~~S283 - Shingle and Shake Roofing Contractor. Application of shingles and shakes made of wood or any other material.~~

~~S284 - Tile Roofing Contractor. Application or installation of tile roofs including under layment material and sealing and~~

~~reinforcement of weight bearing roof structures for the purpose of supporting the weight of the tile.~~

~~S285 - Metal Roofing Contractor. On-site fabrication and/or application of metal roofing materials.]~~

S290 - General Masonry Contractor. Construction by cutting, and/or laying of all of the following brick, block, or forms: architectural, industrial, and refractory brick, all brick substitutes, clay and concrete blocks, terra-cotta, thin set or structural quarry tile, glazed structural tile, gypsum tile, glass block, clay tile, copings, natural stone, plastic refractories, and castables and any incidental works, including the installation of shower pans, as required in construction of the masonry work.

S291 - Stone Masonry Contractor. Construction using natural or artificial stone, either rough or cut and dressed, laid at random, with or without mortar. Incidental work includes the installation of shower pans.

S292 - Terrazzo Contractor. Construction by fabrication, grinding, and polishing of terrazzo by the setting of chips of marble, stone, or other material in an irregular pattern with the use of cement, polyester, epoxy or other common binders. Incidental work includes the installation of shower pans.

S293 - Marble, Tile and Ceramic Contractor. Preparation, fabrication, construction, and installation of artificial marble, burned clay tile, ceramic, encaustic, falence, quarry, semi-vitreous, and other tile, excluding hollow or structural partition tile. Incidental work includes the installation of shower pans.

S294 - Cultured Marble Contractor. Preparation, fabrication and installation of slab and sheet manmade synthetic products including cultured marble, onyx, granite, onice, corian, and corian type products. Incidental work includes the installation of shower pans.

S300 - General Painting Contractor. Preparation of surface and/or the application of all paints, varnishes, shellacs, stains, waxes and other coatings or pigments.

S310 - Excavation and Grading Contractor. Moving of the earth's surface or placing earthen materials on the earth's surface, by use of hand or power machinery and tools, including explosives, in any operation of cut, fill, excavation, grading, trenching, backfilling, or combination thereof as they are generally practiced in the construction trade.

S320 - Steel Erection Contractor. Construction by fabrication, placing, and tying or welding of steel reinforcing bars or erecting structural steel shapes, plates of any profile, perimeter or cross-section that are used to reinforce concrete or as structural members, including riveting, welding, and rigging.

S321 - Steel Reinforcing Contractor. Fabricating, placing, tying, or mechanically welding of reinforcing bars of any profile that are used to reinforce concrete buildings or structures.

S322 - Metal Building Erection Contractor. Erection of pre-fabricated metal structures including concrete foundation and footings, grading, and surface preparation.

S323 - Structural Stud Erection Contractor. Fabrication and installation of metal structural studs and bearing walls.

S330 - Landscaping Contractor. Grading and preparing land for architectural, horticultural, and the decorative treatment, arrangement, and planting of~~[f]~~ gardens, lawns, shrubs, vines, bushes, trees, and other decorative vegetation. Construction of small decorative pools, tanks, and fountains,~~[hot and green houses]~~Hothouses and greenhouses, retaining walls, ~~[patio areas when they are an incidental part of the prime contract,]~~fences,

walks, garden lighting of 50 volts or less, and sprinkler systems. Patio areas when they are an incidental part of the prime contract.

S340 - Sheet Metal Contractor. Layout, fabrication, and installation of air handling and ventilating systems. All architectural sheet metal such as cornices, marquees, metal soffits, gutters, flashings, and skylights and skydomes including both plastic and fiberglass.

S350 - HVAC Contractor. Fabrication and installation of complete warm air heating and air conditioning systems, and complete ventilating systems.

S351 - Refrigerated Air Conditioning Contractor. Fabrication and installation of air conditioning ventilating systems to control air temperatures below 50 degrees.

S352 - Evaporative Cooling Contractor. Fabrication and installation of devices, machinery, and units to cool the air temperature employing evaporation of liquid.

S353 - Warm Air Heating Contractor. Layout, fabrication, and installation of such sheet metal, gas piping, and furnace equipment as necessary for a complete warm air heating and ventilating system.

S360 - Refrigeration Contractor. Construction and/or installation of refrigeration equipment including, but not limited to, built-in refrigerators, refrigerated rooms, insulated refrigerated spaces and equipment related thereto; but, the scope of permitted work does not include the installation of gas fuel or electric power services other than connection of electrical devices to a junction box provided for that device and electrical control circuitry not exceeding 50 volts.

S370 - Fire Suppression Systems Contractor. Layout, fabrication, and installation of fire protection systems using water, steam, gas, or chemicals. When a potable sanitary water supply system is used as the source of supply, connection to the water system must be accomplished by a licensed journeyman plumber. Excluded from this classification are persons engaged in the installation of fire suppression systems in hoods above cooking appliances.

S380 - Swimming Pool and Spa Contractor. On-site fabrication, construction and installation of swimming pools, prefabricated pools, spas, and tubs.

S390 - Sewer and Waste Water Pipeline Contractor. Construction of sewer lines, sewage disposal and sewage drain facilities including excavation and grading with respect thereto, and the construction of sewage disposal plants and appurtenances thereto.

S400 - Asphalt Paving Contractor. Construction of asphalt highways, roadways, driveways, parking lots or other asphalt surfaces, which will include but will not be limited to, asphalt overlay, chip seal, fog seal and rejuvenation, micro surfacing, plant mix sealcoat, slurry seal, and the removal of asphalt surfaces by milling. Also included is the excavation, grading, compacting and laying of fill or base-related thereto.

S410 - Pipeline and Conduit Contractor. Fabrication, construction, and installation of pipes, conduit or cables for the conveyance and transmission from one station to another of such products as water, steam, gases, chemicals, slurries, data or communications. Included are the excavation, cabling, horizontal boring, grading, and backfilling necessary for construction of the system.

S420 - General Fencing, Ornamental Iron and Guardrail Contractor. Fabrication, construction, and installation of fences, guardrails, handrails, and barriers.

S421 - Residential Fencing Contractor. Fabrication and installation of residential fencing up to and including a height of six feet.

S430 - Metal Firebox and Fuel Burning Stove Installer. Fabrication, construction, and installation of metal fireboxes, fireplaces, and wood or coal-burning stoves.

S440 - Sign Installation Contractor. Installation of signs and graphic displays which require installation permits or permission as issued by state or local governmental jurisdictions. Signs and graphic displays shall include signs of all types, both lighted and unlighted, permanent highway marker signs, illuminated awnings, electronic message centers, sculptures or graphic representations including logos and trademarks intended to identify or advertise the user or his product, building trim or lighting with neon or decorative fixtures, or any other animated, moving or stationary device used for advertising or identification purposes. Signs and graphic displays must be fabricated, installed and erected in accordance with professionally engineered specifications and wiring in accordance with the National Electrical Code.

S441 - Non Electrical Outdoor Advertising Sign Contractor. Installation of signs and graphic displays which require installation permits or permission as issued by state and local governmental jurisdictions. Signs and graphics shall include outdoor advertising signs which do not have electrical lighting or other electrical requirements, and in accordance with professionally engineered specifications.

S450 - Mechanical Insulation Contractor. Fabrication, application and installation of insulation materials to pipes, ducts and conduits.

S460 - Wrecking and Demolition Contractor. The raising, cribbing, underpinning, moving, and removal of building and structures so that alterations, additions, repairs, and new sub-structures may be built.

S470 - Petroleum Systems Contractor. Installation of above and below ground petroleum and petro-chemical storage tanks, piping, dispensing equipment, monitoring equipment and associated petroleum and petro-chemical equipment including excavation, backfilling, concrete and asphalt.

S480 - Piers and Foundations Contractor. The excavation, drilling, compacting, pumping, sealing and other work necessary to construct, alter or repair piers, piles, footings and foundations placed in the earth's subsurface to prevent structural settling and to provide an adequate capacity to sustain or transmit the structural load to the soil or rock below.

S490 - Wood Flooring Contractor. Installation of wood flooring including prefinished and unfinished material, sanding, staining and finishing of new and existing wood flooring. Underlayments, non-structural subfloors and other incidental related work.

S491 - Laminate Floor Installation Contractor. Installation of laminate floors including underlayments, non-structural subfloors and other incidental related work, but does not include the installation of solid wood flooring.

S500 - Sports and Athletic Courts, Running Tracks, and Playground Installation Contractor. Installation of sports and athletic courts including but not limited to tennis courts, racquetball courts, handball courts, basketball courts, running tracks, playgrounds, or any combination. Includes nonstructural floor subsurfaces, nonstructural wall surfaces, perimeter walls and perimeter fencing.

S600 - General Stucco Contractor. Applying stucco to lathe, plaster and other surfaces.

S700 - Specialty License Contractor.

(a) A specialty license is a license that confines the scope of the allowable contracting work to a specialized area of construction which the division grants on a case-by-case basis.

(b) When applying for a specialty license, an applicant, if requested, shall submit to the division the following:

(i) a detailed statement of the type and scope of contracting work that the applicant proposes to perform; and

(ii) any brochures, catalogs, photographs, diagrams, or other material to further clarify the scope of the work that the applicant proposes to perform.

(c) A contractor issued a specialty license shall confine the contractor's activities to the field and scope of operations as outlined by the division.

(3)(a) Any person holding a S215 Solar Systems Contractor license before the effective date of this rule may obtain a S202 Solar Photovoltaic Contractor license by submitting an affidavit demonstrating two years of experience that meets the requirements of R156-55a-302b no later than March 31, 2010.

(b) Any person holding a S271 Plastering and Stucco Contractor license before the effective ate of this rule shall be issued a S270 General Drywall and Plastering Contractor license.

(c) Any person holding a S274 Drywall Contractor license before the effective ate of this rule shall be issued a S270 General Drywall and Plastering Contractor license.

(d) Any person holding a S271 Plastering and Stucco Contractor license or an S270 General Drywall, Stucco and Plastering Contractor license before the effective date of this rule may obtain a S600 General Stucco Contractor license by submitting an affidavit demonstrating two years of experience that meets the requirements of R156-55a-302b no later than March 31, 2010.

(e) Any person holding any of the following licenses before the effective date of this rule shall be issued a S280 General Roofing Contractor license:

(i) S281 Single Ply and Specialty Coating Contractor;

(ii) S282 Build-up Roofing Contractor;

(iii) S283 Shingle and Shake Roofing Contractor;

(iv) S284 Tile Roofing Contractor; and

(v) S285 Metal Roofing Contractor.

R156-55a-302b. Qualifications for Licensure - Experience Requirements.

In accordance with Subsection 58-55-302(1)(e)(ii), the minimum experience requirements are established as follows:

(1) Requirements for all license classifications:

(a) All experience shall be directly supervised by the applicant's employer.

(b) All experience shall be directly related to the scope of practice set forth in Section R156-55a-301 of the classification the applicant is applying for, as determined by the Division.

(c) One year of work experience means 2000 hours.

(d) No more than 2000 hours of experience during any 12 month period may be claimed.

(e) Except as described in paragraph (2)(c), experience obtained under the supervision of a construction trades instructor as a part of an educational program is not qualifying experience for a contractors license.

(2) Requirements for E100 General Engineering, B100 General Building, R100 Residential and Small Commercial Building license classifications:

(a) In addition to the requirements of paragraph (1), an applicant for an R100, B100 or E100 license shall have within the past 10 years a minimum of four years experience as an employee of a contractor licensed in the license classification applied for, or the substantial equivalent of a contractor licensed in that license classification as determined by the Division.

(b) Two of the required four years of experience shall be in a supervisory or managerial position.

(c) A person holding a four year bachelors degree or a two year associates degree in Construction Management may have one year of experience credited towards the supervisory or managerial experience requirement.

(3) Requirements for S220 Carpentry, S280 General Roofing, S290 General Masonry, S320 Steel Erection, S350 Heating Ventilating and Air Conditioning, S360 Refrigeration and S370 Fire Suppression Systems license classifications:

In addition to the requirements of paragraph (1), an applicant shall have within the past 10 years a minimum of four years of experience as an employee of a contractor licensed in the license classification applied for, or the substantial equivalent of a contractor licensed in that license classification as determined by the Division.

(4) Requirements for I101 General Engineering Trades Instructor, I102 General Building Trades Instructor, I103 Electrical Trades Instructor, I104 Plumbing Trades Instructor, I105 Mechanical Trades Instructor license classifications:

An applicant for construction trades instructor license shall have the same experience that is required for the license classifications for the construction trade they will instruct.

(5) Requirements for other license classifications:

~~[4]~~ Except as set forth in paragraph (6), in addition to the requirements of paragraph (1), an applicant for contractor license classification not listed above shall have within the past 10 years a minimum of two years of experience as an employee of a contractor licensed in the license classification applied for, or the substantial equivalent of a contractor licensed in that license classification as determined by the Division.

(6) Requirements for S202 Solar Photovoltaic Contractor. In addition to the requirements of paragraphs (1) and (5), an applicant shall hold a current certificate by the North American Board of Certified Energy Practitioners.

R156-55a-303a. Renewal Cycle - Procedures.

(1) In accordance with Subsection 58-1-308(1), the renewal date for the two year renewal cycle applicable to licensees under Title 58, Chapter 55 is established by rule in Section R156-1-308a.

(2) Renewal procedures shall be in accordance with Section R156-1-308a.

(3) In accordance with Subsections 58-55-501(21) and 58-1-308(3)(b)(i), there is established a continuing education requirement for license renewal. Each licensee, or the licensee's qualifier, or an officer, director or supervising individual, as designated by the licensee, shall comply with the following continuing education requirements:

(a) complete three hours of core continuing education; and

(b) an additional three hours of professional continuing education.

~~[R156-55a-306a. Financial Responsibility—Questionnaire and Aggregate Bonding Limit.~~

~~—In accordance with Section 58-55-306, the following shall apply:~~

~~—(1) An applicant may demonstrate financial responsibility by either submitting the questionnaire or by submitting proof of an aggregate bonding limit in a form acceptable to the division.~~

~~—(2) Under no circumstances shall the aggregate bonding limit be less than \$25,000.]~~

R156-55a-306[b]. Financial Responsibility - Division Audit - Financial Statements.

In accordance with Section 58-55-306, the following shall apply:

(1) All financial statements shall cover a period of time ending no earlier than the last tax year.

(2) Financial statements prepared by an independent certified public accountant (CPA) shall be "audited", "reviewed", or "compiled" financial statements prepared in accordance with generally accepted accounting principles and shall include the CPA's report stating that the statements have been audited, reviewed or compiled.

(3) Division reviewed financial statements shall be submitted in a form acceptable to the division and shall include the following:

- (a) the balance sheet;
- (b) all schedules;
- (c) a complete copy of the applicant's most recently filed federal income tax return;
- (d) a copy of the applicant's bank or broker account statements; and
- (e) an acceptable credit report for the applicant.

(4) An acceptable credit report is:

- (a) dated within 30 days prior to the date the application is received by the division;
- (b) free from erasures, alterations, modifications, omissions, or any other form of change which alters the full and complete information provided by the credit reporting agency;
- (c) a report from:
 - (i) Trans Union, Experian, and Equifax national credit reporting agencies; or
 - (ii) National Association of Credit Managers (NACM); or
 - (iii) another local credit reporting agency that includes a report for each of the three national credit reporting agencies names in Subsection (i) above.

R156-55a-308b. Natural Gas Technician Certification.

(1) In accordance with Subsection 58-55-308(1), the scope of practice defined in Subsection 58-55-308(2)(a) requiring certification is further defined as the installation, modifications, maintenance, cleaning, repair or replacement of the gas piping, combustion air vents, exhaust venting system or derating of gas input for altitude of a residential or commercial gas appliance.

(2) An approved training program shall include the following course content:

- (a) general gas appliance installation codes;
- (b) venting requirements;
- (c) combustion air requirements;
- (d) gas line sizing codes;
- (e) gas line approved materials requirements;
- (f) gas line installation codes; and
- (g) methods of derating gas appliances for elevation.

(3) In accordance with Subsection 58-55-308(2)(c)(i), the following programs are approved to provide natural gas technician training, and to issue certificates or documentation of exemption from certification:

- (a) Federal Bureau of Apprenticeship Training;
- (b) Utah college apprenticeship program; and
- (c) Trade union apprenticeship program.

(4) In accordance with Subsection 58-55-308~~(2)(e)~~(3), the approved programs set forth in paragraphs (2)(b) and (2)(c) herein shall require program participants to pass the Rocky Mountain Gas Association Gas Appliance Installers Certification Exam or approved equivalent exams established or adopted by a training program, with a minimum passing score of 80%.

(5) In accordance with Subsection 58-55-308~~(2)(e)~~(3), a person who has not completed an approved training program, but has passed the Rocky Mountain Gas Association Gas Exam or approved equivalent exam established or adopted by an approved training program, with a minimum passing score of 80%, or the Utah licensed Journeyman or Residential Journeyman Plumber Exam, with a minimum passing score of 70%, shall be exempt from the certification requirement set forth in Subsection 58-55-308(2)(c)(i).

(6) Content of certificates of completion. An approved program shall issue a certificate, including a wallet certificate, to persons who successfully complete their training program containing the following information:

- (a) name of the program provider;
- (b) name of the approved program;
- (c) name of the certificate holder;
- (d) the date the certification was completed; and
- (e) signature of an authorized representative of the program provider.

(7) Documentation of exemption from certification. The following shall constitute documentation of exemption from certification:

- (a) certification of completion of training issued by the Federal Bureau of Apprenticeship Training;
- (b) current Utah licensed Journeyman or Residential Journeyman plumber license; or
- (c) certification from the Rocky Mountain Gas Association or approved equivalent exam which shall include the following:
 - (i) name of the association, school, union, or other organization who administered the exam;
 - (ii) name of the person who passed the exam;
 - (iii) name of the exam;
 - (iv) the date the exam was passed; and
 - (v) signature of an authorized representative of the test administrator.

(8) Each person engaged in the scope of practice defined in Subsection 58-55-308(2)(a) and as further defined in Subsection (1) herein, shall carry in their possession documentation of certification or exemption.

R156-55a-311. Reorganization of Contractor Business Entity.

A reorganization of the business organization or entity under which a licensed contractor is licensed shall require application for a new license under the new form of organization or business structure. The creation of a new legal entity or conversion constitutes a reorganization and includes a change to a new entity under the same form of business entity or a change of the form of business entity between proprietorship, partnership, whether limited or general, joint venture, corporation or any other business form.

R156-55a-312. Inactive License.

(1) The requirements for inactive licensure specified in Subsection R156-1-305(3) shall also include certification that the licensee will not engage in the construction trade(s) for which his license was issued while his license is on inactive status except to identify himself as an inactive licensee.

(2) A license on inactive status will not be required to meet the requirements of licensure in Subsections 58-55-302(1)(e)(i), 58-55-302(2)(a) and 58-55-302(2)(b).

(3) The requirements for reactivation of an inactive license specified in Subsection R156-1-305(6) shall also include:

(a) documentation that the licensee meets the requirements of Subsections 58-55-302(1)(e)(i), 58-55-302(2)(a) and 58-55-302(2)(b); and

(b) documentation that the licensee has taken and passed the business and law examination and the trade examination for the classification for which activation is sought except that the following exceptions shall apply to the reactivation examination requirement:

(i) ~~[No qualifying examinations will be required if the licensee applies for reactivation of his license within two years after being placed on inactive status.]~~ No license shall be in an inactive status for more than six years.

(ii) Prior to a license being activated, a licensee shall meet the requirements of renewal. ~~[No qualifying examinations will be required if the licensee has been actively and lawfully involved in the construction trades as an employee of another licensed contractor or has been actively and lawfully involved in the construction trades in another state during the time the license was inactive.~~

~~— (iii) If the licensee applies for reactivation after two years but before four years after being placed on inactive status, the division may waive the qualifying examinations if the licensee presents adequate support that he has maintained the knowledge and skills tested in the business and law examination and the trade examination in the classification for which reactivation of licensure is sought.~~

~~— (iv) If the licensee applies for reactivation four years or more after being placed on inactive status, the division may waive the trade examination in the classification for which reactivation of licensure is sought, if the licensee presents adequate support that he has maintained the knowledge and skills tested in the trade examination.]~~

R156-55a-401. Minimum Penalty for Failure to Maintain Insurance.

(1) A minimum penalty is hereby established for the violation of Subsection R156-55a-501(2) as follows:

(a) For a violation the duration of which is less than 90 days, where the licensee at the time a penalty is imposed documents that the required liability and workers compensation insurance have been reacquired, and provided an insurable loss has not occurred while not insured, a minimum of a 30 day suspension of licensure, stayed indefinitely, automatically executable in addition to any other sanction imposed, upon any subsequent violations of Subsection R156-55a-501(2).

(b) For a violation the duration of which is 90 days or longer, or where insurable loss has occurred, where the licensee at the time a penalty is imposed documents that the required insurance have been reacquired, a minimum of 30 days suspension of licensure.

(c) For a violation of any duration, where the licensee at the time a penalty is imposed fails to document that the required insurance have been reacquired, a minimum of indefinite

suspension. A license which is placed on indefinite suspension may not be reinstated any earlier than 30 days after the licensee documents the required insurance have been reacquired.

(d) If insurable loss has occurred and licensee has not paid the damages, the license may be suspended indefinitely until such loss is paid by the licensee.

(e) Nothing in this section shall be construed to restrict a presiding officer from imposing more than the minimum penalty for a violation of Subsection R156-55a-501(2) and (3). However, absent extraordinary cause, the presiding officer may not impose less than the minimum penalty.

R156-55a-501. Unprofessional Conduct.

"Unprofessional conduct" includes:

(1) failing to notify the division with respect to any matter for which notification is required under th[ese]is rule[s] or Title 58, Chapter 55, the Construction Trades Licensing Act, including a change in qualifier. Such failure shall be considered by the division and the board as grounds for immediate suspension of the contractors license;

(2) failing to continuously maintain insurance and registration as required by Subsection 58-55-302(2), in coverage amounts and form as implemented by this chapter; and

(3) failing, upon request by the division, to provide proof of insurance coverage within 30 days.

R156-55a-503. Administrative Penalties.

(1) In accordance with Subsection 58-55-503, the following fine schedule shall apply to citations issued under Title 58, Chapter 55:

TABLE		
FINE SCHEDULE		
FIRST OFFENSE		
Violation	All Licenses Except Electrical or Plumbing	Electrical or Plumbing
58-55-308(2)	\$ 500.00	N/A
58-55-501(1)	\$ 500.00	\$ 500.00
58-55-501(2)	\$ 500.00	\$ 800.00
58-55-501(3)	\$ 800.00	\$ 1,000.00
58-55-501(9)	\$ 500.00	\$ 500.00
58-55-501(10)	\$ 800.00	\$ 1,000.00
58-55-501(12)	N/A	\$ 500.00
58-55-501(14)	\$ 500.00	N/A
58-55-501(19)	\$ 500.00	N/A
58-55-501(21)	\$ 500.00	\$ 500.00
58-55-504(2)	\$ 500.00	N/A
SECOND OFFENSE		
58-55-308(2)	\$1,000.00	N/A
58-55-501(1)	\$1,000.00	\$1,500.00
58-55-501(2)	\$1,000.00	\$1,500.00
58-55-501(3)	\$1,600.00	\$2,000.00
58-55-501(9)	\$1,000.00	\$1,000.00
58-55-501(10)	\$1,600.00	\$2,000.00
58-55-501(12)	N/A	\$1,000.00
58-55-501(14)	\$1,000.00	N/A
58-55-501(19)	\$1,000.00	N/A
58-55-501(21)	\$1,000.00	\$1,000.00
58-55-504(2)	\$1,000.00	N/A

THIRD OFFENSE

Double the amount for a second offense with a maximum amount not to exceed the maximum fine allowed under Subsection 58-55-503(4)(h).

(2) Citations shall not be issued for third offenses, except in extraordinary circumstances approved by the investigative supervisor.

(3) If multiple offenses are cited on the same citation, the fine shall be determined by evaluating the most serious offense.

(4) An investigative supervisor may authorize a deviation from the fine schedule based upon the aggravating or mitigating circumstances.

(5) The presiding officer for a contested citation shall have the discretion, after a review of the aggravating and mitigating circumstances, to increase or decrease the fine amount imposed by an investigator based upon the evidence reviewed.

KEY: contractors, occupational licensing, licensing

Date of Enactment or Last Substantive Amendment: [~~December 19, 2005~~]2007

Notice of Continuation: November 8, 2006

Authorizing, and Implemented or Interpreted Law: 58-1-106(1)(a); 58-1-202(1)(a); 58-55-101; 58-55-308(1); 58-55-102(35); 58-55-501(21)

◆ ————— ◆

**Health, Epidemiology and Laboratory
Services; HIV/AIDS, Tuberculosis
Control/Refugee Health**

R388-805

Ryan White Program

NOTICE OF PROPOSED RULE

(New Rule)

DAR FILE NO.: 30171

FILED: 07/03/2007, 12:14

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this rule is to document the Ryan White Program eligibility. The rule will apply program eligibility criteria to all eligible applicants.

SUMMARY OF THE RULE OR CHANGE: The rule establishes eligibility criteria for the Utah Ryan White Program.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 26-1-5, 26-1-15, and 26-1-18; Subsections 26-1-30(2)(a), (b), (c), (g); and Sections 63-46a-3.5 and 63-46a-3

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: There are no anticipated costs or savings to the State budget because this is a federally-funded program that provides services to persons living with HIV/AIDS.

❖ LOCAL GOVERNMENTS: There are no anticipated costs or savings to local government because the program governed by this rule neither requires action from nor provides benefits to local governments.

❖ OTHER PERSONS: There are no anticipated costs or savings to other persons. The program receives federal funding to provide services to persons living with HIV/AIDS. This rule does not change the amount or types of services previously provided by the program. A person who qualifies for the program would have cost savings in the amount of the service being provided to them.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs associated with this rule as no person is required to perform additional duties to qualify for services under the program.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Businesses serving persons eligible for services under the Ryan White program will continue to receive the same payments after this rule is adopted. Fiscal impact should be neutral. David N. Sundwall, MD, Executive Director

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

HEALTH
EPIDEMIOLOGY AND LABORATORY SERVICES;
HIV/AIDS, TUBERCULOSIS CONTROL/
REFUGEE HEALTH
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:

Jodie Pond at the above address, by phone at 801-538-6225, by FAX at 801-538-9913, or by Internet E-mail at jpond@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 08/31/2007.

THIS RULE MAY BECOME EFFECTIVE ON: 09/07/2007

AUTHORIZED BY: David N. Sundwall, Executive Director

R388. Health, Epidemiology and Laboratory Services; HIV/AIDS, Tuberculosis Control/Refugee Health.

R388-805. Ryan White Program.

R388-805-1. Authority and Purpose.

This rule governs program eligibility, benefits, and administration by the Department for the Ryan White HIV/AIDS Treatment Modernization Act of 2006 Part B Program (Ryan White Program). It is authorized by Section 26-805-5; Section 26-805-15; Section 26-805-18; and Section 26-805-30(2)(a), (b), (c), and (g).

R388-805-2. Definitions.

The following definitions apply to this rule:

- (1) "HIV" means Human Immunodeficiency Virus.
- (2) "Department" means the Utah Department of Health.
- (3) "Client" means an individual who meets the eligibility criteria and is enrolled in the Ryan White Program pursuant to the provisions of this rule.

R388-805-3. Nature of Program and Benefits.

(1) The Ryan White Program provides reimbursement to providers for services rendered to HIV positive individuals who meet the eligibility requirements. The Ryan White Program provides limited services as described in this rule. The Department provides reimbursement coverage under the program only for services for each program:

- (a) as provided in law governing the Ryan White HIV/AIDS Treatment Modernization Act of 2006;
- (b) as described and limited in the Treatment and Care Program Comprehensive Plan, dated January 2007, which is adopted and incorporated by reference, and all applicable laws and rules;
- (c) to the extent that it has agreed to reimburse providers with whom it contracts to provide services; and
- (d) as limited in manuals that form part of its Provider Agreements or contracts with providers.

(2) Within available funding, the Department provides the following services under the Ryan White Program:

- (a) The AIDS Drug Assistance Program (ADAP) provides HIV related medications;
- (b) The Health Insurance Continuation Program pays for health insurance premiums and medication co-pays;
- (c) Supportive Services Program provides a variety of supportive services that enable the client to access medical care as well as to retain the client in medical care.
- (3) The Department may adjust the services available to meet current needs and fluctuations in available funding.
- (4) The Ryan White Program is not health insurance. A relationship with the Department as the insurer and the client as the insured is not created under this program.

R388-805-4. Providers.

The Department reimburses only providers who contract with the Department to provide services under the program.

R388-805-5. Reimbursement.

- (1) The Department shall reimburse only for services as limited in the manuals that form part of its agreements or contracts with providers.
- (2) The Department shall reimburse providers according to the fee schedule or schedules that are made part of its agreements or contracts with providers.
- (3) Payment for services by the Department and client co-payment, if any, constitutes full payment for services. A provider may not bill or collect any additional monies for services rendered pursuant to an agreement or contract to provide services under the Ryan White Program.
- (4) The Department does not pay for services under the Ryan White Program for which an individual is eligible to receive under Medicaid or any other primary payer source.

R388-805-6. Ryan White Program Eligibility.

(1) To receive services under the Ryan White Program, an individual must be a Utah resident and must have a medical diagnosis of HIV infection as verified by the individual's physician.

(a) An individual may own one home and one registered vehicle but may not have any other assets over \$5,000.00.

(b) If an individual owns a vehicle that is not registered and is considered an asset by Medicaid, which then prevents the individual from receiving benefits from Medicaid, the individual is also ineligible for services under the Ryan White Program.

(c) If an individual is ineligible for Medicaid due to failing Medicaid asset limits but otherwise meet Medicaid eligibility requirements, the individual is also ineligible for services under the Ryan White Program.

(2) To receive services under the AIDS Drugs Assistance Program, the Health Insurance Continuation Program and the Supportive Services Program, an individual must have income not exceeding 400% of the federal poverty level by providing any of the following:

- (i) Immediate year Tax Return.
- (ii) Immediate year W-2 Form(s).
- (iii) Most recent pay Stub/Earnings Statement.
- (iv) Most recent Social Security Disability Income Letter.
- (v) Most recent Supplemental Security Income Letter.
- (vi) Most recent Unemployment Statement.
- (vii) Most recent General Assistance Letter from the Department of Workforce Services.
- (viii) Most recent Disability Income Letter from a disability insurer.

(3) To be eligible to receive assistance from the AIDS Drug Assistance Program, an individual:

- (a) must not be eligible for Medicaid and not covered for the medication requested through this program by any other public or private health insurance coverage;
- (b) must have a prescription for the medication requested.
- (4) To participate in the Health Insurance Continuation Program, an individual must currently take HIV anti-retroviral medications.

(5) To participate in the Consolidated Omnibus Budget Reconciliation Act (COBRA) Continuation program an individual must meet the following additional eligibility criteria:

- (a) The individual must have a medical diagnosis of HIV disease or is a dependent with HIV disease who is covered under the health insurance of someone else;
- (b) The policy covers HIV related costs and outpatient HIV related drugs;
- (c) The policy can be converted under COBRA;
- (d) The individual has not previously been denied health insurance coverage for HIV disease related services;
- (e) The individual must be ineligible for Medicaid or for group/individual health insurance from the individual's current employer;
- (f) The individual must have begun the process of securing income support through the Social Security Disability Insurance (SSDI), or the Supplemental Security Income (SSI) or other disability programs if the individual is disabled, or have applied to receive public entitlement benefits.
- (6) Clients must re-certify annually in order to continue program participation.

KEY: treatment and care, HIV/AIDS, ADAP, Ryan White Program
Date of Enactment or Last Substantive Amendment: 2007
Authorizing, Implemented, or Interpreted Law: 26-805-5; 26-805-15; 26-805-18; 26-805-30(2)(a), (b), (c), (g)

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Health, Health Care Financing, Coverage and Reimbursement Policy

R414-1-5

State Plan

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 30175

FILED: 07/09/2007, 16:24

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Subsection 26-18-3(2)(a) requires the Medicaid program to implement policy through administrative rules. Therefore, this change incorporates the most current Medicaid State Plan by reference.

SUMMARY OF THE RULE OR CHANGE: Subsection R414-1-5(2) is changed to update the incorporation of the State Plan by reference to the 01/01/2007 edition.

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

THIS RULE OR CHANGE INCORPORATES BY REFERENCE THE FOLLOWING MATERIAL: Utah Medicaid State Plan, January 1, 2007

ANTICIPATED COST OR SAVINGS TO:

❖ **THE STATE BUDGET:** There have been 18 State Plan Amendments approved since this rule was last amended. The following seven State Plan Amendments have no budget impact: 05-005-UT Special Modifiers; 05-009-UT Prescribed Drug Changes; 05-012-UT More Liberal Income and Resource Selections; 05-015-UT Low-Income Subsidy Determinations; 05-016-UT Family Related Medicaid; 06-008-UT Payment for Hospice Services; and 06-011-UT Preprint Modification. 05-011-UT Vaccine for Children had a federal cost of \$26,373 and a state cost of \$11,127 in FY 2005 and a federal cost of \$52,746 with a state cost of \$22,254 in FY 2006. 05-014-UT Medicare Enrollment had a federal cost of \$8,750 and a state cost of \$3,700 in FY 2005 and a federal cost \$35,000 with a state cost of \$14,800 in FY 2006. 05-017-UT Physician Payment Enhancement (Anesthesiologist) had a federal cost of \$322,620 and a state cost of \$136,356 in FY 2005 and a federal cost of \$1,290,478 with a state cost of \$545,422 in FY 2006. 06-002-UT Medicaid Work Incentive Premium Change had a federal cost of \$286 and a state cost of \$115 in FY 2006. Projected federal and state costs for FY 2007 are \$1,142 and \$458, respectively. 06-004-UT Optometry and Eyeglasses Services had a federal savings of

\$469,300 and a state savings of \$198,375 in FY 2006. Federal and state savings for FY 2007 are \$1,877,200 and \$793,500, respectively. 06-006-UT Nursing Facility Payments had a federal cost of \$4,457 and a state cost of \$1,893 in FY 2006. Projected federal and state costs for FY 2007 are \$17,828 and \$7,572, respectively. 06-007-UT Foster Care Youths had a federal cost of \$266,125 and a state cost of \$112,475 in FY 2006. Projected federal and state costs for FY 2007 are \$1,064,500 and \$449,500, respectively. 06-009-UT San Juan and Grand County Home Health had a federal cost of \$67,416 and a state cost of \$28,485 in FY 2006. Projected federal and state costs for FY 2007 are \$134,831 and \$56,969, respectively. 06-012-UT DRA Long-Term Care Changes had a federal savings of \$65,271 and a state savings of \$27,579 in FY 2006. Projected federal and state savings for FY 2007 are \$261,083 and \$110,317, respectively. 07-001-UT Third Party Data Exchange has a projected federal savings of \$537,225 and a projected state savings of \$227,100 in FY 2007. Projected federal and state savings for FY 2008 are \$716,300 and \$302,800, respectively. 07-002-UT False Claims Recoveries has a projected federal cost of \$5,625 and a projected state cost of \$2,400 in FY 2007. Projected federal and state costs for FY 2008 are \$7,500 and \$3,200, respectively.

❖ **LOCAL GOVERNMENTS:** There is no budget impact because these amendments do not affect local government programs and providers.

❖ **OTHER PERSONS:** As a result of 05-011-UT Vaccine for Children, providers and small businesses received an increase in annual revenue of approximately \$75,000, based on a 5% fee increase per vaccination. As a result of 05-017-UT Physician Payment Enhancement (Anesthesiologist), providers received an increase in annual revenue of approximately \$1,835,900. As a result of 06-004-UT Optometry and Eyeglasses Services, there is an annual cost of \$2,670,700 to providers of vision care services which also includes small businesses. Approximately 60,000 adults will lose their vision care coverage, and the aggregate out of pocket expense for Medicaid clients is approximately \$13,500,000. As a result of 06-009-UT San Juan and Grand County Home Health, providers will receive an annual increase in revenue of \$191,800. As a result of 06-007-UT Foster Care Youths, approximately 500 foster care youths (19 to 20 years old) will receive additional Medicaid coverage that totals approximately \$1,500,000. As a result of 06-012-UT DRA Long-Term Care Changes, providers and small businesses will receive approximately the same amount of revenue, because potential Medicaid clients will make private payments for nursing home care until they become Medicaid eligible. Admittance for long-term care for some clients will also be delayed.

COMPLIANCE COSTS FOR AFFECTED PERSONS: As a result of 06-004-UT Optometry and Eyeglasses Providers, a single vision care provider loses approximately \$13,354 in revenue based on a total number of 200 vision care providers. A single Medicaid client also pays an out-of-pocket expense of approximately \$225 for eyeglasses.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule change updates the

incorporation of the Medicaid state plan into rule. Changes in the Medicaid program that affect business are detailed in "Costs for small businesses and other persons" above. It appears to me that they accurately detail the fiscal impact of business due to these changes in the Medicaid program that have already been implemented. David N. Sundwall, 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 08/31/2007.

THIS RULE MAY BECOME EFFECTIVE ON: 09/07/2007

AUTHORIZED BY: David N. Sundwall, Executive Director

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

R414-1. Utah Medicaid Program.

R414-1-5. State Plan.

(1) As a condition for receipt of federal funds under title XIX of the Act, the Utah Department of Health must submit a State Plan contract to the federal government for the medical assistance program, and agree to administer the program in accordance with the provisions of the State Plan, the requirements of Titles XI and XIX of the Act, and all applicable federal regulations and other official issuances of the United States Department of Health and Human Services. A copy of the State Plan is available for public inspection at the Division's offices during regular business hours.

(2) The department adopts the Utah State Plan Under Title XIX of the Social Security Act Medical Assistance Program, in effect [September]January 1, 200[5]7, which is incorporated by reference.

KEY: Medicaid

Date of Enactment or Last Substantive Amendment: [~~May 16, 2006~~]2007

Notice of Continuation: April 16, 2007

Authorizing, and Implemented or Interpreted Law: 26-1-5; 26-18-1

◆ _____ ◆

Health, Health Care Financing, Coverage and Reimbursement Policy **R414-60A-3** Responsibilities and Functions

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 30198

FILED: 07/16/2007, 13:56

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This amendment clarifies the Department's intent that the Drug Utilization Review (DUR) Board may consider the recommendations of the independent Pharmacy and Therapeutics (P&T) Committee.

SUMMARY OF THE RULE OR CHANGE: This amendment clarifies the relationship between the DUR Board and the P&T Committee regarding the preferred drug list (PDL).

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 26-18-2, 26-18-2.4, 26-18-3, and 26-1-5; and Title 26, Chapter 18, Part 2

ANTICIPATED COST OR SAVINGS TO:

❖ **THE STATE BUDGET:** There is no budget impact because this amendment only clarifies the relationship between the DUR Board and the P&T Committee.

❖ **LOCAL GOVERNMENTS:** There is no budget impact because local governments do not fund the Medicaid drug program.

❖ **OTHER PERSONS:** There is no impact to other persons and small businesses because this amendment only clarifies the relationship between the DUR Board and the P&T Committee.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There is no budget impact because this amendment only clarifies the relationship between the DUR Board and the P&T Committee.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There is no expected fiscal impact on business by clarifying that the Drug Utilization Review Board may consider the recommendations of the independent Pharmacy and Therapeutics Committee. David N. Sundwall, 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:

Melissa Frost at the above address, by phone at 801-538-6381, by FAX at 801-538-6099, or by Internet E-mail at mlfrost@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 08/31/2007

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE: 8/29/2007 at 3:00 PM, Cannon Health Building, 288 N 1460 W, Room 114, Salt Lake City, UT.

THIS RULE MAY BECOME EFFECTIVE ON: 09/07/2007

AUTHORIZED BY: David N. Sundwall, Executive Director

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

R414-60A. Drug Utilization Review Board.

R414-60A-3. Responsibilities and Functions.

(1) The DUR Board shall meet monthly in a public forum, except when meeting in executive session or in petitions subcommittee.

(2) The board may elect to not meet in a given month if circumstances do not require a meeting. The board shall meet at least ten times per year.

(3) The DUR Board chairperson shall conduct all meetings. The DUR Board manager shall conduct meetings if the chairperson is not present.

(4) In accordance with Section 26-18-105, notice shall be given for a DUR Board meeting in which prior authorization criteria is considered.

(5) The DUR Board manager shall schedule meetings, set agendas, provide meeting materials, keep minutes, record DUR Board business, notify DHCF when vacancies occur, provide meeting notices, and coordinate functions between the DUR Board and DHCF.

(6) DHCF shall rely upon the DUR Board to carry out the Division's federal and state responsibilities for the Medicaid drug program to address the following issues:

- (a) Adverse reactions to drugs.
- (b) Therapeutic appropriateness.
- (c) Overutilization and underutilization.
- (d) Appropriate use of generic drugs.
- (e) Therapeutic duplication.
- (f) Drug-disease contraindications.
- (g) Drug-drug interactions.
- (h) Incorrect drug dosage and duration of treatment.
- (i) Drug allergy interactions.
- (j) Clinical abuse and misuse.
- (k) Identification and reduction of the frequency of patterns of fraud, abuse, and gross overuse.

(l) Inappropriate or medically unnecessary care among physicians, pharmacists, and recipients.

(m) Prior Authorization criteria.

(7) The DUR Board ~~shall~~ may consider recommendations, criteria, and standards produced by the Pharmacy and Therapeutics

(P&T) Committee. ~~[in matters regarding a preferred drug list. The P&T Committee is established in Rule R414-60B.]~~

KEY: Medicaid

Date of Enactment or Last Substantive Amendment: 2007

Authorizing, and Implemented or Interpreted Law: 26-18-3; 26-1-5

◆ ————— ◆

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

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE No.: 30176

FILED: 07/09/2007, 16:29

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This change is needed to provide detailed requirements for the Quality Improvement Incentive programs.

SUMMARY OF THE RULE OR CHANGE: This amendment defines Quality Improvement Incentive program requirements. It includes detailed criteria for: the clinical information systems program; Heating, Ventilating, and Air Conditioning (HVAC) program; and the dining program.

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

ANTICIPATED COST OR SAVINGS TO:

❖ **THE STATE BUDGET:** The Department cannot determine how many Medicaid nursing facilities will qualify for the quality improvement incentives and, therefore, cannot estimate the impact to the state budget because of the quality improvement incentive programs.

❖ **LOCAL GOVERNMENTS:** The Department cannot determine how many Medicaid nursing facilities will take advantage of the quality improvement incentives and, therefore, cannot estimate the impact to local governments because of the quality improvement incentive programs.

❖ **OTHER PERSONS:** The Department cannot determine how many Medicaid nursing facilities will take advantage of the quality improvement incentives and, therefore, cannot estimate the impact to Medicaid nursing facilities and small businesses because of the quality improvement incentive programs.

COMPLIANCE COSTS FOR AFFECTED PERSONS: These changes will have no impact on individual Medicaid nursing facility residents, because they only detail requirements for the Quality Improvement Incentive programs.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Participation in the Quality Improvement Incentive Program is voluntary and will enhance the revenue of facilities that choose to participate. David N. Sundwall, 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 08/31/2007.

THIS RULE MAY BECOME EFFECTIVE ON: 09/07/2007

AUTHORIZED BY: David N. Sundwall, Executive Director

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

R414-504. Nursing Facility Payments.

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 patient add-on amounts.

(1) Approximately 59% 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 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) Each quarter, the Department shall calculate a new case mix index for each nursing facility. The case mix index is based on three months of MDS assessment data. The newly calculated case mix index is applied to a new rate at the beginning of a quarter according to the following schedule:

(a) January, February and March MDS assessments are used for July 1 rates.

(b) April, May and June MDS assessments are used for October 1 rates.

(c) July, August and September MDS assessments are used for January 1 rates.

(d) October, November and December MDS assessments are used for April 1 rates.

(3) MDS data is used in calculating each facility's case mix index. This information is submitted by each facility and, as such, each facility is responsible for the accuracy of its data. The Department may exclude inaccurate or incomplete MDS data from the calculation.

(4) MDS assessments for recipients who are eligible for the "Intensive Skilled" add-on are excluded from the case mix calculation. A facility with less than 20 percent of its total census days as Medicaid days, as reported on its FCP or FRV data report, is excluded from the state case mix average. The state average case mix index is used to set the rate for that facility.

(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. Utah's Bureau of Health Facility Licensure Certification and Resident Assessment 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.

(7) Property costs shall be calculated once per year, each July 1, and reimbursed as a component of the facility rate based on an FRV System.

(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 initial 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, as reported on the FRV Data Report, 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 an FRV Data Report for the reporting period used for the 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 three percent. Regardless of the result produced in this subsection (ii), the rental factor shall not be less than nine 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) Seventy-five percent of the annualized Medicaid operational bed capacity of the facility; however, the Department recognizes banked beds only as reported in the most recent FRV Data Report. For example, banked beds as reported on the FRV Data Report for the period ending February 28th/29th would be incorporated in the following July 1 FRV calculation.

(iv) The FRV per diem determined under this fair rental value system shall be no lower than \$8 and no greater than \$22 per patient day.

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

(i) The nursing facility's per diem property tax and property insurance cost is determined by dividing the sum of the facility's allowable property tax and property insurance costs, as reported in the most recent FCP or FRV Data Report, as applicable, by the facility's actual total patient days.

(ii) For a newly constructed or newly certified facility that has not submitted an FCP or FRV Data Report that would be used in the rate period, the per diem property tax and property insurance is the state average daily property tax and property insurance cost of all facilities.

(8) Newly constructed or newly certified facilities' case mix component of the rate shall be paid using the average case mix index. This average case mix index remains in place until sufficient MDS data exist for the facility to calculate the case mix as described in R414-504-3(2). At the following quarter's rate setting, the Department shall issue

a new case mix adjusted rate. The property payment to the facility is controlled by R414-504-3(7).

(9) 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.

(a) The subsequent quarter's case mix index is established using the prior ownership facility MDS data until sufficient MDS data exist for the facility to calculate the case mix as described in R414-504-3(2).

(b) The property component is calculated for the facility at the beginning of the next state fiscal year, as noted in R414-504-3(7).

(10) 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 7.5% above the average of the most recent Medicaid daily rate for all Medicaid residents in all freestanding nursing facilities in the state. The maximum duration of this adjustment is for no more than a total of 12 months per facility in any five-year period.

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

(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.

(i) If the governmental agency receives donations in order to provide the financial contribution, it must document that the donations are "bona fide" as set forth in 42 CFR 433.54.

(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.

(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.

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

(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.

(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.

(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.

(11) A provider may challenge the rate set pursuant to this rule using the appeal in R410-14. This applies to which rate methodology is used as well as to the specifics of implementation of the methodology. A provider must exhaust administrative remedies before challenging rates in any other forum.

(12) 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.

(13) The Department reimburses swing beds, transitional care unit beds, and small health care facility beds that are used as nursing facility beds, using the prior calendar year state-wide average of the daily nursing facility rate.

(14) Withholding of Title XIX payments

(a) The Department may withhold Title XIX payments from providers if:

(i) there is a shortage in a resident trust account managed by the facility;

(ii) the facility fails to submit a complete and accurate FCP as required by Utah State Plan Attachment 4.19-D, Section 332;

(iii) the facility fails to submit timely, accurate Minimum Data Set (MDS) data;

(iv) the facility owes money to the Division of Health Care Financing because of an overpayment, nursing care facility assessment, civil money penalty, or other offset; or

(v) the facility fails to respond within ten business days to requests for information relating to desk review or audit findings relating to the facility's submitted FCP or FRV Data Report.

(b) For ongoing operations, the Department will provide a 30-day notice before withholding payments. The Department may immediately withhold Title XIX payments without giving 30-days notice if it believes the delay may jeopardize the recovery. The Department and provider may negotiate a repayment schedule acceptable to the Department for monies owed to the Department listed in subsection(a)(iv). The repayment schedule may not exceed 180 days.

(c) When the Department rescinds withholding of payments to a facility, it will resume payments according to the regular claims payment cycle. ~~—The Department will not issue special checks outside the regular claims payment cycle for any reason.~~

R414-504-4. Quality Improvement Incentive.

(1) Upon federal approval of the Nursing Care Facilities State Plan Amendment, funds in the amount of \$ 1,000,000 shall be set aside annually to reimburse non-ICF/MR facilities that have a quality improvement plan which includes the involvement of residents and family, a process of assessing and measuring that plan, quarterly customer satisfaction surveys conducted by an independent third-party, 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.

~~(2)a~~ A facility that receives a substandard quality of care level F, H, I, J, K, or L during the July 1 through June 30 incentive period is eligible for only 50% of the possible payout. A facility receiving substandard quality of care level F, H, I, J, K, or L in more than one survey during the July 1 through June 30 incentive period is ineligible for payout under this incentive.

~~(3)2~~ In addition to the above incentive, funds in the amount of \$3,406,000 shall be set aside in state fiscal year 2008 for use in state fiscal year 2008 for the following quality improvement initiatives:

(a) Incentive for facilities to purchase or enhance clinical information systems, which incorporate advanced technology into improved patient care, such as better integration, capture of more information at the point of care, more automated reminders, etc. Qualifying Medicaid providers may receive up to \$108.02 for software and up to \$90 for hardware for each Medicaid certified bed.

The Medicaid certified bed count used for each facility for this incentive is the count as of July 1, 2007. ~~[The Department will establish qualifying criteria by rule prior to distributing this incentive.]~~ Qualifying criteria include the following:

(i) Software:

(A) A facility must purchase or lease a new or enhance its existing clinical information system. The software component incorporates advanced technology into improved patient care that includes better integration, capture of more information at the point of care, more automated reminders, etc. The following clinical tracking minimum requirements must all be included in the software:

(I) Care plans;

(II) Current condition(s);

(III) Medical order(s);

(IV) Activities of Daily Living;

(V) Medication Administration Records;

(VI) Timing of medication(s);

(VII) Medical notes; and

(VIII) Point of care data tracking.

(B) A facility, with its application, must submit a detailed description of the functionality of the software, denoting each of the minimum clinical tracking requirements.

(C) A facility must purchase or lease and implement the software on or after July 1, 2005, and no later than June 8, 2008.

(D) A facility, with its application, must submit its software, software installation and training costs, and detailed supporting documentation. These costs must be separate from hardware related costs.

(E) A facility, with its application, must submit proof of purchase that includes receipts and invoices.

(ii) Hardware:

(A) The purchase or lease of hardware must facilitate the tracking of patient care and integrate the collection of data into the facility's clinical information system software.

(B) A facility, with its application, must submit a detailed description of the functionality of the hardware and its integration with the clinical information system software.

(C) A facility must purchase or lease and implement the hardware on or after July 1, 2005, and no later than June 8, 2008.

(D) A facility, with its application, must submit its hardware, hardware installation and training costs, and detailed supporting documentation. These costs must be separate from software related costs.

(E) A facility, with its application, must submit proof of purchase that includes receipts and invoices.

(iii) A facility must qualify for the software incentive and the hardware incentive separately. Thus, a facility must provide separate supporting documentation for each incentive component.

(iv) The Department must receive the application form and all supporting documentation no later than June 8, 2008, for consideration under this incentive. Failure to include all required supporting documentation precludes a facility from qualification.

(b) Incentive for facilities to improve their heating, ventilating, and air conditioning systems. Qualifying Medicaid providers may receive up to \$162 for each Medicaid certified bed. The Medicaid certified bed count used for each facility for this incentive is the count as of July 1, 2007. ~~The Department will establish qualifying criteria by rule prior to distributing this incentive.~~ Qualifying criteria include the following:

(i) A facility must purchase a new or enhance its existing heating, ventilating, and air conditioning system (HVAC).

(ii) A facility, with its application, must submit a detailed description of the change.

(iii) The HVAC system must be purchased and installed on or after July 1, 2005, and no later than June 8, 2008.

(iv) A facility, with its application, must submit proof of purchase that includes receipts and invoices.

(v) The Department must receive the application form and all supporting documentation no later than June 8, 2008, for consideration under this incentive. Failure to include all required supporting documentation precludes a facility from qualification.

(c) Incentive to encourage facilities to use innovative means to improve the residents' dining experience. Qualifying Medicaid providers may receive up to \$111 for each Medicaid certified bed. The Medicaid certified bed count used for each facility for this incentive is the count as of July 1, 2007. ~~The Department will establish qualifying criteria by rule prior to distributing this incentive.~~ Qualifying criteria include the following:

(i) A facility must implement changes to its dining program to improve the resident's dining experience. These changes may include meal ordering, dining times or hours, atmosphere, more food choices, etc.

(ii) A facility, with its application, must submit a detailed description of the changes.

(iii) The changes to the dining program must be made on or after July 1, 2006, and no later than June 8, 2008. A facility must submit invoices or similar documentation to show the date of purchase or implementation.

(iv) A facility, with its application, must submit invoices, receipts, or other documentation, to show proof of payment for the incremental costs that resulted from the dining program changes.

(v) The Department must receive the application form and all supporting documentation no later than June 8, 2008, for consideration under this incentive. Failure to include all required supporting documentation precludes a facility from qualification.

(d) Applications and all supporting documentation must be received by June 8, 2008, for consideration.

(e) A facility must clearly mark and organize all supporting documentation to facilitate review by Department staff.

R414-504-5. Reimbursement for Intermediate Care Facilities for the Mentally Retarded.

The following principles apply to the payment of community-based intermediate care facilities for the mentally retarded (ICF/MRs) that are licensed under Utah Code 26-21-13.5:

(1) The Department pays approximately 93% of the aggregate payments to ICF/MRs based on a prospective flat rate established in Utah State Plan Attachment 4.19-D. The Department pays the balance as a property cost component calculated by the Fair Rental Value system pursuant to R414-504-3.

(2) Funds in the amount of \$200,000 shall be set aside annually for incentives to facilities that have a meaningful quality improvement plan and have demonstrated a means to measure that plan. In addition, the facility must have had no violations, as determined by the Department, that are at an immediate jeopardy level 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 Department shall distribute the remaining incentive payments to all qualifying facilities.

KEY: Medicaid

Date of Enactment or Last Substantive Amendment: ~~July 1, 2007~~

Authorizing, and Implemented or Interpreted Law: 26-1-5; 26-18-3; 26-35a



Human Resource Management, Administration **R477-100** Americans With Disabilities Act (ADA) Complaint Procedure

NOTICE OF PROPOSED RULE

(Repeal)

DAR FILE NO.: 30170

FILED: 07/03/2007, 11:51

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is redundant and no longer necessary. This rule was made effective in 1991 coincident with the implementation of the federal Americans with Disabilities Act, 42 USC 12201 (ADA).

The intent of the rule was to define a procedure for employees in the Department of Human Resource Management (DHRM) to grieve perceived violations of the ADA. At that time, there were no recognized procedures to grieve and this rule filled that void. In the ensuing years, DHRM rules have been amended to provide an employee with three options to file a discrimination complaint (see Section

R477-2-3). An employee may file a complaint through the established state grievance procedures defined in Title 67, Chapter 19a; with the Utah Anti-Discrimination and Labor Division; or directly with the Equal Employment Opportunity Commission. The processes of these three options are far more familiar to managers and Human Resource professionals, whereas the process in this rule is virtually unknown and never used.

SUMMARY OF THE RULE OR CHANGE: The requirements of this rule are contained in other sections of DHRM rules. This rule is repealed in its entirety.

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

ANTICIPATED COST OR SAVINGS TO:

- ❖ THE STATE BUDGET: This rule is never used by employees in DHRM who file ADA grievances. Instead they always use the better known processes provided in Section R477-2-3 as mentioned in the "purpose of the change" above. Repealing this rule will have no impact on the number of employees who may file a grievance or the number of grievances they may file. There will therefore be no budget impact on the department.
- ❖ LOCAL GOVERNMENTS: This rule only affects the state DHRM and will have no impact on local governments.
- ❖ OTHER PERSONS: This rule only affects the state DHRM and will have no impact on other persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: This rule only affects the state DHRM.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Rules published by DHRM have no direct effect on businesses or any entity outside state government. DHRM has authority to write rules only to the extent allowed by the Utah Personnel Management Act, Title 67, Chapter 19. This act limits the provisions of career service and these rules to employees of the executive branch of state government. The only possible impact may be a very slight, indirect effect if an agency passes costs or saving on to business through fees. However, it is anticipated that the minimal costs associated with these changes will be absorbed by agency budgets and will have no effect on business. Jeff Herring, Executive Director

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

HUMAN RESOURCE MANAGEMENT
ADMINISTRATION
Room 2120 STATE OFFICE BLDG
450 N MAIN ST
SALT LAKE CITY UT 84114-1201, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Lyle Almond at the above address, by phone at 801-538-3391, by FAX at 801538-3081, or by Internet E-mail at lalmond@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 08/31/2007.

THIS RULE MAY BECOME EFFECTIVE ON: 09/07/2007

AUTHORIZED BY: Jeff Herring, Executive Director

R477. Human Resource Management, Administration.

~~[R477-100. Americans With Disabilities Act (ADA) Complaint Procedure.~~

~~R477-100-1. Authority and Purpose.~~

~~— This rule applies only to DHRM. Agencies shall adopt, define and publish their own rules pursuant to the Americans with Disabilities Act (ADA). The Department of Human Resource Management, pursuant to 28 CFR 35.107, 1991 edition, adopts, defines, and publishes within this rule, complaint procedures providing for prompt and equitable resolution of complaints filed in accordance with Title II of the Americans With Disabilities Act.~~

~~— The provision of 28 CFR 35, 1991 edition implements the provisions of Title II of the Americans With Disabilities Act, 42 USC 12201, which provides that no qualified individual with a disability, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of the Department, or be subjected to discrimination by this or any such entity.~~

~~R477-100-2. Definitions.~~

~~— "The ADA Coordinator" means the Department of Human Resource Management's coordinator or his designee who has responsibility for investigating and providing prompt and equitable resolution of complaints filed by qualified individuals with disabilities.~~

~~— 100-2.(1) "The ADA State Coordinating Committee" means that committee with representatives designated by the directors of the following agencies:~~

- ~~— (1) Office of Planning and Budget;~~
- ~~— (2) Department of Human Resource Management;~~
- ~~— (3) Division of Risk Management;~~
- ~~— (4) Division of Facilities Construction Management; and~~
- ~~— (5) Office of the Attorney General.~~

~~— 100-2.(2) "Disability" means, with respect to an individual with a disability, a physical or mental impairment that substantially limits one or more of the major life activities of such an individual; a record of such an impairment; or being regarded as having such an impairment.~~

~~— 100-2.(3) "Major life activities" means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.~~

~~— 100-2.(4) "Individual with a disability" (hereinafter individual) means a person who has a disability which limits one of his major life activities and who meets the essential eligibility requirement for the receipt of services or the participation in programs or activities provided by the Department, or who would otherwise be an eligible applicant for vacant state positions, as well as those who are employees of the state.~~

~~— 100-2.(5) "Department" means the Department of Human Resource Management, divisions and units therein.~~

~~R477-100-3. Filing of Complaints.~~

~~— The complaint shall be filed in a timely manner to assure prompt, effective assessment and consideration of the facts, but no later than~~

180 days from the date of the alleged act of discrimination. However, any complaint alleging an act of discrimination occurring between January 26, 1992 and the effective date of this rule may be filed within 180 days of the effective date of this rule.

—100-3.(1) The complaint shall be filed with the Department's ADA Coordinator in writing or in another accessible format suitable to the individual.

—Each complaint shall:

—(1) include the individual's name and address;

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

—(3) describe the Department's alleged discriminatory action in sufficient detail to inform the Department of the nature and date of the alleged violation;

—(4) describe the action and accommodation desired; and

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

—100-3.(2) Complaints filed on behalf of classes or third parties shall describe or identify by name, if possible, the alleged victims of discrimination.

R477-100-4. Investigation of Complaint.

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

—100-4.(1) When conducting the investigation, the coordinator may seek assistance from the Department's legal, human resource and budget staff in determining what action, if any, shall be taken on the complaint. Before making any decision that would involve:

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

—(2) facility modifications; or

—(3) reclassification or reallocation in a salary range; the coordinator shall consult with the ADA State Coordinating Committee.

R477-100-5. Issuance of Decision.

—Within 15 working days after receiving the complaint, the ADA Coordinator shall issue a decision outlining in writing or in another acceptable or suitable format stating what action, if any, shall be taken on the complaint.

—100-5.(1) If the coordinator is unable to reach a decision within the 15 working day period, he shall notify the individual with a disability in writing or by another acceptable suitable format why the decision is being delayed and what additional time is needed to reach a decision.

R477-100-6. Appeals.

—The individual may appeal the decision of the ADA Coordinator by filing an appeal within five working days from the receipt of the decision.

—100-6.(1) The appeal shall be filed in writing with the Department's executive director or a designee other than the Department's ADA Coordinator.

—100-6.(2) The filing of an appeal shall be considered as authorization by the individual to allow review of all information, including information classified as private or controlled, by the Department's executive director or designee.

—100-6.(3) The appeal shall describe in sufficient detail why the coordinator's decision is in error, is incomplete or ambiguous, is not supported by the evidence, or is otherwise improper.

—100-6.(4) The executive director shall review the factual findings of the investigation and the individual's statement regarding the inappropriateness of the coordinator's decision and arrive at an independent conclusion and recommendation. Additional investigations may be conducted if necessary to clarify questions of fact before arriving at an independent conclusion. Before making any decision that would involve the executive director or designee to:

—(1) an expenditure of funds which is not absorbable and would require appropriation authority;

—(2) facility modifications; or

—(3) reclassification or reallocation in a salary range; he shall also consult with the State ADA Coordinating Committee.

—100-6.(5) The decision shall be issued within ten working days after receiving the appeal and shall be in writing or in another accessible suitable format to the individual.

—100-6.(6) If the executive director is unable to reach a decision within the ten working day period, he shall notify the individual in writing or by another acceptable or suitable format why the decision is being delayed and the additional time needed to reach a decision.

R477-100-7. Classification of Records.

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

R477-100-8. Relationship to Other Laws.

—This rule does not prohibit or limit the use of remedies available to individuals under the State Anti-Discrimination Complaint Procedures Section (67-19-32); the Federal ADA Complaint Procedures (28 CFR 35, Subpart F, beginning with Part 35.107, 1991 edition); or any other Utah State or federal law that provides equal or greater protection for the rights of individuals with disabilities.

KEY: ~~developmentally disabled, physically handicapped, grievance~~

Date of Enactment or Last Substantive Amendment: 1994

Notice of Continuation: September 4, 2002

Authorizing, and Implemented or Interpreted Law: 63-46a-3(2)



Human Services, Administration, Administrative Services, Licensing

R501-2

Core Rules

NOTICE OF PROPOSED RULE

(Repeal and Reenact)

DAR FILE NO.: 30180

FILED: 07/11/2007, 09:45

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Changes to this rule are necessary as a result of legislation passed in 2006 and 2007 that resulted in amendments to Title 62A, Chapter 2; need to clarify certain requirements that had previously been misinterpreted; need to insert clean-up language and additional details to aid with interpretations; need to create new sections to address basic health, safety and client care as required by Title 62A, Chapter 2.

SUMMARY OF THE RULE OR CHANGE: This rule makes a significant number of changes to the existing Rule R501-2, Core Rules, thus necessitating a "repeal and reenact". It facilitates substantive changes by establishing the following new sections, which did not previously exist in the repealed rule: Authority and Purpose; Definitions; Financial Requirements; Off-Site Activities; Medication and Medical Procedures; Infectious Disease; and Weapons. Although there are other substantive changes within this rule, many of the Program Administration, Governance, Record Keeping, Direct Service Management, Behavior Management, Rights of Clients, Personnel Administration, Emergency Plans, Safety, and Transportation requirements are basically the same as those found in the previous rule.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 62A-2-101 et seq.

ANTICIPATED COST OR SAVINGS TO:

- ❖ THE STATE BUDGET: It is anticipated that there will be initial implementation costs associated to this rule in the way of development and printing of new checklists, training of staff, and some additional enforcement efforts. It is expected, however, that these costs can be absorbed in current budgets.
- ❖ LOCAL GOVERNMENTS: There should be no direct costs to local governments because they do not operate programs that are regulated by this rule.
- ❖ OTHER PERSONS: There should be no cost to other persons except those listed below in "compliance costs for affected persons" and "comments by the department head".

COMPLIANCE COSTS FOR AFFECTED PERSONS: Human services Programs licensed under this rule will experience some administrative costs to modify or update policies and procedures manuals. Depending on the specific type of program some will experience mild to moderate cost increases in order to implement and adequately comply with the rule. There are those that will experience little or no cost increases.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The businesses that will be impacted fiscally by this rule are licensed to provide human service programs. Some of these businesses receive public funds through contract with the Department and will be evaluated for fiscal impact through the rate setting process. Private noncontracted human service programs may realize the need to set higher fees to offset any additional costs resulting from these regulations

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

Ken Stettler at the above address, by phone at 801-538-4235, by FAX at 801-538-4553, or by Internet E-mail at kstettler@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 08/31/2007.

THIS RULE MAY BECOME EFFECTIVE ON: 09/07/2007

AUTHORIZED BY: Ken Stettler, Director

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

R501-2. Core Rules.

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

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

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

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

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

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

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

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

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

- ~~— 1. program management,~~

— 2. maintenance of complete, accurate and accessible records, and

— 3. record retention.

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

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

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

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

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

— J. The program's license shall be posted where it is easily read by consumers, staff and visitors. See also R501-1-5 F. The program shall post Civil Rights License on Notice of Agency Action, abuse and neglect reporting and other notices as applicable.

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

— L. Programs providing foster or proctor care services shall adhere to the following:

— 1. approve homes that comply with Foster Care Rules, R501-12. The agency shall be required to recruit, train, and supervise foster parents as defined by R501-12.

— 2. foster families meeting requirements shall be approved or certified by the agency. The agency must maintain written records of annual home approval. The approval process shall include a home study evaluation and training plan.

— 3. the agency must have a procedure to revoke or deny home approval.

— 4. the agency must have a written agreement with the foster parents which includes the expectations and responsibilities of the agency, staff, foster parents, the services to be provided, the financial arrangements for children placed in the home, the authority foster parents can exercise on children placed in the home, actions which require staff authorization.

— 5. planning, with participation of the child's legal guardian for care and services to meet the child's individual needs.

— 6. obtaining, coordinating and supervising any needed medical, remedial, or other specialized services or resources with the ongoing participation of the foster parents.

— 7. providing ongoing supervision of foster parents to ensure the quality of the care they provide.

R501-2-3. Governance.

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

— 1. to ensure program policy and procedures compliance,

— 2. to ensure continual compliance with relevant local, state and federal requirements,

— 3. to notify the Office of Licensing within 30 days of changes in program administration and purpose,

— 4. to ensure that the program is fiscally and operationally sound, by providing documentation by a financial professional that the program is a "going concern",

— 5. to ensure that the program has adequate staffing as identified on the organizational chart,

— 6. to ensure that the program has general liability insurance, professional liability insurance as appropriate, vehicle insurance for transport of consumers, and fire insurance, and

— 7. for programs serving youth, the program director or designee shall meet with the Superintendent or designee of the local school district at the time of initial licensure, and then again each year as the programs renews its license to complete the necessary student forms including youth education forms.

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

— 1. a Board of Directors in a non-profit organization; or

— 2. commissioners or appointed officials of a governmental unit; or

— 3. Board of Directors or individual owner or owners of a for-profit organization.

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

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

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

— 1. attendance,

— 2. date,

— 3. agenda items, and

— 4. actions.

R501-2-4. Statutory Authority.

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

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

R501-2-5. Record Keeping.

— The program shall have a written record for each consumer to include the following:

— A. Demographic information to include Medicaid number as required,

— B. Biographical information,

— C. Pertinent background information, including the following:

1. personal history, including social, emotional, psychological and physical development,

— 2. legal status,

— 3. emergency contact with name, address and telephone number, and

— 4. photo as needed.

- D. Health records of a consumer including the following:
 - 1. immunizations, for children only;
 - 2. medication;
 - 3. physical examinations, dental, and visual examinations, and
 - 4. other pertinent health records and information.
- E. Signed consent forms for treatment and signed Release of Information form;
- F. Copy of consumer's individual treatment or service plan;
- G. A summary of family visits and contacts, and
- H. A summary of attendance and absences.

R501-2-6. Direct Service Management.

- A. Direct service management, as described herein, is not applicable to social detoxification. The program shall have on file for public inspection a written eligibility policy and procedure, approved by a licensed clinical professional to include the following:
 - 1. legal status;
 - 2. age and sex of consumer;
 - 3. consumer needs or problems best addressed by program;
 - 4. program limitations, and
 - 5. appropriate placement.
- B. The program shall have a written admission policy and procedure to include the following:
 - 1. appropriate intake process;
 - 2. age groupings as approved by the Office of Licensing;
 - 3. pre-placement requirements;
 - 4. self-admission;
 - 5. notification of legally responsible person, and
 - 6. reason for refusal of admission, to include a written, signed statement.
- C. Intake evaluation.
 - 1. At the time of intake an assessment shall be conducted to evaluate health and family history, medical, social, psychological and, as appropriate, developmental, vocational and educational factors.
 - 2. In emergency situations which necessitate immediate placement, the intake evaluation shall be completed within seven days of admission.
 - 3. All methods used in evaluating a consumer shall consider age, cultural background, dominant language, and mode of communication.
- D. A written agreement, developed with the consumer, and the legally responsible person if applicable, shall be completed, signed by all parties, and kept in the consumer's record, with copies available to involved persons. It shall include the following:
 - 1. rules of program;
 - 2. consumer and family expectations;
 - 3. services to be provided and cost of service;
 - 4. authorization to serve and to obtain emergency care for consumer;
 - 5. arrangements regarding absenteeism, visits, vacation, mail, gifts, and telephone calls, when appropriate, and
 - 6. sanctions and consequences.
- E. Consumer treatment plan shall be individualized, as applicable according to the following:
 - 1. A staff member shall be assigned to each consumer having responsibility and authority for development, implementation, and review of the plan.
 - 2. The plan shall include the following:
 - a. findings of intake evaluation and assessment;
 - b. measurable long and short term goals and objectives;

- 1) goals or objectives clearly derived from assessment information;
- 2) goals or objectives stated in terms of specific observable changes in behavior, skills, attitudes or circumstances;
- 3) evidence that consumer input was integrated where appropriate in identifying goals and objectives; and
- 4) evidence of family involvement in treatment plan, unless clinically contraindicated;
- c. specification of daily activities, services, and treatment, and
- d. methods for evaluation;
- 3. Treatment plans
 - a. plans shall be developed within 30 days of consumer's admission by a treatment team and reviewed by a clinical professional if applicable. Thereafter treatment plans shall be reviewed by the licensed clinical professional if applicable as often as stated in the treatment plan.
 - 4. All persons working directly with the consumer shall be appropriately informed of the individual treatment plan.
 - 5. Reports on the progress of the consumer shall be available to the applicable Division, the consumer, or the legally responsible person.
 - 6. Treatment record entries shall include the following:
 - a. identification of program;
 - b. date and duration of services provided;
 - c. description of service provided;
 - d. a description of consumer progress or lack of progress in the achievement of treatment goals or objectives as often as stated in the treatment plan; and
 - e. documentation of review of consumer's record to include the following:
 - 1) signature,
 - 2) title,
 - 3) date, and
 - 4) reason for review.
 - 7. Transfer and Discharge
 - a. a discharge plan shall identify resources available to consumer.
 - b. the plan shall be written so it can be understood by the consumer or legally responsible party.
 - c. whenever possible the plan shall be developed with consumers participation, or legally responsible party if necessary. The plan shall include the following:
 - 1) reason for discharge or transfer;
 - 2) adequate discharge plan, including aftercare planning;
 - 3) summary of services provided;
 - 4) evaluation of achievement of treatment goals or objectives;
 - 5) signature and title of staff preparing summary, and
 - 6) date of discharge or transfer.
 - d. The program shall have a written policy concerning unplanned discharge.
 - 8. Incident or Crisis Intervention records
 - a. The program shall have written policies and procedures which includes: reporting to program manager, documentation, and management review of incidents such as deaths of consumers, serious injuries, fights, or physical confrontations, situations requiring the use of passive physical restraints, suspected incidents of abuse or neglect, unusual incidents, strip searches and other situations or circumstances affecting the health, safety, or well-being of consumers.
 - b. records shall include the following:
 - 1) summary information;

- 2) date, time of emergency intervention;
- 3) action taken;
- 4) employees and management responsible and involved;
- 5) follow-up information;
- 6) list of referrals;
- 7) signature and title of staff preparing report, and
- 8) records shall be signed by management staff.
- c. the report shall be maintained in individual consumer records.
- d. when an incident involves abuse, neglect, serious illness, violations of the Provider Code of Conduct or death of a consumer, a program shall:
 - 1) notify the Office of Licensing, legally responsible person and any applicable agency which may include law enforcement.
 - 2) a preliminary written report shall be submitted to the Office of Licensing within 24 hours of the incident.

R501-2-7. Behavior Management.

- A. The program shall have on file for public inspection, a written policy and procedure for the methods of behavior management. These shall include the following:
 - 1. definition of appropriate and inappropriate behaviors of consumers;
 - 2. acceptable staff responses to inappropriate behaviors, and
 - 3. consequences.
- B. The policy shall be provided to all staff, and staff shall receive training relative to behavior management at least annually.
- C. No management person shall authorize or use, and no staff member shall use, any method designed to humiliate or frighten a consumer.
- D. No management person shall authorize or use, and no staff member shall use nor permit the use of physical restraint with the exception of passive physical restraint. Passive physical restraint shall be used only as a temporary means of physical containment to protect the consumer, other persons, or property from harm. Passive physical restraint shall not be associated with punishment in any way.
- E. Staff involved in an emergency safety intervention that results in an injury to a resident or staff must meet with the clinical professional to evaluate the circumstances that caused the injury and develop a plan to prevent future injuries.
- F. Programs using time out or seclusion methods shall comply with the following:
 - 1. The program will have a written policy and procedure which has been approved by the Office of Licensing to include:
 - a. Time out or seclusion is only used when a child's behavior is disruptive to the child's ability to learn to participate appropriately, or to function appropriately with other children or the activity. It shall not be used for punishment or as a substitute for other developmentally appropriate positive methods of behavior management.
 - b. Time out or seclusion shall be documented in detail and provide a clear understanding of the incident which resulted in the child being placed in that time out or seclusion.
 - c. If a child is placed in time out or seclusion more than twice in any twenty-four hour period, a review is conducted by the clinical professional to determine the suitability of the child remaining in the program.
 - d. Any one time out or seclusion shall not exceed 4 hours in duration.

- e. Staff is required to maintain a visual contact with a child in time out or seclusion at all times.
- f. If there is any type of emergency such as a fire alarm, or evacuation notification, children in time out or seclusion shall follow the safety plan.
- g. A child placed in time out or seclusion shall not be in possession of belts, matches, weapons, or any other potentially harmful objects or materials that could present a risk or harm to the child.
- 2. Time out or seclusion areas shall comply with the following:
 - a. Time out or seclusion rooms shall not have locking capability.
 - b. Time out or seclusion rooms shall not be located in closets, bathrooms, or unfurnished basements, attics or locked boxes.
 - c. A time out or seclusion room is not a bedroom, and temporary beds, or mattresses in these areas are not allowed. Time-out and seclusion shall not preclude a child's need for sleep, or normal scheduled sleep period.
 - d. All time out or seclusion rooms shall measure at least 75 square feet with a ceiling height of at least 7 feet. They shall have either natural or mechanical ventilation and be equipped with a break resistant window, mirror or camera that allows for full observation of the room. Seclusion rooms shall have no hardware, equipment, or furnishings that obstruct observation of the child, or that present a physical hazard or a suicide risk. Rooms used for time out or seclusion shall be inspected and approved by the local fire department.
 - G. The program's licensed clinical professional shall be responsible for supervision of the behavior management procedure.

R501-2-8. Rights of Consumers.

- A. The program shall have a written policy for consumer rights to include the following:
 - 1. privacy of information and privacy for both current and closed records;
 - 2. reasons for involuntary termination and criteria for re-admission to the program;
 - 3. freedom from potential harm or acts of violence to consumer or others;
 - 4. consumer responsibilities, including household tasks, privileges, and rules of conduct;
 - 5. service fees and other costs;
 - 6. grievance and complaint procedures;
 - 7. freedom from discrimination;
 - 8. the right to be treated with dignity;
 - 9. the right to communicate by telephone or in writing with family, attorney, physician, clergyman, and counselor or case manager except when contraindicated by the licensed clinical professional;
 - 10. a list of people, whose visitation rights have been restricted through the courts;
 - 11. the right to send and receive mail providing that security and general health and safety requirements are met;
 - 12. defined smoking policy in accordance with the Utah Clean Air Act, and
 - 13. statement of maximum sanctions and consequences, reviewed and approved by the Office of Licensing.
- B. The consumer shall be informed of this policy to his or her understanding verbally and in writing. A signed copy shall be maintained in the consumer record.

R501-2-9. Personnel Administration.

— A. The program shall have written personnel policies and procedures to include the following:

- 1. employee grievances,
- 2. lines of authority,
- 3. orientation and on-going training,
- 4. performance appraisals,
- 5. rules of conduct, and
- 6. sexual and personal harassment.

— B. The program shall have a director, appointed by the governing body, who shall be responsible for management of the program and facility. The director or designated management person shall be available at all times during operation of program.

— C. The program shall have a personnel file for each employee to include the following:

- 1. application for employment,
- 2. applicable credentials and certifications,
- 3. initial medical history if directed by the governing body,
- 4. tuberculin test if directed by the governing body,
- 5. food handler permit, where required by local health authority,
- 6. training record,
- 7. annual performance evaluations,
- 8. I 9 Form completed as applicable,
- 9. comply with the provisions of R501-14 and R501-18 for background screening, and
- 10. a signed copy of the current Department of Human Services Provider Code of Conduct.

— D. The program shall follow a written staff to consumer ratio, which shall meet specific consumer and program needs. The staff to consumer ratio shall meet or exceed the requirements set forth in the applicable categorical rules as found in R501-3, R501-7, R501-8, R501-11, and R501-16.

— E. The program shall employ or contract with trained or qualified staff to perform the following functions:

- 1. administrative,
- 2. fiscal,
- 3. clerical,
- 4. housekeeping, maintenance, and food service,
- 5. direct consumer service, and
- 6. supervisory.

— F. The program shall have a written job description for each position, which includes a specific statement of duties and responsibilities and the minimum level of education, training and work experience required.

— G. Treatment shall be provided or supervised by professional staff, whose qualifications are determined or approved by the governing body, in accordance with State law.

— H. The governing body shall ensure that all staff are certified and licensed as legally required.

— I. The program shall have access to a medical clinic or a physician licensed to practice medicine in the State of Utah.

— J. The program shall provide interpreters for consumers; or refer consumers to appropriate resources as necessary to communicate with consumers whose primary language is not English.

— K. The program shall retain the personnel file of an employee after termination of employment, in accordance with accepted personnel practices.

— L. A program using volunteers, substitutes, or student interns, shall have a written plan to include the following:

- 1. direct supervision by a program staff,
- 2. orientation and training in the philosophy of the program, the needs of consumers, and methods of meeting those needs,
- 3. background screening,
- 4. a record maintained with demographic information, and
- 5. signed copy of the current Department of Human Services Provider Code of Conduct.

— M. Staff Training

— 1. Staff members shall be trained in all policies of the program, including the following:

- a. orientation in philosophy, objectives, and services,
- b. emergency procedures,
- c. behavior management,
- d. current program policy and procedures, and
- e. other relevant subjects.

— 2. Staff shall have completed and remain current in a certified first aid and CPR, such as or comparable to American Red Cross.

— 3. Staff shall have current food handlers permit as required by local health authority.

— 4. Training shall be documented and maintained on-site.

R501-2-10. Infectious Disease.

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

R501-2-11. Emergency Plans.

— A. The program shall have a written plan of action for disaster and casualties to include the following:

- 1. designation of authority and staff assignments,
- 2. plan for evacuation,
- 3. transportation and relocation of consumers when necessary, and
- 4. supervision of consumers after evacuation or relocation.

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

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

R501-2-12. Safety.

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

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

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

— D. All persons associated with the program who have access to children or vulnerable adults and who also have firearms or ammunition shall assure that they are inaccessible to consumers at all times. Firearms and ammunition that are stored together shall be kept securely locked in security vaults or locked cases, not in glass fronted display cases. Firearms that are stored in display cases shall be rendered inoperable with trigger locks, bolts removed, or other disabling methods. Ammunition for those firearms shall be kept securely locked in a separate location. This does not restrict

~~constitution or statutory rights regarding concealed weapons permits, pursuant to UCA 53-5-701 et seq.~~

~~R501-2-13. Transportation.~~

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

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

~~— C. The program shall have means, or make arrangement for, transportation in case of emergency.~~

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

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

~~R501-2-14. Categorical Rules.~~

~~— In addition to Core Rules, Categorical Rules are specific regulations which must be met for the following:~~

~~— A. Child Placing Adoption Agencies R501-7;~~

~~— B. Day Treatment R501-20;~~

~~— C. Intermediate Secure Treatment Programs for Minors R501-16;~~

~~— D. Outdoor Youth Programs R501-8;~~

~~— E. Outpatient Treatment R501-21;~~

~~— F. Foster Care R501-12;~~

~~— G. Residential Treatment R501-19;~~

~~— H. Residential Support R501-22;~~

~~— I. Social Detoxification R501-11 and~~

~~— J. Assisted Living for DSPD Residential R710.~~

~~R501-2-15. Single Service Program Rules.~~

~~— Core Rules of the Office of Licensing do not apply to single service programs.~~

~~— Single services program Rules are the regulations which must be met for the following:~~

~~— A. Adult Day Care, which Rules are found in R501-13;~~

~~— B. Adult Foster Care, which Rules are found in R501-17.]~~

~~R501-2-1. Authority and Purpose.~~

~~— This Rule is authorized by Section 62A-2-106, et seq.~~

~~— This Rule describes the basic health and safety standards all human services programs, with the exception of foster homes for children, are required to comply with.~~

~~— This Rule describes the minimum administration and financial requirements all human services programs, with the exception of foster homes for children, are required to comply with.~~

~~R501-2-2. Definitions.~~

~~— (1)(a) "Abuse" includes, but is not limited to:~~

~~— (i) actual, attempted, or threatened non-accidental harm, to the physical, psychological, or emotional health of a client;~~

~~— (ii) the use of confinement, physical restraint, medication, or isolation that causes or may cause harm to a client;~~

~~— (iii) the deprivation of treatment, food, or hydration, except as provided by law;~~

~~— (iv) causing physical injury or pain, including but not limited to bleeding, bruising, swelling, dislocation, contusion, laceration, burning, bone fracture, bodily damage, or death;~~

~~— (v) corporal punishment, including but not limited to hitting or slapping;~~

~~— (vi) domestic-violence-related abuse;~~

~~— (vii) sexual abuse or sexual exploitation; or~~

~~— (viii) "severe emotional abuse", "severe physical abuse", or "emotional or psychological abuse", as these terms are defined in sections 62A-4a-101 and 62A-3-301.~~

~~— (b) Abuse does not include:~~

~~— (i) reasonable discipline of a client in accordance with the licensee's policy and procedure manual that has been approved by the Office of Licensing;~~

~~— (ii) withholding a client's privileges; or~~

~~— (iii) the use of reasonable and necessary physical restraint or force in self-defense, in defense of others, or to protect the client.~~

~~— (2) "Adult" means an individual who is 18 years of age, or older.~~

~~— (3) "Adult day care" is defined in Section 62A-2-101.~~

~~— (4) "Background screening clearance" means written verification that the Office of Licensing has approved an applicant's criminal, abuse, neglect, and exploitation background screenings.~~

~~— (5) "Behavior Consultant" is a professional certified by The Division of Services for People with Disabilities to assess and develop educational procedures and techniques.~~

~~— (6) "Bodily fluids" includes but is not limited to blood, saliva, feces, urine, nasal discharge, or vomit, but does not include tears or perspiration.~~

~~— (7) "Chemical restraint" means any drug or substance used to control a client's behavior or movement that is not prescribed and monitored by the client's personal physician.~~

~~— (8) "Child" is defined in Section 62A-2-101.~~

~~— (9) "Child placing" is defined in Section 62A-2-101.~~

~~— (10) "Client" is defined in Section 62A-2-101.~~

~~— (11) "Communicable disease" is defined in Section 26-6-2.~~

~~— (12) "Competency and proficiency requirements" are the essential skills and abilities that must be demonstrated by staff, as assessed in a written performance evaluation by the staff's supervisor.~~

~~— (13) "Day treatment" is defined in Section 62A-2-101.~~

~~— (14) "Dangerous weapon" includes but is not limited to "firearms", "antique firearms", "explosive, chemical, or incendiary devices", ammunition, and other items as defined in Sections 76-10-306 and 76-10-501.~~

~~— (15) "Direct access" is defined in Section 62A-2-101.~~

~~— (16) "Direct care staff" means an individual who provides educational, vocational, therapeutic, or treatment services; supervision of a client; or care directly to a client; and does not include support staff.~~

~~— (17) "Directly supervised" is defined in Section 62A-2-120.~~

~~— (18) "Domestic-violence-related abuse" means:~~

~~— (a) domestic violence; or~~

~~— (b) a violent physical or verbal interaction between cohabitants in the physical presence of a child or vulnerable adult, having knowledge that a child or vulnerable adult is present and may see or hear an act of domestic violence.~~

~~— (19) "Domestic violence" is as defined in Section 77-36-1.~~

~~— (20) "Emotional abuse" is as defined in Section 62A-3-301 and includes but is not limited to conduct that subjects the client to psychologically destructive behavior, such as making demeaning comments, threatening harm, terrorizing the client or alienating the client.~~

~~— (21) "DSPD" means the Division of Services for People with Disabilities.~~

(22) "Exploitation" includes but is not limited to: using a client's property without the client's consent; using a client's property in a way that is contrary to the client's best interests, such as expending a client's funds for the benefit of another; making unjust or improper use of clients or their resources; accepting a gift in exchange for preferential treatment of a client; accepting a gift in exchange for services that the program is already obliged to provide to the client; using the labor of a client for personal gain; using the labor of a client without paying the client a legal wage or equivalent non-monetary compensation, except as in accordance with approved therapeutic practices and as approved by the Office of Licensing, U.S. Department of Labor, and the Department of Commerce. "Exploitation" does not include reasonable chores or community service work for a non-profit organization.

(23) "Financial Professional" is a person who has a college degree in accounting or a related field and is currently employed as an accountant or financial auditor that is actively engaged in financial accountability on a day-to-day basis.

(24) "Foster home" is defined in Section 62A-2-101.

(25) "Guardian" means a client's legal guardian or custodian, who is legally entitled to make placement, medical, and treatment decisions on behalf of the client.

(26) "Human services program" is defined in Section 62A-2-101.

(27) "Incident report" means a written description of any notable event, including but not limited to any crime, injury or illness, or unauthorized absence, and how that event was addressed.

(28) "Licensee" means a person with a current, valid license to operate a human services program, issued by the Office of Licensing.

(29) "Maltreatment" includes but is not limited to actual, attempted, or threatened:

(a) physical activity that is not consistent with the client's service plan, health and abilities;

(b) physical activity that is not consistent with standard therapeutic practices;

(c) restraint or seclusion used for the provider's convenience or to coerce, discipline or retaliate against a client;

(i) maltreatment does not include the lawful use of restraint or seclusion in emergency situations to protect any person when: a less restrictive intervention would be ineffective, the use is consistent with standard therapeutic practices, the use is administered by trained authorized personnel, and the use is terminated as soon as the emergency is controlled;

(d) group punishments for the misbehavior of individuals;

(e) disrespecting, bullying, teasing, provoking, intimidating, or agitating a client;

(f) denying a therapeutic, health or safety related program service to coerce, discipline or retaliate against a client;

(g) denial of visitation or communication privileges with the client's family, significant others, attorney, clergy, physician, or Office of Licensing;

(h) requiring a client to remain silent for periods of time to coerce, punish or retaliate against a client;

(i) unreasonable withholding of emotional response or stimulation;

(j) denying a current client from entering the client's residence for any purpose unrelated

to safety.

(30) "Mechanical restraint" means any device used to control or restrict a client's free movement, including but not limited to a

locked door that the client cannot open, a locked window that the client cannot open, handcuffs, belts, straps, ties, or restraint jackets.

(31) "Medical emergency" means any medical condition that may be life threatening or require immediate medical assistance from a medical practitioner, including but not limited to unconsciousness, convulsions, severe bleeding, or severe pain.

(32) "Medical practitioner" means an individual licensed by the State of Utah under Utah Code Ann. Title 58 as a physician, physician's assistant, advanced practice registered nurse, practical nurse, or registered nurse.

(33) "Medical procedures" includes but is not limited to blood draws, insertion or removal of feeding tubes, intravenous lines, catheters, or life support.

(34) "Mental health therapist" means an individual currently licensed under Title 58 Chapter 60 as a physician engaged in the practice of mental health therapy, an advanced practice registered nurse specializing in psychiatric mental health nursing, a psychologist qualified to engage in the practice of mental health therapy, a clinical social worker, a certified social worker, a marriage and family therapist, or a professional counselor.

(35) "Neglect", which includes "severe neglect", is as defined in Sections 62A-3-301, 62A-4a-101, and 76-5-111, including but not limited to actual, attempted, or threatened:

(a) failure to provide sufficient nutrition, hydration, sleep, clothing, bedding, shelter, medical services, dental services, or educational services when the provider is responsible for providing these services to the client;

(b) failure to provide adequate client supervision;

(c) providing client services while impaired for any reason, including but not limited to being under the influence of alcohol or drugs;

(d) failure to provide care or treatment as described by a client's service or treatment plan.

(36) "On call" means immediately available to staff by telephone, and able to be present on site within one hour after a staff telephone call for assistance.

(37) "On duty" means awake, within visual or auditory proximity of clients, and immediately available to clients.

(38) "Outdoor youth program" means a youth program that is required to be licensed in accordance with Rule R501-8 to provide treatment services in an outdoor setting.

(39) "Outpatient treatment" is defined in Section 62A-2-101.

(40) "Person" includes an individual, agency, association, partnership, corporation, or governmental entity.

(41) "Passive physical restraint" means approved non-violent holding techniques that restrict a client's free movement, and are used solely to prevent a client from harming any person, animal, or property, or to allow the client to regain physical or emotional control.

(42) "Restraint" means the use of physical force or a mechanical device to restrict a client's freedom of movement or a client's normal access to his or her body, and includes the use of a drug or substance that is not prescribed by the client's physician and is used to control the client's behavior or restrict the client's freedom of movement.

(43) "Sexual abuse" or "sexual exploitation" includes but is not limited to actual, attempted, or threatened:

(a) sexual contact with a client;

(b) employing, using, persuading, inducing, enticing, or coercing a client to pose in the nude, to observe or participate in sexual acts, or to engage in any sexual or simulated sexual conduct; or

(c) an offense described in Title 76, Chapter 5, Offenses Against the Person.

(44) "Residential support" is defined in Section 62A-2-101.

(45) "Residential treatment" is defined in Section 62A-2-101.

(46) "Seclusion" means restriction of a client to a small room with minimal stimulation, to temporarily isolate a client and to allow the client to regain physical or emotional control.

(47) "Secure treatment" is defined in Section 62A-2-101.

(48) "Self-directed time-out" means a program permits a client to retreat to a quiet room in compliance with the client's request, for the purpose of allowing the client to regain physical or emotional control.

(49) "Sick" means to have a fever, an illness that may be contagious, or to be experiencing diarrhea or vomiting.

(50) "Significant criminal activity" means any act or omission resulting in: the abuse, neglect, or exploitation of a child or vulnerable adult; the death, kidnapping, or rape of any person; an assault resulting in an injury that requires additional medical assistance after treatment with basic first-aid; an assault using a dangerous weapon; a medical or other emergency; or the damage, destruction, or misappropriation of any property or service valued at \$1000 or more.

(51) "Social detoxification" is defined in Section 62A-2-101.

(52) "Staff" means program directors, supervisors, employees, contractors, agents, students, interns, volunteers, or others who provide any program services.

(53) "Staff-directed time-out" means a program requires a client to retreat to a quiet room for the purpose of allowing the client to regain physical or emotional control.

(54) "Staff-in-charge" means the on duty staff, who currently meets the criteria established by the program and Section R501-2-11, who is responsible for client supervision, program services, and rule compliance during a period of time designated by the program director.

(55) "Support staff" means staff who do not directly supervise clients and who only provide support services.

(56) "Therapeutic school" is defined in Section 62A-2-101.

(57) "Treatment plan" means a written description of the therapeutic and other services an individual client requires, as determined and updated after periodic assessments by a mental health therapist.

(58) "Vulnerable Adult" is defined in Section 62A-2-101.

(59) "Youth program" is defined in Section 62A-2-101.

R501-2-3. Program Administration.

(1)(a) A program shall comply with this rule, R501-2, applicable categorical rules, variances issued in accordance with Section R501-1-9, and local, state and federal laws at all times, regardless of whether a deficiency or violation is observed or noted by the Office of Licensing.

(b) A program shall monitor itself and promptly identify and correct any deficiency or violation of Rule R501-2, applicable categorical rules, variances issued in accordance with Rule R501-1, and local, state and federal laws.

(2) The program shall have and comply with a current, written policy and procedure manual that addresses all rules in Rule R501-2 and all rules in the categories of licensure for which the program applies, and shall also include:

(a) program philosophy;

(b) description of long and short term goals;

(c) description of the services provided;

(d) detailed description of the population to be served;

(e) admission, exclusion, intake, and expulsion criteria and procedures;

(f) description of how the program will comply with the core and categorical rules.

(3) The program's policies and procedures manual shall be submitted to the Office of Licensing with the program's application for an initial license.

(a) The program may request in writing that the policies and procedures manual be classified as protected as indicated in subsection(4)(a).

(b) Modifications to the manual shall be submitted to the Office of Licensing prior to the effective date of any changes to the manual.

(4) Except as described in subsection(a) below, the Office of Licensing shall classify a program's policies and procedures manual as public and disclose it to the public in accordance with the Government Records Access and Management Act.

(a) Records classified as "protected" in accordance with Sections 63-2-304 and 63-2-308 may be withheld from disclosure to the public.

(5) The program shall have a written quality assurance plan, and shall document the implementation of that plan.

(6) The program shall comply with and post the following notices where they can be read by staff, clients and visitors:

(a) abuse and neglect reporting laws;

(b) Civil Rights Notice;

(c) Americans with Disability Act;

(d) Notices of Agency Action; and

(e) program license.

(7) All programs that provide services to children or vulnerable adults shall submit identifying information for background screening in accordance with Rule R501-14.

(a) The program shall have policies and procedures for the handling of staff who are denied a background screening clearance.

(8) The program shall comply with all applicable Interstate Compact Laws.

(9) The program shall not exploit clients.

(a) A client shall not be required to perform work that involves the operation or maintenance of the program or its facilities or that exploits the client.

(i) A client may be required to work in a vocational educational, vocational rehabilitation, or vocational training program that complies with all applicable labor laws, when the work is required by the client's individual service or treatment plan.

(ii) A client may be required to participate in housekeeping and hygiene activities, including but not limited to cleaning the client's own sleeping area, the client's proportionate share of program common areas, cleaning up after the client's own activities, and laundering the client's own clothes.

(iii) A client may be required to participate in the client's proportionate share of meal preparation and meal clean-up activities.

(iv) A client may be required to participate in community service work for a public or non-profit organization that does not involve the operation or maintenance of the program or its facilities or benefit the program, when the work is required by the client's individual service or treatment plan.

(b) Except as provided by Subsection R501-2-3(9)(a)(i) through(iv), a client who chooses to perform work that involves the operation or maintenance of the program or its facilities or benefits the program shall be compensated.

(c) The program shall comply with State and Federal laws regarding the compensation and safety of staff and clients on its workforce, including but not limited to laws regarding minimum wage requirements.

(10) Information provided to clients, guardians, media, and the public shall be accurate and factual. Requests for information received from clients and guardians shall be responded to within 5 business days.

R501-2-4. Financial Requirements.

A program shall provide a written disclosure of all fees and expenses a client or a client's guardian may incur, and identify which fees may be non-refundable, before accepting any payment, entering any contract to provide client services, or admitting a client to the program.

A program shall provide an itemized accounting of actual expenditures made on behalf of each client before requiring reimbursement from the client or the client's guardian, except a program is not required to provide an itemized accounting of expenditures that have previously been disclosed to and approved by the client or the client's guardian in writing.

The program shall not handle the personal business affairs of a client, including but not limited to borrowing or lending money, withdrawing assets from a client's account, or co-signing applications or notes, unless the program is first court-appointed as the client's guardian or conservator and acting within the limits of that appointment, except for a provider who is certified by the Social Security Administration and designated as the client's representative payee.

A client's personal funds shall not be commingled with the program's funds.

A program that maintains clients' personal funds for the client's use shall have a section in its policy and procedure manual regarding access to and use of clients' personal funds.

(a) A program's policy and procedures regarding a client's personal funds shall be admission.

(b) A program shall permit a client to access the client's personal funds in accordance with its policy and procedure manual.

(c) A program shall maintain an accurate log of all funds deposited and all withdrawals made for the personal use of each client.

(d) A program shall obtain the signature of the client or client's guardian verifying receipt of each withdrawal made for the personal use of each client.

(e) Receipts for purchases of over \$20.00 shall be signed by the client or guardian, and direct care staff, and maintained with the log.

R501-2-5. Governance.

(1) The program shall have a governing body that is responsible for and has authority over program policies and procedures. The governing body's responsibilities shall include the following:

(a) to ensure program policy and procedures compliance;

(b) to ensure continual compliance with local, state and federal requirements;

(c) to notify the Office of Licensing prior to changes in program purpose or services, and no later than one business day after changes in program administration;

(d) to ensure that the program is fiscally and operationally sound, by providing written verification by an independent financial

professional by means of a Financial Opinion Statement that offers an unqualified opinion that the program's financial statements are presented fairly. A financial audit of the program by an independent CPA may be substituted for a Financial Opinion Statement;

(e) to ensure that the program has adequate staffing as identified on the organizational chart and categorical rules;

(f) to ensure that the program has general or commercial general liability insurance, professional liability insurance, motor vehicle insurance for each vehicle used to transport clients, worker's compensation insurance in accordance with Section 34A-2-101, et seq., and fire insurance; and

(g) to provide the Office of Licensing with current certificates of insurance or self-insurance that include a provision requiring the insurer to notify the Office of Licensing in the event that policy coverage is amended or cancelled.

(2) The governing body shall be:

(a) a Board of Directors in a non-profit organization;

(i) a non-profit organization shall document its legal status;

(b) commissioners or appointed officials of a governmental unit;

(i) a publicly operated program shall document its statutory authorization; or

(c) Board of Directors or individual owners of a for-profit organization;

(i) a for-profit organization shall document its ownership and legal status.

(3) The program shall have a current list of all members of its governing body, indicating the name, address and term of each member.

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

(5) When the governing body is composed of more than one person, the governing body shall establish written by-laws, hold formal meetings at least twice a year, and maintain written minutes, which shall be available to the Office of Licensing, to include:

(a) attendance;

(b) date;

(c) agenda items; and

(d) actions.

R501-2-6. Record Keeping.

(1) The program shall have a written record for each client, which shall include:

(a) the client's full name, gender, date of birth, description, and other identifying information;

(b) the client's guardian, if any, and the guardian's full name, address, and telephone numbers, and copies of documents establishing guardianship;

(c) client's application, all contracts and agreements with the program that are signed by the client or the client's guardian, intake evaluation and assessments;

(d) dates of placement and discharge, who placed client in program, and to whom client was discharged;

(i) this subsection(d) does not apply to child placing adoption agencies;

(e) the client's background information, including:

(i) intake screening and initial assessment;

(ii) legal status;

(iii) emergency contact with name, address and telephone number; and

(iv) in residential programs and programs where clients consume medications, a current, full-face photo kept at the location where medications are administered;

(f) health records of a client, including:

(i) in programs serving children, immunizations;

(ii) medical needs, medication, and allergies; and

(iii) in residential programs, physical, dental, hearing, and vision examinations;

(g) signed consent forms for treatment;

(h) signed and completed release of information form(s);

(i) the client's individual treatment or service plan;

(j) the client's progress records;

(k) a copy of all incident reports involving the client;

(l) a copy of all search reports involving the client;

(m) a copy of all transfer and placement reports involving the client;

(n) a record of family visits; and

(o) a record of attendance and absences.

(2) The program shall have a personnel file for each staff, which shall include:

(a) his or her job description;

(b) application for employment or resume;

(c) current address and telephone numbers;

(d) copies of required credentials and certifications, including but not limited to diplomas and licenses;

(e) verification of work experience and qualifications for the staff position held;

(f) food handler permit, if staff prepare food for clients;

(g) training record;

(h) annual performance evaluations and proficiency evaluations;

(i) documentation of disciplinary actions;

(j) completed IRS I-9 Form;

(k) current background screening approval verifications;

(l) a signed copy of the current Department of Human Services Provider Code of Conduct, for programs that are contracted to provide services to the Department of any or its Divisions; and

(m) copy of current driver's license for all staff who transport clients.

(3) A program shall retain all records relating to a client or staff for a minimum of 8 years after the date the client or staff is discharged, terminated, or otherwise departs the program, and for a minimum of 4 years after a client or staff who is a child attains the age of 18 years.

(a) Current staff and client records shall be maintained on-site and shall be immediately available to the Office of Licensing upon request.

(b) Former staff and client records may be maintained off-site and made available to the Office of Licensing within 24 hours of request.

(4) All manuals and other program records shall be available to the Office of Licensing upon request for a minimum of 8 years from the date they expired or were superceded. A program:

(a) shall maintain copies of all written reports and certificates of clearance issued by the fire inspector;

(b) that is required to have fire sprinklers shall maintain copies of all written reports issued by the fire sprinkler inspector;

(c) shall maintain copies of all written reports and certificates issued by the building inspector; and

(d) shall maintain copies of all written reports and certificates issued by the local health inspector.

(5)(a) Staff and client records shall be maintained in locked storage when not in active use.

(b) Unlocked staff and client records shall not be left unattended. Direct care staff shall remain within immediate reach of unlocked records at all times.

(6) The on duty staff-in-charge shall have access to all locked files, including computer files, and make them immediately available to the Office of Licensing upon request.

A program that does not grant a staff-in-charge access to all locked staff files shall have an on-call staff with access and shall make staff files available to the Office of Licensing within one hour of a request.

(7) A licensed program with more than one site may locate its staff files at one licensed site, however client files and other records shall be available at the licensed site where the client resides, or in non-residential programs, where the client receives services.

(8) A current roster of all clients shall be available on site at all times.

The roster shall include each client's name, date of birth, sex, emergency contact information, and date of admission.

In a residential program, the current location of any client who is off-site shall be maintained in the roster or a log established for that purpose.

(9) A program's rules shall be provided to clients and clients' guardians, and shall be available to a client's clergy or attorney upon request.

R501-2-7. Direct Service Management.

(a) A program shall have written policies and procedures that describe the appropriate treatment of clients, and shall prohibit the abuse, neglect, maltreatment, and exploitation of clients.

(b) Staff shall not abuse, neglect, maltreat, or exploit any client through any act or omission.

(c) Staff shall not encourage or fail to deter the acts or omissions of another that abuse, neglect, maltreat, or exploit any client.

(d) Staff shall not engage in criminal conduct.

(2) The program shall have a written eligibility policy and procedure that shall include:

(a) legal status;

(b) age and sex of client;

(c) client needs or problems best addressed by program;

(d) program limitations; and

(e) placement.

(3) Admission policy and procedures shall include:

(a) written intake screening conducted prior to a client's admission that determines whether a prospective client meets the program's eligibility standards;

(b) age of clients served, as approved by the Office of Licensing;

(i) a program shall not provide services to children and adults without first obtaining the written approval of the Office of Licensing;

(ii) a residential program shall not locate the bedrooms or bathrooms of children on the same wing, corridor, or floor with adult clients;

A program providing services only to women and their children is excepted from this subsection(3)(b)(ii).

A program authorized to provide services to an adult in the same facility as a child in accordance with Section 62A-2-106(1)(a)(iii) and Subsection R501-19-11(5) is excepted from this subsection(3)(b)(ii).

(iii) a program shall not permit children to participate in any activity, including but not limited to treatment, counseling, dining, education, recreation, free time, or using restroom facilities, on the same wing, corridor, floor, or other location, with adults, without first obtaining written approval from the Office of Licensing of its policy and procedures designed to safely separate children from adult clients;

(A) A program providing services only to women and their children is excepted from this subsection(3)(b)(iii).

(c) pre-placement requirements;

(d) self-admission;

(e) all items referenced in client manual under subsection(6);

(f) notification of client's guardian; and the program shall not admit a client with a medical emergency or a client who needs medical detoxification from drugs or alcohol.

(4) A program shall conduct a written intake screening prior to admitting a client.

(a) The intake screening shall determine whether:

(i) the client applicant satisfies the program's written eligibility policy; and

(ii) the program provides the services needed by the client applicant.

(5) The program shall complete a written assessment of each client.

(a) The assessment of each client shall be conducted:

(i) by a mental health therapist, in programs that provide treatment; or

(ii) by the client's direct care team, as defined in program policy, in programs that do not provide treatment; and

(iii) within 30 calendar days of admission to determine whether the program remains an appropriate placement to meet the client's physical, emotional, social, educational, recreational, and other needs.

(b) The assessment shall evaluate each client's health and family history, including but not limited to a self-harm assessment, medical, social, psychological, developmental, vocational and educational factors.

(c) The written assessment shall include a detailed description of the client's needs.

(6) A current client manual shall be provided to each client or each client's guardian before the program accepts any non-refundable payment or enters any contract to provide client services. The manual shall include detailed descriptions of:

(a) client expulsion criteria and procedures;

(b) services and activities provided on site and off site;

(c) methods of providing supervision of clients on-site and off site;

(d) the rules of the program, including but not limited to rules regarding discipline and personal possessions;

(e) the program's policy and procedures regarding:

(i) attendance and absenteeism;

(ii) visits to and from family, friends, and others;

(iii) vacation and holidays;

(iv) sending and receipt of mail and email;

(v) sending and receipt of gifts; and

(vi) making and receiving telephone calls;

(f) the program's policy and procedures regarding behavior management;

(g) the program's policy and procedures regarding contraband;

(h) the program's policy and procedures regarding searches;

(i) the program's food service and samples of actual menus;

(j) the program's physical education and recreational activities;

(k) the program's client rights statement;

(l) the program's weapons policy;

(m) the program's client grievance policy, including an appeal process; and

(n) the name and contact information for the Office of Licensing.

(7)(a) A written agreement between the program and the client or the client's guardian shall be completed and signed by all parties before the program accepts any payment from the client or the client's guardian.

A copy of the signed agreement shall be provided to the client or the client's guardian, and a copy shall be kept in the client's file.

(c) The agreement shall include:

(i) services to be provided and cost of service;

(ii) the client or the client's guardian's consent to participate in each program activity;

(iii) the client or the client's guardian's authorization to obtain emergency medical care for the client; and

(iv) the duration of the agreement.

(8)(a) A client's written individualized treatment or service plan shall include:

(i) the title of direct care staff assigned to provide services to the client, including but not limited to staff having responsibility for the development, implementation, and review of the plan;

(ii) the client's measurable long and short term goals and objectives;

(iii) evidence by way of client or guardian signature that input from the client or the client's guardian was integrated in identifying goals and objectives;

(iv) services, and treatment;

(v) methods for evaluation;

(vi) criteria for discharge; and

(vii) transition and follow-up plans.

(b) An individual treatment or service plan shall be developed, signed, and dated within 30 days of each client's admission by:

(i) a mental health therapist or an intern in a supervised clinical training internship who is certified under Title 58 chapter 60;

(ii) a "qualified mental retardation professional", as that term is defined in 42 CFR 483.430, for a client served through a contract between the program and DSPD; or

(iii) a Therapeutic Recreation Specialist who is licensed under Title 58 chapter 40, for clients in Adult Day Care programs.

(c) Each client's treatment or service plan shall be reviewed by:

(i) the mental health therapist as often as stated in the treatment or service plan, and no less than once every 3 months;

(ii) the "qualified mental retardation professional", for a client served through a contract between the program and DSPD, as often as stated in the treatment or service plan and no less than once every year; or

(iii) a Therapeutic Recreation Specialist who is licensed under Title 58 chapter 40, for clients in Adult Day Care programs.

(d) Each review shall include an assessment of the appropriateness of the program to continue to provide the services needed by the client.

(e) The client and the client's guardian shall be provided an opportunity to participate in each review and revision of the plan.

(9) (a) Reports on the progress of the client shall be provided to the client or the client's guardian.

(b) Treatment and service records shall be provided to the client or the client's guardian within two weeks of request.

(10) Treatment progress notes and service record entries shall include:

(a) identification of the program;

(b) date and duration of services provided, including but not limited to therapeutic, treatment, medical, educational, and recreational services;

(c) description of service provided; and

(d) a description of client progress or lack of progress in the achievement of treatment or service goals or objectives.

(11) All treatment progress notes and service record entries shall be signed and dated by the author, and shall include the author's title and the time they are written.

(12) Client Transfer, Withdrawal, or Discharge.

(a) The program shall develop a written individual discharge plan for each client.

(b) The individual discharge plan shall identify the client's ongoing needs and resources that may be available to the client.

(c) The plan shall be developed with the participation of the client or the client's guardian.

(d) A copy of the written individual discharge plan shall be provided to the client or the client's guardian upon the client's transfer, withdrawal, or discharge from the program.

(e) Within fifteen calendar days after each client transfers, withdraws, is discharged, or otherwise leaves the program, a discharge report shall be completed and placed in the client's file. The report shall include the:

(i) reason for discharge, withdrawal, or transfer;

(ii) summary of services provided;

(iii) evaluation of achievement of treatment goals or objectives;

(iv) signature and title of staff preparing the report; and

(v) date of discharge, withdrawal, or transfer.

The program shall have and comply with written policy and procedures concerning the unplanned discharge or withdrawal of a client.

(13)(a) The program shall have written policies and procedures regarding incident reports that shall include:

(i) An incident report documenting all incidents, such as deaths, medical emergencies, injuries of unknown origin, suicide attempts, suicide, fights, physical confrontations, situations involving the use of passive physical restraints, alleged or suspected incidents of abuse, neglect, or exploitation, unauthorized client absences from programs serving children or vulnerable adults, unusual incidents, searches performed when the client or client's guardian has not signed a written consent, and other situations affecting the health or safety of clients or staff, shall be signed by the staff involved and provided to the program director or acting director within 12 hours of the incident.

(ii) An incident report documenting the use of physical restraint, staff-directed time-out, seclusion, or any behavior modification technique that results in an injury to any person, shall be signed by the staff involved and provided to the program director or acting director within 12 hours of the incident, and shall include a detailed description of:

(A) the client's behavior before, during, and after the intervention;

(B) staff who requested, required, supervised, and witnessed the behavior or the intervention;

(C) staff attempts to de-escalate the behavior;

(D) the length of time that de-escalation was attempted;

(E) the date and time the intervention technique was started and completed;

(F) the intervention techniques used;

(G) supervisory follow-up with the staff; and

(H) follow-up with the client.

(iii) The program director or acting director shall review and sign each incident report, and document any follow-up action taken, including but not limited to staff training, staff discipline, or assessment of the appropriateness of the program to continue to provide the services needed by the client.

(b) A program shall verbally report an incident that involves death, or an emergency that may make continued provision of services impossible or impracticable, to the Office of Licensing and the client's guardian within 12 hours of the incident.

(c) A preliminary written report of an incident that involves the application of physical restraint that results in any injury; allegations of abuse, neglect, maltreatment or exploitation; medical emergency; death; a fire or other emergency that may make continued provision of services impossible or impracticable; shall be signed by the staff involved and submitted to the Office of Licensing within 24 hours of the incident; and a final written report shall be submitted to the Office of Licensing within 15 calendar days of the incident.

(d) A program shall immediately report an incident that involves death or significant criminal activity to the local law enforcement agency, except when prohibited by 42 CFR Part 2.

(e) A program shall report any alleged misconduct by staff that are licensed by state or local authorities, including but not limited to the Division of Occupational and Professional Licensing, to the applicable licensing authority within 15 calendar days of knowledge of the incident.

(14) The Office of Licensing may report a licensee's or staff's misconduct to law enforcement, clients, and clients' legal representatives.

(15)(a) A client who has a medical emergency, or who requests the services of a medical practitioner, shall receive an immediate assessment by a certified wilderness first responder, certified EMT, or a medical practitioner.

(b) The program shall comply with the recommendations of the certified wilderness first responder, certified EMT, or medical practitioner.

(c) The supervisor or staff-in-charge shall complete an incident report that describes the medical emergency or client request for medical services, includes the name and title of the individual performing the assessment, describes the individual's conclusions and recommendations, and attaches any documents regarding the incident and assessment.

(16)(a) The program shall have and comply with a written policy and procedures describing how clients will be transferred or placed in the event that program becomes unable to provide services due to a license sanction, court action, fire, or other emergency that makes continued provision of services impossible or impracticable.

(b) A written report documenting client transfers or placements shall include:

(i) the date, time, and circumstances surrounding the transfer or placement;

(ii) the client and staff involved;

(iii) communications with the client's guardian;

(iv) methods of transfer used, including transportation and safety plans;

(v) verification that the client's guardian, if any, has accepted physical custody of the client or approved the transfer of physical custody of the client to an individual designated by the guardian in writing;

(vi) date, signature and title of staff preparing report; and

(vii) date and signature of the program director approving the report.

(17) The program's grievance policy shall describe how a grievance may be made, who shall investigate and complete a written report regarding each grievance, and an appeal process.

(a) The program, its governing body and its staff shall not retaliate against any person who makes a complaint or grievance.

(b) Grievances shall be retained in grieving client's or grieving staff's file, and a copy shall be retained in a separate file documenting all grievances together with the investigation and resolution.

(18) Changes to the program's services, policies and procedures shall be disclosed to clients or clients' guardians prior to any change.

R501-2-8. Off-site Activities.

(1) A program that offers off-site activities for clients shall describe in the program's policies and procedures manual which types of off-site activities, including but not limited to specific types of mountain sports, water sports, shopping trips, and field trips, are permitted and which are prohibited, and shall:

(a) address risk factors associated with taking clients off-site for each type of activity permitted by the program;

(b) address risk factors associated with the client population that may participate in off-site activities;

(c) identify high-risk clients and require staff to remain within sight or hearing of high-risk clients;

(d) describe the minimum direct care staff-to-client ratio required for each type of activity permitted by the program, which shall never be less than the minimum direct care staff-to-client ratio required by categorical rule;

(e) describe what physical and behavioral prerequisites a client must meet in order to participate in each type of activity permitted by the program; and

(f) include a safety plan, including but not limited to communication, emergency and evacuation procedures, for each type of activity permitted by the program.

(2) A program shall obtain the written consent of the adult client or the client's guardian for each type of off-site activity prior to permitting the client to participate in the activity, but is not required to obtain an additional consent each time the client participates in the same activity.

(3) Staff involved in the off-site activity shall be familiar with the location and activity.

(a) A program may contract with an experienced professional guide to conduct an activity as long as the client's legal guardian grants permission and the program maintains responsibility for the health and safety of the participants.

(4) A program shall provide safety equipment, supplies, staff training, and client training for each person participating in the activity.

R501-2-9. Behavior Management.

(1) The program policies and procedures shall describe all methods of behavior management permitted by the program. These shall include:

(a) definition of appropriate and inappropriate behaviors;

(b) acceptable staff responses to inappropriate behaviors;

(i) staff shall only use behavior management techniques appropriate for the age, behavior, needs, and developmental level of a client;

(ii) staff shall only use behavior management techniques that are positive, consistent, and that promote self-control, self-esteem, and independence;

(iii) staff shall not use physical work assignments or activities that inflict pain as behavior management techniques;

(A) a physical work assignment or activity that results in minor sore muscles does not violate subsection(1)(b)(iii);

(iv) staff shall not abuse, threaten, humiliate, ridicule, degrade, or frighten a client;

(v) staff shall not deny a client medical care, food, hydration, clothing, bedding, sleep, toilet and bathing facilities, or any clients' rights;

(vi) staff shall not use nor permit the use of a mechanical restraint, chemical restraint, physical force, or the infliction of pain to discipline, coerce, punish, or retaliate against a client;

(vii) staff shall not place nor permit another to place anything on a client's face, over a client's head, or in a client's mouth to discipline, coerce, punish, or retaliate against a client;

(c) staff shall use the least restrictive method of behavior management available to control a situation; and

(d) staff shall not use behavior management techniques that are not specifically authorized by the program's written policy and procedures.

(2) Staff shall receive training relative to behavior management at least annually.

(3)(a) Staff shall not use nor permit the use of any physical restraint with the exception of passive physical restraint.

Passive physical restraint shall be used only as a temporary means of physical containment to protect the client, other persons, or property from harm.

(c) Passive physical restraint shall not be used to discipline, coerce, punish, or retaliate against a client.

(d) Passive physical restraint shall be documented in an incident report.

(e) Passive physical restraint shall be applied only by staff who are trained in accordance with the non-violent intervention strategies of a State, regional or national recognized program.

(f) Passive physical restraint shall be applied only as long as necessary to calm the client, and shall not exceed 30 minutes unless a mental health therapist, a medical practitioner, or a behavior consultant in a program that is under exclusive contract with DSPD and provides services only to DSPD clients, remains present on site, evaluates the client, and determines that the restraint remains necessary.

(4)(a) A staff-directed time-out or a self-directed time-out is only used when a client's behavior is disruptive to a client's ability to participate in the activity, or as an intervention when the client poses a risk of harm to a person or property.

(b) A time out shall not be used to coerce, punish, or retaliate against a client.

(c) A staff-directed time-out shall be documented in an incident report.

(d) If a client is placed in a staff-directed time-out more than four times in any twenty-four hour period, a review is conducted by the mental health therapist, medical practitioner, or a behavior consultant in a program that is under exclusive contract with DSPD and provides services only to DSPD clients, to determine the suitability of the client remaining in the program.

(e) Any one time-out shall not exceed 30 minutes in duration unless a mental health therapist, a medical practitioner, or a behavior consultant in a program that is under exclusive contract with DSPD and provides services only to DSPD clients, remains present on site, evaluates the client, and determines that the time-out remains necessary.

(f) A staff who is responsible for monitoring a client in a staff-directed time-out shall have no other immediate responsibilities and is required to maintain continuous visual or auditory contact with a client.

(5)(a) Seclusion may only be used when a client's behavior is disruptive to a client's ability to participate in the activity, or as an intervention when the client poses a high risk of harm to a person or property, and a less restrictive method of behavior management is ineffective.

(b) Seclusion shall not be used to discipline, coerce, punish, or retaliate against a client.

(c) Seclusion shall be documented in an incident report.

(d) If a client is placed in seclusion more than 2 times in any twenty-four hour period, a review is conducted by a mental health therapist, a medical practitioner, or a behavior consultant in a program that is under exclusive contract with DSPD and provides services only to DSPD clients, to determine the suitability of the client remaining in the program.

(e) Any one seclusion shall not exceed the time required for the client to gain control of the client's emotions and actions, and in no event shall the seclusion exceed 2 hours in duration unless a mental health therapist, a medical practitioner, or a behavior consultant in a program that is under exclusive contract with DSPD and provides services only to DSPD clients, remains present on site, evaluates the client, and determines that the seclusion remains necessary.

(f) A staff who is responsible for monitoring a client in seclusion shall have no other immediate responsibilities and is required to maintain continuous visual and auditory contact with a client.

(g) Seclusion shall not be used in any:

(i) therapeutic school, or

(ii) non-residential program.

(6) If there is any type of emergency, such as a fire alarm or evacuation notification, clients in time-out or seclusion shall immediately be released and follow the safety plan.

(7) A client who is placed in a staff-directed time-out or seclusion shall not be in possession of potentially harmful objects or materials, such as articles of clothing that could present a risk of harm.

(a) A client who has expressed any suicidal or self-harm ideation or behavior shall be visually monitored by staff until a mental health therapist evaluates the client and makes further recommendations.

(b) A client in time-out or seclusion shall be provided with clothing that preserves the comfort, modesty, and dignity of the client.

(8) Toilet facilities shall be provided for a client who is in time-out or seclusion.

(9)(a) Time-out rooms shall not be located in closets, bathrooms, unfinished basements, unfinished attics, or boxes.

(b) Seclusion rooms shall not be located in closets, bathrooms, bedrooms, unfinished basements, unfinished attics, or boxes.

(c) A seclusion room shall be unfurnished and shall contain no equipment or materials that a client may use to inflict harm upon any person or property.

(d) A room used for time-out or seclusion shall be wide enough and deep enough to allow the client to lie prone with arms extended without touching the walls, with a ceiling height of at least 7 feet.

(e) A room used for time-out or seclusion shall have either natural or mechanical ventilation, and shall be maintained at no less than 65 degrees and no more than 80 degrees.

(f) A room used for seclusion shall be equipped with a break resistant window or camera that allows for full observation of all areas of the room.

(g) A room used for time-outs or seclusion shall not have locking capability, except:

(i) after receiving the prior written approval of the Office of Licensing, a program may equip a time-out or seclusion room with a magnetic lock that is connected with the program's alarm system and that automatically unlocks in the event of an emergency; and

(ii) after receiving the prior written approval of the fire marshal, a program may use a magnetic lock in a time-out or seclusion room that is connected with the program's alarm system and that automatically unlocks in the event of an emergency.

(10) The program's mental health therapist shall be responsible for the supervision of the program's behavior management procedures.

(a) A program that is under exclusive contract with DSPD and provides services only to DSPD clients may utilize the services of a "behavior consultant" instead of a mental health therapist.

R501-2-10. Rights of Clients.

(1) The program policies and procedures shall describe clients' rights, which shall include but not be limited to:

(a) the right to confidentiality of information about prospective, current and former clients, and the right to confidentiality of records concerning prospective, current and former clients, except when disclosure is required by law or requested by the client's guardian or an adult client;

(b) the right to receive medical care, treatment services, nutritious food, and in residential programs, clean clothing and safe shelter;

(c) the right to be informed of the reasons for an involuntary termination, appeals processes in programs that permit appeals of involuntary terminations, and the criteria for re-admission to the program in programs that permit readmission;

(d) the right to be treated with courtesy and professionalism by staff;

(e) the right to protection from harm or acts of violence, including protection from physical, verbal, sexual, and emotional abuse, neglect, maltreatment, exploitation, or inhumane treatment;

(f) the right to be informed of the program's rules of conduct;

(g) the right to be informed of the program's fees and other costs that the client is responsible for paying;

(h) the right to be informed of and invoke, without repercussion or retribution, complaint, grievance and appeal procedures, including but not limited to appeals of level changes and service changes;

(i) the right to protection from discrimination based upon the client's race, color, national origin, culture, religion, sex, sexual orientation, age, political affiliation, or disability;

(j) the right to be treated with dignity, which shall include but not be limited to the right to reasonable personal privacy, the right to have the client's opinions regarding the client's treatment and future considered and, to the greatest extent possible, honored;

(k) the right to communicate with and have visitors, except for those individuals whose communication and visitation rights have been restricted through the courts, the client's guardian, the client's mental health therapist, or the client's "qualified mental retardation professional" for a client served through a contract between the program and DSPD;

(l) the right to communication with and visits from the client's guardian, attorney, physician, and clergy shall not be restricted;

(m) the right to send and receive private, unopened, uncensored mail to and from the client's guardian, attorney, physician, clergy, and the Office of Licensing;

(n) a program may require a client to open mail from individuals other than the client's guardian, attorney, physician, clergy, or the Office of Licensing in the presence of program staff to verify that no contraband is present, but may not read the client's mail.

(o) a program that restricts a client from receiving mail from any individual other than the client's guardian, attorney, physician, clergy, or the Office of Licensing shall return the mail, unopened, to the sender; and

(p) the right to be informed of the program sanctions and consequences that have been reviewed and approved by the Office of Licensing.

(2) Each client shall be informed of the Clients' Rights statement verbally and in writing no later than the time of intake and admission. A copy of the Client's Rights statement shall be signed by the client and the client's guardian, and shall be maintained in the client's file.

(3) The program's Client's Rights statement shall be posted or provided to clients and clients' guardians, together with the phone number of the Office of Licensing.

R501-2-11. Personnel Administration.

(1) The program shall have written personnel policies and procedures regarding:

(a) employee grievances;

(b) supervision and lines of authority;

(c) orientation and training;

(d) rules of conduct;

(e) mandatory abuse, neglect and exploitation reporting;

(f) staff discipline; and

(g) sexual and personal harassment.

(2) Each program site shall have a minimum of one supervisor or staff-in-charge on-site at all times.

(3) The program shall follow a written staff to client ratio, which shall meet specific client and program needs. The direct care staff to client ratio shall meet or exceed the requirements set forth in the applicable categorical rules.

(4) The program shall have a written job description for each position, which includes a specific statement of duties and responsibilities and the minimum level of education, training and work experience required.

(5) The governing body of the program shall designate one or more program directors, acting directors, or clinical directors who shall maintain responsibility for the on-site daily administration and operation of the program.

(6) All direct care staff shall have within 90 days of the date of hire:

(a) current certification in standard first aid;

(b) current certification in CPR;

(c) documented training in behavior management techniques, including passive restraint techniques by a certified instructor, if program staff use any passive restraint techniques; and

(d) emergency procedures.

(7) In addition to completing the requirements Subsection R501-2-11(6):

(a) The director, clinical director, and all acting directors who maintain responsibility for the on-site administration and operation of the program shall:

(i) be at least 25 years of age;

(ii) have a BA or BS social services degree, or a minimum of three years of documented training or experience in providing the program services, and have a minimum of two years of social service program management experience.

(b) Each supervisor shall have:

(i) a minimum of one year of documented competency and proficiency performing on-duty direct-care program services; and

(ii) documentation of meeting the minimum qualifications for their job description.

(c) A staff-in-charge shall have:

(i) a minimum of six months of documented competency and proficiency performing on-duty, direct-care program services; and

(ii) documentation of meeting the minimum qualifications for their job description.

(8) Each staff with direct access to a client shall be directly supervised by a supervisor until the staff:

(a) achieves the qualifications, competency and proficiency requirements, and training requirements of the applicable job description;

(b) receives current certification in standard first aid;

(c) receives current certification in CPR;

(d) for programs where a background screening is required, a current background screening clearance; and

(e) all training listed in Subsection R501-2-11(9).

(9) Staff shall receive and document the following annual training and requirements:

(a) behavior management;

(b) passive restraint techniques by a certified instructor, if program staff use any passive restraint techniques;

(c) client searches, if program staff conduct any searches;

(d) suicide prevention;

(e) successfully completes annual training directly related to providing program services;

(f) completes a current annual background screening clearance through the Office of Licensing in programs requiring a background screening; and

(g) reads, signs, and demonstrates a working knowledge of:

(i) Rules R501-2 Core Rules, R501-1 General Provisions, R501-14 Background Screening;

(ii) the applicable categorical rules;

(iii) the current program policy and procedure manual;

(iv) the current program client manual;

(v) emergency procedures; and

(vi) universal precautions for infectious and communicable diseases.

(10) A program shall have and comply with a policy to inform direct care staff of client needs, including but not limited to:

(a) therapeutic goals of each client; and

(b) specific techniques to actively support the service plan or the treatment plan.

(11) The program shall have policy and procedures regarding contraband, which shall include:

(a) a definition of contraband that includes but is not limited to drugs, syringes, alcohol, razor blades, firearms, knives, and explosives;

(b) confiscation and disposal or return of contraband;

(c) notifications to local law enforcement; and

(d) notifications to a client's guardian.

(12) A program shall have and comply with a written policy and procedures regarding searches of a client or a client's property, which shall include:

(a) a program shall not conduct a search of a client's property or body without obtaining the written consent of the client or the client's guardian at the time of admission that describes the program's search policies and procedures;

(b) staff shall maintain the dignity of each client by conducting each search of a client's body in a private room, by two staff members of the same gender as the client;

(c) no searches shall be made except in accordance with the program's approved manual;

(d) no search shall be performed unless required for the safety of the client or another individual, or to locate and confiscate contraband;

(e) a search shall be made in the least intrusive manner possible;

(f) a description of what type of searches will and will not be permitted;

(g) staff conducting a permitted search shall complete, date, and sign a report describing the reason for the search, the time and date of the search, witnesses to the search, and the results of the search; and

(h) a permitted strip search shall be conducted only if:

(i) staff has reason to believe, after a pat-down search, that contraband may be found;

(ii) the circumstances are first discussed with the program director;

(iii) the program director authorizes the search;

(iv) the client is required to remove clothing and step away from the clothing so that staff may search the clothing;

(v) the client's body is not touched by any person;

(vi) the client's privacy is preserved; and

(vii) body cavity searches, except for requiring a client to open the client's mouth for a visual search, are prohibited.

(13) The Director of the Office of Licensing, or the Director's designee, may require a psychological examination of a person associated with the licensee as defined in 62A-2-101(24) if that person exhibits behavior that may pose a risk of harm to a child or vulnerable adult.

(a) The Director or the Director's designee may require a person associated with the licensee to:

(i) obtain and pay for a psychological examination from a currently licensed psychologist or psychiatrist who is not affiliated with the program; and

(ii) authorize the psychologist or psychiatrist to submit the examination findings and report directly to the Office of Licensing.

(b) A program's staff member or staff applicant who is required to obtain a psychological examination under this section shall have no unsupervised direct access to a client until after:

(i) a psychologist or psychiatrist examines the staff member or staff applicant; and

(ii) submits a report to the Office of Licensing that indicates the staff member or staff applicant does not pose a risk of harm to a child or vulnerable adult.

R501-2-12. Medication and Medical Procedures.

(1) A program shall not provide prescription or non-prescription medications to clients and shall not permit the self-administration of prescription or non-prescription medications except as specifically described in the program's policy and procedures manual and approved by the Office of Licensing.

(2)(a) A program shall not administer or permit any person to administer any medical procedures at the program site.

(b) Subsection(2)(a) shall not apply to:

(i) administration of medication in accordance with Subsection R501-2-12(3);

(ii) medical procedures performed by a medical practitioner or certified emergency medical technician;

(iv) medical procedures performed by unlicensed assistive personnel trained and supervised by a nurse in accordance with the Nurse Practice Act and Rule 156-31b; or

(v) medical procedures performed by a health care facility that is licensed by the Department of Health.

(3)(a) A program shall keep all prescription and non-prescription medications in locked storage when not in active use.

(b) A client who requires immediate access to the client's medication, including but not limited to a client with asthma or diabetes, may be permitted to carry a single dose of medication for active use.

(4) Medications in active use shall not be left unattended.

(5) Non-prescription medications shall be stored in their original manufacturer's packaging together with manufacturer's directions and warnings.

(6) Programs only serving adults who are capable of managing their own resources and carrying out the activities of daily living may develop policies approved by the Office of Licensing that permit the adult to possess and manage their own medication. The program will monitor the adult clients management of their medication.

(7)(a) Prescription medications shall be stored in their original pharmacy packaging together with the pharmacy label, directions and warnings.

(b) A medical practitioner may repackage no more than one week's worth of a client's prescription medication into individual dose packages, each of which shall be labeled with the client's name, the name of the medication, and the time, date, and dosage that the medication is to be administered.

(c) Individual dose packages shall be stored together with the original pharmacy packaging and pharmacy label, directions and warnings.

(8) The staff-in-charge or a staff with documented training in medication procedures that is designated by the staff-in-charge shall:

(a) administer or oversee the self-administration of prescription medications only as prescribed by a medical practitioner;

(b) administer or oversee the self-administration of non-prescription medications only as directed by the manufacturer;

(c) observe the client consume any medication;

(d) maintain an individual client medication log, which shall include the client's name and photograph, medication, time and dosage administered, effects of the medication, and initial or signature of client and staff administering medication; and

(e) immediately notify a client's physician of any reactions to medications that are severe or that are not expected according to warnings on prescription or non-prescription labels.

(9) Each client medication log shall be maintained together with the medication while the client is actively enrolled in the program, and transferred to the client's file when the client leaves the program.

(10) Upon discharge from a program, the program shall transfer a client's unused medications to the client's guardian or, if the client has no guardian, to the client.

(11) Unused or expired medications shall be destroyed by two direct care staff, and the destruction shall be documented.

(12)(a) A program shall inform the client's guardian of any emergency medical treatment no later than 48 hours after treatment commences.

(b) Except for minor first aid treatment, a program shall obtain the prior written consent of the client's guardian for any non-emergency medical treatment, including the administration of medication not provided by the guardian.

R501-2-13. Infectious Disease.

(1) The program shall have written policies and procedures designed to prevent, or control infectious and communicable diseases, including but not limited to AIDS, chickenpox, Gonorrhea, Hepatitis, HIV, Measles, Meningitis, Mumps, Rabies, Syphilis, Tuberculosis, or suspected or confirmed outbreaks of food-borne or water-borne disease in the facility in accordance with local, state and federal health standards.

(a) The program shall immediately report any individual suffering from or suspected of having a disease that is infectious or communicable to the County Health Department in accordance with Section 26-6-6 and Rule R386-702.

(2) A program shall develop written policies and procedures requiring the use of universal precautions to respond to incidents involving bodily fluids, which shall include proper clean-up procedures as recommended by the local health department.

(3) The program shall provide universal precautions training to all staff and clients which shall include but is not limited to:

(a) hand washing rules;

(b) not permitting staff to work when sick;

(c) sanitizing rooms utilized by sick staff or clients; and

(d) procedures for limiting the exposure of healthy individuals to sick individuals.

R501-2-14. Emergency Plans.

(1) The program shall have a written emergency response plan describing how staff shall respond in an emergency, including but not limited to severe weather, a fire, natural disaster, prolonged disruption of utility services, medical emergency, a client who may be missing, or significant criminal activity, to include:

(a) designation of authority and staff assignments;

(b) plan for evacuation, including but not limited to evacuation of persons who are non-ambulatory and persons with disabilities;

(i) all staff and clients shall evacuate from a building within two minutes after an alarm; or

(ii) all staff and clients in a program that is under exclusive contract with DSPD and provides services only to DSPD clients shall evacuate from a building in accordance with an emergency plan that has been approved in writing by an Office of Licensing Life Safety Inspector;

(c) transportation and relocation of staff and clients, including but not limited to transportation and relocation of persons with disabilities;

(d) location, supervision and care of clients after evacuation or relocation, including but not limited to care of persons with disabilities;

(e) notification of each client's guardian; and

(f) reporting significant criminal activity or medical emergencies to local law enforcement, emergency first responders, and the Office of Licensing.

(2) The program shall comply with its approved emergency response plan.

(3) The program shall educate staff and clients on how to respond to emergencies.

(a) The program shall conduct quarterly emergency response drills, including fire drills.

(b) The program director shall maintain a detailed written report for the Office of Licensing that assesses staff and client compliance with the program's written emergency response plan.

(4) The program shall comply with the written safety requirements of the local fire department, including but not limited to requirements regarding emergency exits.

R501-2-15. Safety.

(1)(a) The program shall provide staff and clients with emergency access to an operable telephone at all times.

(b) Local emergency telephone numbers, including fire, police, poison control, emergency medical personnel, and other local emergency numbers, shall be visibly posted by each telephone.

(c) On-call staff telephone numbers shall be immediately available to on-duty staff.

(2) The program shall have a first-aid kit readily accessible within 100 feet of all on-duty staff.

(a) The contents of each first-aid kit shall be as recommended by a nationally recognized program, such as the American Red Cross, or approved in writing by a medical practitioner.

(b) The contents of each first-aid kit shall be inventoried and restocked within one week after each use, and no less than monthly.

(c) First aid kits that include any medication shall be locked.

(3) The program shall have at least one first-aid kit, one operational carbon monoxide detecting device, one operational

smoke detector, and one fully charged fire extinguisher on each level of each building.

(4) A program shall place all hazardous chemicals and materials, including but not limited to poisonous substances, explosive or flammable substances, and cleaning supplies, in locked storage when not in active use.

(a) Hazardous chemicals and materials shall be stored in:

(i) the manufacturer's original packaging together with the manufacturer's directions and warnings; or

(ii) a container that complies with the manufacturer's directions and warnings and is clearly labeled with the contents, manufacturer's directions and warnings.

(b) Flammable substances, including but not limited to gasoline, kerosene, and propane, shall be locked in a ventilated storage area or OSHA approved storage cabinet separate from office and living areas.

(c) Except as provided by Subsections R501-2-15(4)(c)(i) through (iii), a client shall have no access to any hazardous chemicals or materials, including but not limited to poisonous substances, explosive or flammable substances, and cleaning supplies, unless the client is directly supervised by staff.

(i) A program may assess a client and provide unsupervised access to a hazardous chemical or material only after the client demonstrates the ability to use the hazardous chemical or material safely.

(ii) A client's individual assessment shall provide a detailed description of the assessment and shall be signed and dated by the direct care staff performing the assessment.

(iii) A client's assessment shall be filed in the client's individual file.

(5) A program that permits any person to smoke or use tobacco products shall:

(a) have and comply with a smoking and tobacco products policy;

(b) prohibit smoking and the use of tobacco products by or in the presence of a child;

(c) prohibit smoking and the use of tobacco products in any enclosed area; and

(d) comply with the Utah Clean Air Act.

(6) A program that provides food for its clients shall comply with Rule 70-530 Food Protection.

(7) A program that provides food for its clients shall not serve and shall promptly dispose of food:

(a) after the expiration date on the food package;

(b) after the "best used by" date on the food package;

(c) two weeks after the "sell by" date on the food package;

(d) infested with insects or vermin;

(e) that looks or smells spoiled or moldy; or

(f) in a can that has any damage to its seams, has rust, or is bulging.

(8) A program shall have policies and procedures that describe which animals are permitted or restricted on-site.

(a) Animals that are owned, sheltered or fed by the program, or whose freedom to leave the program site is restricted, shall be free from disease and cared for in a clean, safe, and humane manner.

(b) A program shall maintain a file documenting the health of each animal on site. The file shall include written verification of each animal's current vaccinations in accordance with the law and veterinary recommendations, health care, health history, and any incidents involving aggression by the animal.

(c) A program shall provide and document staff training and client training regarding the risks, proper feeding, cleaning shelter and handling of each individual animal prior to permitting any contact with that animal.

(d) A program shall immediately isolate an animal that bites or attacks any person and causes an injury, and shall report an incident to local animal control authorities within 24 hours.

R501-2-16. Weapons.

(1) Dangerous weapons shall be inaccessible to clients, except as specifically authorized in the program's written policy and procedures manual.

(a) The program shall take into consideration common household items that may be used as a weapon.

(b) A program's manual shall describe which weapons are permitted and which are prohibited on site, and shall also describe how weapons shall be stored, and the circumstances under which they may be accessible to clients.

(i) The determination of permitted and prohibited weapons shall be made in accordance with the age and behavioral characteristics of the client population served.

R501-2-17. Transportation.

The program shall have a written policy and procedures regarding transporting clients, which shall include:

(a) each occupant of any vehicle transporting a client shall have and use a properly functioning seat belt;

(b) a client shall not be transported in the bed of any vehicle; and

(c) a client shall not be permitted to transport another client unless the client who is driving is the parent or spouse of the client being transported.

(2) An adult client in an adult treatment program may transport another adult client in the program if:

(a) the program has and complies with a written policy and procedures that address safety factors, including but not limited to its clients' presenting problems, risk to other clients, staff and the community, age, maturity, and behavior;

(b) the client driver first submits a current driver license and annual Department of Public Safety driving record to the program, to be retained in the client file, which indicate the client's license is currently valid; and

(c) the passenger voluntarily consents in writing to being transported by a client driver.

(3) A program's minimum staff to client ratios, as described in that program's categorical rules, shall be maintained while transporting clients;

(a) staff who are off-site providing transportation services shall not be counted when determining program compliance with on-site staff to client ratios; and

(b) staff shall not transport any client on a motorcycle or farm machinery, as those terms are defined in Title 53.

(4)(a) The program shall maintain on-site a copy of the current registration and insurance verification records for each vehicle, including a privately owned vehicle, it uses to transport a client.

(b) Insurance records for a privately owned vehicle used to transport a client shall document that the policy includes coverage for transportation of clients.

(5) A vehicle used to transport a client shall be maintained in a safe condition.

(6) Each vehicle used to transport a client shall visibly post emergency information in the vehicle, or maintain emergency information together with registration and insurance documents in the vehicle. Emergency information shall include the name, address and phone number of the program and an emergency telephone number for a program management person.

(7) Staff shall not transport a client without first submitting a current valid driver license to the program for the type of vehicle driven.

(8)(a) Each vehicle used to transport a client shall be equipped with a first-aid kit as recommended by a nationally recognized program, such as the American Red Cross.

(b) The contents of each first aid kit shall be inventoried and restocked within one week after each use, and no less than monthly.

R501-2-18. Categorical Rules.

A human services program shall not provide child placing adoption services without first obtaining a license and complying with Child Placing Adoption Agencies Rule R501-7.

A human services program shall not provide outdoor youth program services without first obtaining a license and complying with Outdoor Youth Programs Rule R501-8.

A human services program shall not provide social detoxification services without first obtaining a license and complying with Social Detoxification Rule R501-11.

(a) A human services program shall not provide child foster home services without first obtaining a license and complying with Child Foster Care Rule R501-12.

(b) A program licensee authorized by the Office of Licensing to certify foster or proctor care homes shall:

(i) approve applicants only after first verifying and documenting the applicant's compliance with the Child Foster Care Rule R501-12;

(ii) recruit, train, and supervise foster and proctor parents in accordance with all requirements of Rule R501-12;

(iii) maintain written records of each annual home study evaluation, compliance with Rule R501-12, and completion of training requirements;

(iv) have a written procedure, including an appeal process, to suspend, revoke or deny a foster home or proctor home certification;

(v) have a written agreement with the foster or proctor parents which includes the expectations and responsibilities of the program, staff, foster or proctor parents, the services to be provided, the financial arrangements for children placed in the home, the authority foster parents can exercise on children placed in the home, actions which require staff authorization;

(vi) plan, with participation of the child's guardian, for care and services to meet the child's individual needs;

(vii) obtain, coordinate and supervise any needed medical, remedial, or other specialized services or resources with the ongoing participation of the foster or proctor parents;

(viii) provide quarterly supervision of foster and proctor parents to monitor the quality of the care they provide;

(ix) not grant a variance to Rule R501-12 without the prior, written consent of the Director of the Office of Licensing; and

(x) not authorize a variance to any law or regulation.

A human services program shall not provide adult day care services without first obtaining a license and complying with Adult Day Care Rule R501-13.

A human services program shall not provide therapeutic school services without first obtaining a license and complying with Therapeutic Schools Rule R501-15.

A human services program shall not provide intermediate secure treatment services without first obtaining a license and complying with Intermediate Secure Treatment Programs for Minors Rule R501-16.

A human services program shall not provide adult foster home services without first obtaining a license and complying with Adult Foster Care Rule R501-17.

A human services program shall not provide residential treatment services without first obtaining a license and complying with Residential Treatment Rule R501-19.

(10) A human services program shall not provide day treatment services without first obtaining a license and complying with Day Treatment Rule R501-20.

(11) A human services program shall not provide outpatient treatment services without first obtaining a license and complying with Outpatient Treatment Rule R501-21.

(12) A human services program shall not provide residential support services without first obtaining a license and complying with Residential Support Rule R501-22.

(13) A human services program shall not provide more than one category of services requiring a categorical program license without first:

(a) obtaining a license for each category of services offered; and

(b) complying with the most restrictive categorical rules in any facilities, activities, or services shared by the programs.

R501-2-19. Compliance.

Any licensee that is in operation on the effective date of this rule shall be given 90 days after the effective date to achieve compliance with this rule.

KEY: licensing, human services

Date of Enactment or Last Substantive Amendment: [~~March 17, 2004~~2007]

Notice of Continuation: November 25, 2002

Authorizing, and Implemented or Interpreted Law: 62A-2-101 et seq.



Human Services, Administration, Administrative Services, Licensing

R501-14

Background Screening

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 30178

FILED: 07/11/2007, 08:25

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Changes to this rule are necessary as a result of requirements established by the passage of the federal Adam Walsh Child Protection and Safety Act of 2006, and the provisions set forth in H.B. 245 Child Welfare Amendments passed during the 2007 General Session of the Utah State Legislature. (DAR NOTE: H.B. 245 (2007) is found at Chapter 152, Laws of Utah 2007, and was effective 04/30/2007.)

SUMMARY OF THE RULE OR CHANGE: The changes: identify new background screening requirements for prospective foster and adoptive parents as specified in the new laws mentioned above; create provisions for Live Scan fingerprint checks; clarify the role of the Human Services Department Comprehensive Review Committee; and clarify the information required from applicant in order for Office of Licensing staff to adequately conduct background screens.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 62A-2-108.3, 62A-2-120, 62A-2-121, 62A-2-122, 62A-3-104.3, and 62A-5-103.5; Subsections 78-30-3.5(2)(a) and (8); and Section 78-30-3.6

ANTICIPATED COST OR SAVINGS TO:

- ❖ THE STATE BUDGET: The implementation of this rule will require some initial cost for acquisition of Live Scan equipment and training of staff. On-going costs will be off-set by collection of fees as required by the federal law.
- ❖ LOCAL GOVERNMENTS: There should be no cost to local government associated with this rule.
- ❖ OTHER PERSONS: There should be no costs to other persons except as indicated below under "Compliance cost for affected persons" and "Comments by the department head".

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no additional costs required of the affected person unless the persons choose to utilize the Live Scan fingerprint background screen. The fee for Live Scan is double the current fee for the hard copy fingerprint check, but the results are available in 48 hours versus 8 to 12 weeks.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Some private providers that contract with the Department will pay the fee for the background screens of their staff. Some do not, and pass that expense on to the prospective staff member. Businesses that choose to pay the fee have indicated that the quicker turn around on background clearance actually saves them money overall. Lisa-Michele Church, Executive Director

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

Ken Stettler at the above address, by phone at 801-538-4235, by FAX at 801-538-4553, or by Internet E-mail at kstettler@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 08/31/2007.

THIS RULE MAY BECOME EFFECTIVE ON: 09/07/2007

AUTHORIZED BY: Ken Stettler, Director

R501. Human Services, Administration, Administrative Services, Licensing.**R501-14. Background Screening.****R501-14-1. Authority and Purpose.**

(1)[+] This Rule is authorized by and implements Sections 62A-2-108.3, 62A-2-120, 62A-2-121, 62A-2-122, 62A-3-104.3, 62A-5-103.5, 78-30-3.5(2)(a), and 78-30-3.6.

(2)[2-] This Rule establishes the circumstances under which an applicant may have direct access or provide services to a child or vulnerable adult when the person has a criminal history record, is listed in the Licensing Information System or the statewide database of the Division of Aging and Adult Services, or when juvenile court records show that a court made a substantiated finding under Section 78-3a-320 that the person committed a severe type of child abuse or neglect.

(3)[3-] This Rule clarifies the standards for approving, denying, or revoking an applicant's background screening.

R501-14-2. Definitions.

(1)[+] "Abuse" may include "severe emotional abuse", "severe physical abuse", and "emotional or psychological abuse", as these terms are defined in Sections 62A-4a-101 and Section 62A-3-301.

(2)[2-] "Applicant" means a person whose identifying information is submitted to the Department of Human Services Office of Licensing under Sections 62A-2-108.3, 62A-2-120, 62A-3-104.3, 62A-5-103.5, 78-30-3.5(2)(a), and 78-30-3.6.

(3)[3-] "BCI" means the Bureau of Criminal Identification, and is the designated state agency of the Division of Criminal Investigation and Technical Services Division, within the Department of Public Safety, responsible to maintain criminal records in the State of Utah.

(4)[4-] "Child" is defined in Section 62A-2-101.

(5)[5-] "Comprehensive Review Committee" means the Committee appointed to conduct comprehensive reviews in accordance with Section 62A-2-120.

(6)[6-] "Direct Access" is defined in Section 62A-2-101.

(7)[7-] "Direct Service Worker" is defined in Section 62A-5-101.

(8)[8-] "Directly supervised" is defined in 62A-2-120(5).

(9) "Fingerprints" means an individual's fingerprints as copied electronically through a live-scan fingerprinting device or on two ten-print fingerprint cards by a law enforcement agency, an agency approved by the BCI, or an agency approved by the Office of Licensing.

(10)[9-] "Human services program" is defined in Section 62A-2-101.

(11)~~[10-]~~ "Identifying information" means an applicant's:
 (a)~~[a-]~~ current and former names, aliases, and addresses,
 (b)~~[b-]~~ date of birth,
 (c)~~[c-]~~ social security number, and
 (d)~~[d-]~~ a current, valid state driver's license or state identification card bearing the applicant's photo, current name, and address; and

(e)~~[e-]~~ Identifying information includes an applicant's fingerprints when required by law or rule, certified copies of applicable court records, and other records specifically requested by the Office of Licensing.

(12)~~[11-]~~ "Licensing Information System" is created by Section 62A-4a-~~[116-2]~~1006, as a sub-part of the Division of Child and Family Services' Management Information System created by Section 62A-4a-~~[116]~~1003.

(13)~~[12-]~~ "Neglect" may include "severe neglect", as these terms are defined in Sections 62A-4a-101 and 62A-3-301.

(14)~~[13-]~~ "Personal Care Attendant" is defined in Section 62A-3-101.

(15)~~[14-]~~ "Statewide Database" of the Division of Aging and Adult Services is created by Section 62A-3-311.1 to maintain reports of vulnerable adult abuse, neglect, or exploitation.

(16)~~[15-]~~ "Substantiated" is defined in Sections 62A-3-301 and 62A-4a-101.

(17)~~[16-]~~ "Supported" is defined in Section 62A-4a-101.

(18)~~[17-]~~ "Vulnerable Adult" is defined in Section 62A-2-101.

R501-14-3. Background Screening Procedure.

(1)~~[1-a-]~~(a) An applicant for initial background screening or annual background screening renewal shall legibly complete, date and sign a background screening application and consent on a form provided by the Office of Licensing, and attach all required identifying information.

~~ii. an applicant for annual background screening renewal shall legibly complete, date and sign a background screening application and consent on a form provided by the Office of Licensing, and attach all required identifying information.~~

~~(b)~~[A-]~~ [A] An applicant for annual background screening renewal shall submit a background screening application and identifying information [no sooner than sixty days and] no later than fourteen days preceding the expiration date of the current background screening approval.~~

(c)~~[ii-]~~ [A] An applicant for initial background screening or annual background screening renewal shall disclose all criminal charges, including pending charges, and all supported or substantiated findings of abuse, neglect or exploitation on the background screening application.

(2)(a)~~[b-]~~ [A] An applicant for initial background screening or annual background screening renewal who has not continuously lived in Utah for the five years immediately preceding the day the application is submitted shall submit fingerprints~~attach two completed ten print fingerprint cards~~, and a cashiers' check or money order for the cost of a FBI national criminal history record check, ~~to~~with the background screening application.

(b) An applicant has not continuously lived in Utah for the five years immediately preceding the date of the application if the applicant has spent six or more consecutive weeks outside Utah, including but not limited to education, volunteer or employment activities, military duty, or vacations.

(c) An applicant has not continuously lived in Utah for the five years immediately preceding the date of the application if the

applicant presents an out-of-state driver license or an out-of-state identification card.

~~(d) Notwithstanding any other provision of Rule R501-14, an applicant shall submit fingerprints if the background screening is being conducted for the purpose of licensing a prospective foster home or approving a prospective adoptive placement of a child in state custody.~~

(3)(a)~~[A-]~~ [A] Notwithstanding Subsection R501-14-3(2)(a), an applicant for background screening who has continuously lived in Utah for the five years immediately preceding the day the application is submitted, except for time spent outside of the United States and its territories, is not required to submit fingerprints.

~~(b) A~~[a]~~n applicant for annual background screening renewal who has continuously lived in Utah at all times since the date of the initial background screening approval is not required to [attach fingerprint cards]submit fingerprints [or a cashiers' check or money order for the cost of a FBI national criminal history record check to]with the renewal application.~~

~~[B-] the Office of Licensing shall only accept ten print fingerprint cards completed by a law enforcement agency or an agency approved by the BCI.~~

~~ii. (4) [A] An applicant who has lived outside of the United States during the five years immediately preceding the date of the application shall [also]attach an original or certified copy of:~~

~~(a)~~[A-]~~ a criminal history report from each country lived in;~~

~~(b)~~[B-]~~ a letter of honorable release from U.S. military or full-time ecclesiastical service, from each country lived in; or~~

~~(c)~~[C-]~~ other written verification of criminal history from each country lived in, as approved by the Office of Licensing Background Screening Unit supervisor.~~

(5)(a)~~[e-]~~ [A] An applicant shall submit the completed application and consent form, and all required identifying information, to the applicable licensing specialist, human services program, local government employer (for certified local inspector applicants only), the Area Agency on Aging (for Personal Care Attendant applicants only), or the Division of Services for People With Disabilities (for Direct Service Worker applicants only).

(b)~~[ii-]~~ [F] The applicable licensing specialist, human services program, local government employer (for certified local inspector applicants only), Area Agency on Aging (for Personal Care Attendant applicants only), or Division of Services for People With Disabilities (for Direct Service Worker applicants only), shall:

(i)~~[A-]~~ inspect the applicant's state driver's license or state identification card and make a good faith effort to determine that it does not appear to have been forged or altered;

(ii)~~[B-]~~ inspect the copy of applicant's state driver's license or state identification card and make a good faith effort to determine that it appears to be identical to the original; and

(iii)~~[C-]~~ forward the inspected copy of applicant's state driver's license or state identification card, the completed application and consent form, and all other required identifying information, to the Office of Licensing background screening unit within ~~three business~~five calendar days after the applicant completes and signs the application.

(6)~~[d-]~~ [A] An application that is illegible, incomplete, unsigned, undated, or lacks a signed consent or required identifying information, may be returned to the individual who submitted it without further action.

~~ii. an application that is submitted later than three business days after the applicant completes and signs the application may be returned to the individual who submitted it without further action.~~

~~iii. an application for annual background screening renewal that is signed or submitted sooner than sixty days preceding the expiration date of the current background screening approval, as required by subsection (1)(a)(ii)(A), may be returned to the individual who submitted it without further action.~~

~~[(7)[2-](a)[-]] Identifying information submitted pursuant to Sections 62A-2-108.3, 62A-2-120, 62A-3-104.3, 62A-5-103.5, 78-30-3.5(2)(a), and 78-30-3.6 shall be used to search criminal history records, the Licensing Information System, juvenile court records under Section 78-3a-320, and the statewide database.~~

~~(i) Identifying information submitted in accordance with Section 62A-2-120(1)(f) shall also be used to check the child abuse and neglect registry in each state where the applicant resided in accordance with Section 62A-2-120(1)(g).~~

~~(b)[-]] In accordance with Section 62A-5-103.5, a direct service worker who is a direct ancestor or descendant, or who is an aunt, uncle or sibling of the person to whom services are rendered, shall be exempt from a criminal history record search, but shall remain subject to a search of the Licensing Information System, juvenile court records under Section 78-3a-320, and the statewide database.~~

~~(8)[3-a-](a) Except as permitted by Section 62A-2-120(5), an applicant for an initial background screening shall have no direct access to a child or vulnerable adult prior to receiving written confirmation of background screening approval from the Office of Licensing.~~

~~(b)[b-]] Except as permitted by Section 62A-2-120(5), an applicant seeking annual background screening renewal shall have no direct access to a child or vulnerable adult after the background screening expiration date and prior to receiving written confirmation of background screening approval from the Office of Licensing.~~

~~(9)[4-]] Upon receipt of a signed, legible, completed application and identifying information, the Office of Licensing shall:~~

~~(a)[a-]] investigate and make a preliminary determination of whether the applicant has been charged with any crime and the disposition of any charges; and~~

~~(b)[b-]] search the Licensing Information System, juvenile court records, and the statewide database, and make a preliminary determination of whether the applicant has any supported or substantiated findings of abuse, neglect or exploitation.~~

~~(10)(a)[5-a-]] The Office of Licensing may defer action on an application until the applicant submits all additional information required by the Office of Licensing.~~

~~(b)[b-]] The Office of Licensing may deny an application in the event that an applicant fails to provide all additional information required by the Office of Licensing.~~

~~(11)[6-]] The Office of Licensing may notify an applicant of its preliminary determination that the applicant may have a criminal history outside of Utah, and require an applicant to:~~

~~(a)[a-]] submit [ten print fingerprint cards completed by a law enforcement agency or an agency approved by the BCI] fingerprints, and a cashier's check or money order for the cost of a nationwide criminal history check, within 15 calendar days of a letter of notification;~~

~~(b)[b-]] obtain and submit a certified copy of the applicant's criminal history or records from local, state, federal, or foreign officials within 15 calendar days of a letter of notification.~~

~~[7. An applicant has not continuously lived in Utah for the five years immediately preceding the date of the application if the applicant has spent four or more consecutive weeks outside Utah, including but not limited to education, volunteer or employment~~

~~activities, military duty, vacations, or when the applicant maintains an out of state driver's license.~~

~~— [(12)(a)[8-a-]] The Office of Licensing shall send all written communications to the applicant or to the applicable human services program, local government employer (for certified local inspector applicants only), the Area Agency on Aging (for Personal Care Attendant applicants only), or the Division of Services for People With Disabilities (for Direct Service Worker applicants only) by first-class mail.~~

~~(b)[b-]] A human services program, local government employer (for certified local inspector applicants only), the Area Agency on Aging (for Personal Care Attendant applicants only), or the Division of Services for People With Disabilities (for Direct Service Worker applicants only) shall provide the applicant with a copy of all written communication from the Office of Licensing within 5 calendar days after the date it is received.~~

~~(13)[9-]] The applicant shall promptly notify the Office of Licensing of any change of address while the application remains pending.~~

R501-14-4. Results of Screening.

~~(1)(a)[4-a-]] The Office of Licensing shall approve an application for background screening in accordance with Section 62A-2-120(2).~~

~~(b)[+]] The Office of Licensing shall notify the applicant, the applicable licensing specialist, human services program, local government employer (for certified local inspector applicants only), the Area Agency on Aging (for Personal Care Attendant applicants only), or the Division of Services for People With Disabilities (for Direct Service Worker applicants only), that the applicant's background screening application is approved.~~

~~(c)[+]] The approval granted by the Office of Licensing shall be valid for a period not to exceed one calendar year from the date of approval.~~

~~[iii. Regardless of the application date, an applicant for background screening who is associated with a licensed program shall have an approval expiration date that is 30 calendar days prior to the expiration date of the associated human services program's license.]~~

~~(i) Notwithstanding Subsection R501-14-4(1)(c), an applicant's background screening approval that is issued for the purpose of a preplacement adoptive evaluation in accordance with Section 78-30-3.5 shall be valid for 18 calendar months from the date of approval.~~

~~(d)[b-]] An approval granted by the Office of Licensing shall not be transferable[-], except as provided in Section R501-14-9.~~

~~(e)[+]] Except as provided in Section R501-14-9, [A]a new application shall be submitted each time an applicant may have direct access or provide services to a child or vulnerable adult at any human services program other than the program identified on the initial application.~~

~~(2)[2-]] The Office of Licensing shall deny an application for background screening in accordance with Subsections 62A-2-120(3) and 62A-2-120(8).~~

~~(3)[3-]] The Office of Licensing shall refer an application to the Comprehensive Review Committee for a comprehensive review in accordance with Section 62A-2-120(4).~~

R501-14-5. Comprehensive Review Committee.

~~(1)[4-]] The Director of the following Department of Human Services divisions and offices shall appoint one member and one alternate to serve on the Comprehensive Review Committee:~~

- (a)[a-] the Executive Director's Office;
- (b)[b-] the Division of Aging and Adult Services;
- (c)[c-] the Division of Child and Family Services;
- (d)[d-] the Division of Juvenile Justice Services;
- (e)[e-] the Division of Services for People with Disabilities;
- (f)[f-] the Division of Substance Abuse and Mental Health;
- (g)[g-] Public Guardian; and
- (h)[h-] the Office of Licensing.

(2)[2-] Comprehensive Review Committee members and alternates shall be professional staff persons who are familiar with the programs they represent.

(3)[3-] The appointed Office of Licensing member shall chair the Comprehensive Review Committee as a non-voting member.

(4)[4-] Five voting members shall constitute a quorum.

(5)[5-] The Comprehensive Review Committee shall conduct a comprehensive review of an applicant's background screening application, criminal history records, abuse, neglect or exploitation records, and related circumstances, in accordance with Section 62A-2-120(4).

R501-14-6. Comprehensive Review Investigation.

(1)[1-] The Comprehensive Review Committee shall not deny a background screening application without the Office of Licensing first sending the applicant a written notice that:

(a)[a-] the Office is investigating the applicant's criminal history or findings of abuse, neglect or exploitation;

(b)[b-] the applicant is encouraged to submit any written statements or records that the applicant wants the Comprehensive Review Committee to consider;

(c)[c-] the Comprehensive Review Committee evaluates information using the criteria established by Section 62A-2-120(4)(b), and the applicant may specifically address these issues; and

(d)[d-] submissions must be received within 15 calendar days of the written notice.

(2)(a)[2-a-] The Office of Licensing shall gather information described in Section 62A-2-120(4)(b) and provide available information to the Comprehensive Review Committee.

(b)[b-] The Office of Licensing may request additional information from any available source, including the applicant, victims, witnesses, investigators, the criminal justice system, law enforcement agencies, the courts and any others it deems necessary for the comprehensive evaluation of an application.

(i)[i-] The Office of Licensing may defer action on an application until the applicant submits all additional information required by the Office of Licensing.

(ii)[ii-] The Office of Licensing may deny an application in the event that an applicant fails to provide all additional information required by the Office of Licensing.

R501-14-7. Comprehensive Review Determination.

(1)[1-] The Comprehensive Review Committee shall only consider applications presented by the Office of Licensing. The Comprehensive Review Committee shall evaluate the information provided by the Office of Licensing and any information provided by the applicant.

(2)[2-] The Comprehensive Review Committee shall recommend approval of the background screening of an applicant [with a criminal history] only after a simple majority of the voting members of the Comprehensive Review Committee determines that

approval will not likely create a risk of harm to a child or vulnerable adult.

~~[3- The Comprehensive Review Committee shall recommend approval of the background screening of an applicant when juvenile court records show that a court made a substantiated finding under Section 78-3a-320 that the applicant committed a severe type of child abuse or neglect, the applicant is listed in the Licensing Information System, or the applicant has a substantiated finding of vulnerable adult abuse, neglect, or exploitation in the statewide database, only after a simple majority of the voting members of the Comprehensive Review Committee determines that the applicant was a child at the time of the incident that is being considered, more than ten years have passed since the date of the incident, and approval will not likely create a risk of harm to a child or vulnerable adult.~~

~~—[3][4-] The Comprehensive Review Committee shall recommend denial of the background screening of an applicant when[:~~

~~—a- juvenile court records show that a court made a substantiated finding under Section 78-3a-320 that the applicant committed a severe type of child abuse or neglect, and the applicant was eighteen years of age or older at the time of the incident;~~

~~—b- juvenile court records show that a court made a substantiated finding under Section 78-3a-320 that the applicant committed a severe type of child abuse or neglect, the applicant was under the age of eighteen at the time of the incident, and less than ten years have passed since the date of the incident;~~

~~—c- the applicant is listed in the Licensing Information System, and the applicant was eighteen years of age or older at the time of the incident;~~

~~—d- the applicant is listed in the Licensing Information System, the applicant was under the age of eighteen at the time of the incident, and less than ten years have passed since the date of the incident;~~

~~—e- the applicant is listed in the statewide database, has a substantiated finding of vulnerable adult abuse, neglect, or exploitation, and the applicant was eighteen years of age or older at the time of the incident;~~

~~—f- the applicant is listed in the statewide database, has a substantiated finding of vulnerable adult abuse, neglect, or exploitation, the applicant was under the age of eighteen at the time of the incident, and less than ten years have passed since the date of the incident; or~~

~~—g-] it finds that approval will likely create a risk of harm to a child or vulnerable adult.~~

(4)[5-] The Office of Licensing shall approve or deny the applicant's background screening application in accordance with the recommendation of the Comprehensive Review Committee, and send written notification to the applicant, the applicant's licensing specialist, the licensed human services program the applicant is associated with (if any), a certified local inspector applicant's local government employer (if any), a person described in Subsections 62A-3-101(9)(a)(i) through (iv) (if any), or a direct service worker's employer (if any).]

~~—6- A background screening approval shall be valid for a period not to exceed one calendar year from the date of approval. Regardless of the application date, an applicant for background screening who is associated with a licensed program shall have an approval expiration date that is 30 calendar days prior to the expiration date of the associated human services program's license.~~

~~7. An approval granted by the Office of Licensing shall not be transferable.~~

~~a. a new application shall be submitted each time an applicant may have direct access or provide services to a child or vulnerable adult at any human services program other than the program identified on the initial application.]~~

R501-14-8. Post-Approval Responsibilities.

~~(1)[1-] An applicant, a human services program the applicant is associated with (if any), a certified local inspector applicant's local government employer (if any), a person described in Subsections 62A-3-101(9)(a)(i) through (iv) (if any), and a direct service worker's employer (if any), shall immediately notify the Office of Licensing if the applicant is charged with any felony, misdemeanor, or infraction, or listed in the Licensing Information System, juvenile court records under Section 78-3a-320, or the statewide database after a background screening application is approved.~~

~~(a)[a-] An applicant who is associated with a human services program shall immediately notify the human services program if the applicant is charged with any felony, misdemeanor, or infraction, or listed in the Licensing Information System, juvenile court records under Section 78-3a-320, or the statewide database.~~

~~(2)[2-] An applicant who has received an approved background screening shall resubmit an application and identifying information to the Office of Licensing within ten calendar days after being charged with any felony, misdemeanor, or infraction, or being listed in the Licensing Information System, the statewide database, or juvenile court records under Section 78-3a-320.~~

~~(3)[3-] An applicant who has been charged with any felony, misdemeanor, or infraction or listed in the Licensing Information System or the statewide database, or juvenile court records under Section 78-3a-320, after a background screening application is approved shall have no unsupervised direct access to a child or vulnerable adult until after an application and identifying information have been resubmitted to the Office of Licensing and a current background screening approval is received from the Office of Licensing.~~

~~(4)(a)[4-a-] An applicant charged with an offense for which there is no final disposition shall inform the Office of Licensing of the current status of each case.~~

~~(b)[b-] The Office of Licensing shall determine whether the charge could require a denial or committee review, and if so, notify the applicant to submit a certified copy of judicial documentation that indicates the current status of the case at least once every 3 months until final disposition.~~

~~(c)[c-] An applicant shall submit a certified copy of judicial documentation that indicates the current status of the case at least once every 3 months until final disposition.~~

~~(5)[5-] The Office of Licensing may revoke the background screening approval of an applicant who:~~

~~(a)[a-] has been charged with any felony, misdemeanor, or infraction or is listed in the Licensing Information System, the statewide database, or juvenile court records under Section 78-3a-320; or~~

~~(b)[b-] fails to provide required current status information; and~~

~~(c)[c-] will likely create a risk of harm to a child or vulnerable adult, as determined by the Office of Licensing.~~

~~(6)[6-] The Office of Licensing shall process identifying information received pursuant to Subsection R501-14-8[-](2) in accordance with Rule R501-14-~~

R501-14-9. Confidentiality.

~~(1)[1-] The Office of Licensing may disclose criminal background screening information, including information acknowledging the existence or non-existence of a criminal history, only to the Applicant, the applicable human services program, local government employer (for certified local inspector applicants only), the Area Agency on Aging (for Personal Care Attendant applicants only), or the Division of Services for People With Disabilities (for Direct Service Worker applicants only), and in accordance with the Government Records Access and Management Act, Section 63-2-101, et seq.~~

~~(2)[2-] Except as described below, [B]background screening approvals may not be transferred or shared between human service programs.~~

~~(a) A licensed child-placing agency may provide the approval granted by the Office of Licensing to the person who is the subject of the approval, another licensed child-placing agency, or the attorney for the adoptive parents, in accordance with Section 53-10-108(4).~~

~~(b) A licensed human services program may provide a copy of the approval granted by the Office of Licensing to another licensed human services program with the prior written consent of the person who is the subject of the approval.~~

~~(c) A licensed human services program may permit an individual to have direct access to a child or vulnerable adult if:~~

~~(i) the program receives a copy of the approval granted by the Office of Licensing for the person from another licensed human services program;~~

~~(ii) both the sending and receiving human services programs are licensed to provide the same categories of services to the same client populations; and~~

~~(iii) the program receives written confirmation from the Office of Licensing that the background screening approval has not expired or been revoked.~~

R501-14-10. Retention of Background Screening Information.

A human services program shall retain the background screening information of all individuals associated with the program for a minimum of ~~eight~~three years after the termination of the individual's association with the program.

R501-14-11. Expungement.

An applicant whose background screening application has been denied due to the applicant's criminal record may submit a new application with a certified copy of an Order of Expungement.

R501-14-12. Administrative Hearing.

A notice of agency action that denies or revokes the applicant's background screening application shall inform the applicant of the right to appeal in accordance with Administrative Rule 497-100 and Section 63-46b-0.5, et seq.

R501-14-13. Compliance.

Any licensee that is in operation on the effective date of this rule shall be given 30 days after the effective date to achieve compliance with this rule.

KEY: licensing, background screening, fingerprinting
Date of Enactment or Last Substantive Amendment: [November 16, 2005]2007
Authorizing, and Implemented or Interpreted Law: 62A-2-108 et seq.

◆ ————— ◆

Human Services, Administration, Administrative Services, Licensing

R501-19

Residential Treatment Programs

NOTICE OF PROPOSED RULE

(Repeal and Reenact)
 DAR FILE NO.: 30179
 FILED: 07/11/2007, 09:12

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Changes to this rule are necessary to address requirements set forth in Subsection 62A-2-108.2(1)(a), which requires that the Office of Licensing make rules that establish categories of Residential Treatment licenses based on the differences in the types of Residential Treatment programs. It also provides more clarity to those rules that are generally the same as ones currently in effect.

SUMMARY OF THE RULE OR CHANGE: This rule facilitates substantive changes by establishing the following sections, which did not previously exist in the repealed rule: Definitions; Legal Requirements; Staff Requirements; and, Documentation Requirements. It also creates definitions and new categories for Residential Treatment Group, Residential Treatment Facility, Residential Treatment Center, Residential Treatment Campus, and a category for programs serving clients that offend sexually or violently. Although there are few other minor changes within this rule, most of the facility requirements, health and safety regulations, record keeping, and client services requirements are basically the same as those found in the previous rule.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 62A-2-106 and 62A-2-108.2

ANTICIPATED COST OR SAVINGS TO:

- ❖ THE STATE BUDGET: It is anticipated that there will be some initial implementation costs associated to this rule in the way of development and printing of new check lists, and training of staff to the new rule, but all of these costs can be absorbed in current budgets.
- ❖ LOCAL GOVERNMENTS: There should be no direct costs to local governments because they do not operate programs that are regulated by this rule.
- ❖ OTHER PERSONS: There should be no costs to other persons except for those listed below in "compliance costs for affected persons" and "comments by the department head".

COMPLIANCE COSTS FOR AFFECTED PERSONS: Human service programs that are required to be licensed for Residential Treatment will experience some minimal administrative costs to modify or update policies and procedures manuals and record keeping procedures. There are both costs and savings anticipated in regard to the staffing requirements. Depending on the program it is possible to have some moderate cost increase as a result of staffing and training requirements.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The businesses that may experience some mild to moderate fiscal impact as a result of these rules are the human services programs that will be licensed to provide residential treatment services. Some of these business receive public funds through contracts with the department, and will be evaluated for fiscal impact through the rate setting process. Private noncontracted Residential Treatment programs may need to set higher fees to offset any additional costs due to these regulations.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

Ken Stettler at the above address, by phone at 801-538-4235, by FAX at 801-538-4553, or by Internet E-mail at kstettler@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 08/31/2007.

THIS RULE MAY BECOME EFFECTIVE ON: 09/07/2007

AUTHORIZED BY: Ken Stettler, Director

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

R501-19. Residential Treatment Programs.

[R501-19-1. Authority.

~~— Pursuant to Section 62A-2-101 et seq., the Office of Licensing shall license residential treatment programs according to the following rules.~~

R501-19-2. Purpose.

~~— Residential treatment programs offer room and board and provides for or arranges for the provision of specialized treatment, rehabilitation or habilitation services for persons with emotional, psychological, developmental, or behavioral dysfunctions, impairments, or chemical dependencies. In residential treatment programs, consumers are assisted in acquiring the social and behavioral skills necessary for living independently in the community in accordance with Subsection 62A-2-101(15).~~

R501-19-3. Definition.

Residential treatment program means a 24-hour group living environment for four or more individuals unrelated to the owner or provider in accordance with Subsection 62A-2-101(15).

R501-19-4. Administration.

A. In addition to the following rules, all Residential Treatment Programs shall comply with R501-2, Core Standards.

B. A current list of enrollment of all registered consumers shall be on-site at all times.

R501-19-5. Staffing.

A. The program shall have an employed manager who is responsible for the day-to-day resident supervision and operation of the facility. The responsibilities of the manager shall be clearly defined. Whenever the manager is absent there shall be a substitute available.

B. The program shall have a staff person trained, by a certified instructor, in standard first aid and CPR on duty with the consumers at all times.

C. Programs which utilize students and volunteers, shall provide screening, training, and evaluation of volunteers. Volunteers shall be informed verbally and in writing of program objectives and scope of service.

D. Professional staff shall include the following individuals who have received training in the specific area listed below:

1. Mental Health

a. a licensed physician or consulting licensed physician;

b. a licensed psychologist, or consulting licensed psychologist;

c. a licensed mental health therapist;

d. a licensed advanced practice registered nurse psychiatric mental health nurse specialist, or a consulting advanced practice registered nurse psychiatric mental health nurse specialist; and

e. if unlicensed staff are used, they shall be supervised by a licensed clinical professional.

2. Substance Abuse

a. a licensed physician, or a consulting licensed physician;

b. a licensed psychologist or consulting licensed psychologist;

c. a licensed mental health therapist or consulting licensed, mental health therapist; and

d. a licensed substance abuse counselor or unlicensed staff who work with substance abusers shall be supervised by a licensed clinical professional.

3. Children and Youth

a. a licensed physician, or consulting licensed physician;

b. a licensed psychologist, or consulting licensed psychologist; and

c. a licensed mental health therapist or consulting licensed mental health therapist, to provide a minimum of one hour of service to the program per week per consumer enrolled.

d. A licensed medical practitioner, by written agreement, shall be available to provide, as needed, a minimum of one hour of service per week for every two consumers enrolled.

e. Other staff trained to work with emotionally and behaviorally disturbed, or conduct-disordered children and youth shall be under the supervision of a licensed clinical professional.

f. A minimum of two staff on duty and, a staff ratio of no less than one staff to every four consumers shall exist at all times, except nighttime sleeping hours when staff may be reduced.

g. A mixed gender population shall have at least one male and one female staff on duty at all times.

4. Services for People With Disabilities shall have a staff person responsible for program supervision and operation of the facility. Staff person shall be adequately trained to provide the services and treatment stated in the consumer plan.

R501-19-6. Direct Service.

Treatment plans shall be reviewed and signed by the clinical supervisor. Treatment plans shall be reviewed and signed by the clinical supervisor, or other qualified individuals for Division of Services for People With Disabilities services. Plans shall be reviewed and signed as noted in the treatment plan.

R501-19-7. Physical Facilities.

A. The program shall provide written documentation of compliance with the following items as applicable:

1. local zoning ordinances;

2. local business license requirements;

3. local building codes;

4. local fire safety regulations;

5. local health codes; and

6. local approval from the appropriate government agency for new program services or increased consumer capacity.

B. Building and Grounds

1. The program shall ensure that the appearance and cleanliness of the building and grounds are maintained.

2. The program shall take reasonable measures to ensure a safe physical environment for consumers and staff.

R501-19-8. Physical Environment.

A. Live-in staff shall have separate living space with a private bathroom.

B. The program shall have space to serve as an administrative office for records, secretarial work and bookkeeping.

C. Indoor space for free and informal activities of consumers shall be available.

D. Provision shall be made for consumer privacy.

E. Space shall be provided for private and group counseling sessions.

F. Sleeping Space

1. No more than four persons, or two for Division of Services for People With Disabilities programs, shall be housed in a single bedroom.

2. A minimum of sixty square feet per consumer shall be provided in a multiple-occupant bedroom. Storage space will not be counted.

3. A minimum eighty square feet per individual shall be provided in a single-occupant bedroom. Storage space will not be counted.

4. Sleeping areas shall have a source of natural light, and shall be ventilated by mechanical means or equipped with a screened window that opens.

5. Each bed, none of which shall be portable, shall be solidly constructed, and be provided with clean linens after each consumer stay and at least weekly.

6. Sleeping quarters serving male and female residents shall be structurally separated.

7. Consumers shall be allowed to decorate and personalize bedrooms with respect for other residents and property.

G. Bathrooms

— 1. The program shall have separate bathrooms for males and females. These shall be maintained in good operating order and in a clean and safe condition.

— 2. Bathrooms shall accommodate consumers with physical disabilities as required.

— 3. Each bathroom shall be properly equipped with toilet paper, towels, soap, and other items required for personal hygiene.

— 4. Bathrooms shall be ventilated by mechanical means or equipped with a screened window that opens.

— 5. Bathrooms shall meet a minimum ratio of one toilet, one lavatory, and one tub or shower for each six residents.

— 6. There shall be toilets and baths or showers which allow for individual privacy.

— 7. There shall be mirrors secured to the walls at convenient heights.

— 8. Bathrooms shall be located as to allow access without disturbing other residents during sleeping hours.

— H. Furniture and equipment shall be of sufficient quantity, variety, and quality to meet program and consumer needs.

I. All furniture and equipment shall be maintained in a clean and safe condition.

— J. Programs which permit individuals to do their own laundry shall provide equipment and supplies for washing, drying, and ironing.

— K. Programs which provide for common laundry of linens and clothing, shall provide containers for soiled laundry separate from storage for clean linens and clothing.

— L. Laundry appliances shall be maintained in a clean and safe operating condition.

R501-19-9. Food Service.

— A. One staff shall be responsible for food service. If this person is not a professionally qualified dietitian, regularly scheduled consultation with a professionally qualified dietitian shall be obtained. Meals served shall be from dietitian approved menus.

— B. The staff responsible for food service shall maintain a current list of consumers with special nutritional needs and record in the consumers service record information relating to special nutritional needs and provide for nutrition counseling where indicated.

— C. The program shall establish and post kitchen rules and privileges according to consumer needs.

— D. Consumers present in the facility for four or more consecutive hours shall be provided nutritious food.

— E. Meals may be prepared at the facility or catered.

— F. Kitchens shall have clean, safe, and operational equipment for the preparation, storage, serving, and clean up of all meals.

— G. Adequate dining space shall be provided for consumers. The dining space shall be maintained in a clean and safe condition.

— H. When meals are prepared by consumers there shall be a written policy to include the following:

- 1. rules of kitchen privileges,
- 2. menu planning and procedures,
- 3. nutritional and sanitation requirements, and
- 4. schedule of responsibilities.

R501-19-10. Medication.

— A. The program shall have locked storage for medications.

— B. The program shall have locked storage for hazardous chemicals and materials, according to the direction of the local fire authorities.

— C. Prescriptive medication shall be provided as prescribed by a qualified physician, according to the Medical Practices Act.

— D. The program shall have designated qualified staff, who shall be responsible to:

- 1. administer medication,
- 2. supervise self medication,
- 3. record medication, including time and dosage, according to prescription, and
- 4. record effects of medication.

R501-19-11. Specialized Services for Substance Abuse.

— A. The program shall not admit anyone who is currently experiencing convulsions, in shock, delirium tremens, in a coma, or unconscious.

— B. At a minimum, the program shall document that direct service staff complete standard first aid and CPR training within six months of being hired. Training shall be updated as required by the certifying agency.

— C. Before admission, consumers shall be tested for Tuberculosis. Both consumers and staff shall be tested annually or as directed by the local health authority.

R501-19-12. Specialized Services for Programs Serving Children and Youth.

— A. Provisions shall be available for adolescents to continue their education with a curriculum approved by the State Office of Education.

— B. Programs which provide their own school shall be recognized by an educational accreditation organization, i.e., State Board of Education or the National School Accreditation Board.

— C. Individual, group, couple, and family counseling sessions or other appropriate treatment, including skills development, shall be conducted at least weekly, or more often if defined by the treatment plan. The consumer's record shall document the time and date of the service provided and include the signature of the counselor.

— D. An accurate record shall be kept of all funds deposited and withdrawn with the residential facility for use by a consumer. Consumer purchases of over \$20.00 per item, shall be substantiated by receipts signed by the consumer and appropriate staff.

R501-19-13. Specialized Services for Division of Services for People With Disabilities.

— A. Rules governing the daily operation and activities of the facility shall be available to all consumers and visitors, and shall apply to family members, consumers, and staff that come into the facility.

— B. The program shall have policy specifying the amount of time family or friends may stay as overnight guests.

— C. All consumers in residential programs shall have an individual plan that addresses appropriate day treatment.

— D. A monthly schedule of activities shall be shared with the consumer and available on request. Schedules shall be filed and maintained for review.

— E. A record of income, earned, unearned, and consumer service fees, shall be maintained by the provider.

— F. Residential facilities shall be located where school, church, recreation, and other community facilities are available.

— G. An accurate record shall be kept of all funds deposited with the residential facility for use by a consumer. This record shall contain a list of deposits and withdrawals. Consumer purchases of over \$20.00, per item, shall be substantiated by receipts signed by

~~the consumer and professional staff. A record shall be kept of consumer petty cash funds.~~

~~H. The program, in conjunction with the parent or guardian and the Division of Services for People With Disabilities support coordinator, shall apply for unearned income benefits for which a consumer is entitled.]~~

R501-19-1. Authority and Purpose.

(1) This Rule is authorized under Sections 62A-2-106 and 62A-2-108.2.

(2) This Rule Restablishes:

(a) basic health and safety standards for residential treatment programs;

(b) procedures and standards for permitting a residential treatment program to provide services to an adult in the same facility and under the same conditions as a child;

(c) minimum administration and financial requirements; and

(d) categories of residential treatment licenses.

R501-19-2. Definitions.

(1) "Abuse" may also include "severe emotional abuse", "severe physical abuse", and "emotional or psychological abuse", as these terms are defined in Sections 62A-4a-101 and Section 62A-3-301.

(2) "Adult" means a person 18 years old or older.

(3) "Background screening clearance" means written verification that the Office of Licensing has approved an applicant's criminal, abuse, neglect, and exploitation background screenings.

(4) "Certified local inspector" is defined in Section 62A-2-101.

(5) "Child" is defined in Section 62A-2-101.

(6) "Client" is defined in Section 62A-2-101, and shall include the child of a client when the child resides with the client at the program.

(7) "Dangerous weapon" includes "firearms", "antique firearms", "explosive, chemical, or incendiary devices", ammunition, and other items as defined in Sections 76-10-306 and 76-10-501.

(8) "Dietician" means an individual certified in accordance with Utah Code Ann. Title 58 Chapter 49.

(9) "Direct access" is defined in Section 62A-2-101.

(10) "Direct care staff" means an individual who provides educational, vocational, therapeutic, or treatment services, supervision of a client or care directly to a client, and does not include support staff.

(11) "Directly supervised" is defined in Section 62A-2-120.

(12) "Exploitation" is as described in Subsection 76-5-111(4).

(13) "Facility" means the physical area where program activities take place, and include the buildings and grounds that are owned or leased by the program or its governing body.

(14) "Guardian" means a client's legal guardian or custodian, who is legally authorized to make placement, medical, or treatment decisions on behalf of the client.

(15) "Incident report" means a written description of any notable event, including but not limited to any crime, discipline, injury or illness, or unauthorized absence, and how that event was addressed.

(16) "Medical emergency" means any medical condition that may:

(a) be life threatening, including but not limited to shock, delirium tremens, coma, unconsciousness, convulsions, severe bleeding, or severe pain; or

(b) require additional medical assistance after treatment with basic first-aid.

(17) "Medical practitioner" means an individual currently licensed by the State of Utah under Utah Code Ann. Title 58 as a physician, physician's assistant, advanced practice registered nurse, practical nurse, or registered nurse.

(18) "Mental health therapist" means an individual currently licensed under Title 58, Chapter 60, as a physician engaged in the practice of mental health therapy, an advanced practice registered nurse specializing in psychiatric mental health nursing, a psychologist qualified to engage in the practice of mental health therapy, a clinical social worker, a certified social worker, a marriage and family therapist, or a professional counselor.

(19) "Mental illness" is defined in Section 62A-15-602.

(20) "Neglect" may also include "severe neglect", as these terms are defined in Section 62A-4a-101.

(21) "On call" means immediately available to staff by telephone, and able to be present on site within one hour after a staff telephone call for assistance.

(22) "On duty" means awake, within visual or auditory proximity of clients, and immediately available to clients.

(23) "Recreational therapist" means an individual licensed to practice recreational therapy in accordance with Title 58, Chapter 40.

(24) "Regular business hours" is defined in Section 62A-2-101.

(25) "Residential treatment" is defined in Section 62A-2-101.

(26) "Sick" means to have a fever, an illness that may be contagious, or to be experiencing diarrhea or vomiting.

(27) "Significant criminal activity" means any act or omission resulting in:

(a) the abuse, neglect, or exploitation of a child or vulnerable adult;

(b) the death, kidnapping, or rape of any person;

(c) an assault resulting in an injury that requires additional medical assistance after treatment with basic first-aid;

(d) an assault using a dangerous weapon; or

(e) the damage, destruction, or misappropriation of any property or service valued at \$1000 or more.

(28) "Staff" means program directors, supervisors, faculty, employees, contract employees, agents, interns or volunteers who provide any program services.

(29) "Staff-in-charge" means a staff who currently meets the criteria established by Section R501-2-11 and who is designated by the program as the on duty staff who is currently responsible for client supervision, program services, and compliance during a period of time designated by the program director. The staff-in-charge is not required to be designated as a supervisor by the program.

(30) "Staffing ratio that is more restrictive" means a greater number of staff for a given number of clients than would otherwise required by this rule.

(31) "Support staff" means staff who do not supervise clients and who only provide support services.

(32) "Treatment plan" means a written description of the therapeutic and other services an individual client requires, as determined and updated after periodic assessments by a mental health therapist.

(33) "Vulnerable Adult" is defined in Section 62A-2-101.

R501-19-3. Legal Requirements.

(1) At the time of the program's initial application to operate a residential treatment program, the program shall provide written verification to the Office of Licensing of compliance with Section

62A-2-108.2(4), which requires the program to provide information to the local government.

(2) A residential treatment program shall comply with this rule and:

- (a) Rule R501-1, General Provisions;
- (b) Rule R501-2, Core Standards;
- (c) Rule R501-14, Background screening;
- (d) state fire prevention laws and rules, including but not limited to Rule R710-4, Buildings Under the Jurisdiction of the State Fire Prevention Board, and Rule R710-9, Rules Pursuant to the Utah Fire Prevention Law; and
- (e) all applicable local, state, and federal laws.

(3) At the time of a program's initial application, and annually thereafter, the program shall provide written verification of compliance with:

- (a) local zoning ordinances;
- (b) local business license requirements;
- (c) local building codes, as required by the local governmental entity's licensed building inspector;
- (d) state fire prevention laws and rules, as determined through a fire safety inspection by a certified fire safety inspector or fire marshal; and
- (e) state and local health codes.

(4) A program shall comply with Rule R501-16 and obtain an intermediate secure treatment license prior to offering any intermediate secure treatment services.

(5) A program shall not exceed the maximum client capacity indicated on the current license issued by the Office of Licensing.

(6) Each time a program changes the type of client population, or applies for a license with an increased consumer capacity or for a new service category, the program shall provide written verification of local government approval to the Office of Licensing.

R501-19-4. Staff Requirements.

(1) Each owner or member of the governing body of a program who makes decisions regarding the program's daily operations shall successfully complete a minimum of 8 hours of annual training relating to residential treatment services.

(2) Directors, clinical directors, and acting directors who have responsibility for the on-site daily administration or operation of the program shall meet the requirements specified in Subsection R501-2-11(7) and shall have a minimum of two years of residential treatment program supervisory experience.

(a) A director or acting director shall be on duty or on call at all times.

(3) A program shall have a minimum of one staff-in-charge on duty at all times.

(4) A program providing services to children shall maintain a minimum direct care staff ratio of one direct care staff on duty for every six clients, and never fewer than two direct care staff on duty, between 7:00 a.m. and 9:00 p.m., or during any off site activity.

(a) When more than two direct care staff are required to be on duty before 9:00 p.m., the additional direct care staff shall not leave until after all children are asleep.

(b) If clients are awake before 7:00 a.m., the program shall maintain a minimum direct care staff ratio of one direct care staff on duty for every six clients, and never fewer than two direct care staff on duty while clients are awake.

(5) A program providing services to children shall maintain a minimum direct care staff ratio of one direct care staff on duty for every twelve clients, and never fewer than two direct care staff on

duty in each building where clients sleep, between 9:00 p.m. and 7:00 a.m.

(6) A program is not required to include a child who is directly supervised by the child's parent in the staff ratios described in this section, R501-19-4.

(7) A program providing services to adults only shall maintain a minimum direct care staff ratio of one direct care staff on duty for every ten clients, and never fewer than one direct care staff on duty and one direct care staff on call, between 7:00 a.m. and 11:00 p.m., or during any off site activity.

(8) A program providing services to adults only shall maintain a minimum direct care staff ratio of one direct care staff on duty for every twenty clients, and never fewer than one direct care staff on duty in each building where clients sleep and one direct care staff on call, between 11:00 p.m. and 7:00 a.m.

(9) A substance abuse program providing services to adults only may reduce the minimum direct care staff ratio in this section if it has and complies with a written policy and procedures regarding staff ratios that considers factors particular to its client population, including but not limited to its clients presenting problems and the risks they may present to other clients, staff and the community.

(10) A program shall comply with a staffing ratio that is more restrictive when required by a client's treatment plan or a contract with the Department of Human Services or its Divisions.

R501-19-5. Documentation.

(1) A program shall maintain a written record for each individual client, as specified in Section R501-2-6.

(a) Each client written record shall include progress notes specific to the client's treatment plan, which shall be completed within one week following each counseling session, describing the client's behavior, staff interventions, and client responses.

(2) A program shall maintain, and direct care staff shall read, a daily shift log, which shall include:

(a) a description of the activities and incidents occurring during each shift;

(b) the date, time, and signature of the staff-in-charge at the end of each work shift; and

(c) the date, time, and signature of each direct care staff at the beginning of the staff's work shift.

R501-19-6. Client Services.

(1) A program shall describe how medical services will be promptly provided.

(a) Upon admission, each client shall be informed of the right to consult with a medical practitioner and a mental health therapist.

(b) A program that must travel more than 30 miles to an emergency room or 24-hour urgent care facility shall retain the on-call services of a medical practitioner and a mental health therapist.

(2) A monthly schedule of activities shall be posted in the common area and the office. Monthly schedules of activities shall be filed and retained for a minimum of one year.

R501-19-7. Physical Environment.

(1) The program buildings and grounds shall be maintained in a safe and clean manner.

(2) Live-in staff shall have a separate living space with a private bedroom and bathroom.

(3) The program shall have an on-site office or designated space for records.

(4) A program shall provide indoor common areas, such as gymnasiums, recreation areas, cafeterias, classrooms, libraries, and lounges, for group activities.

(a) The total common area space in a program shall be a minimum of thirty square feet per client, and shall not include hallways, bedrooms, kitchens, storage space, or utility rooms.

(5) A program shall have rooms available for private individual and group counseling sessions.

(6) Client Sleeping Space

(a) Except as authorized by Subsection R501-19-10(2) or subsection (i) below, no more than four persons shall be housed in a single bedroom.

(i) A program that has a fully functional automatic fire suppression system may house up to six persons in a single bedroom.

(ii) In the event that a contract with the Department of Human Services or one of the Divisions of the Department of Human Services further restricts the number of clients that may be housed in a single bedroom, the more restrictive number shall apply.

(b) A minimum of sixty square feet per client shall be provided in a multiple occupant bedroom.

(i) Storage space shall not be counted when calculating square footage requirements.

(c) A minimum eighty square feet per client shall be provided in a single occupant bedroom.

(i) Storage space shall not be counted when calculating square footage requirements.

(d) Sleeping areas shall have a source of natural light, and shall be ventilated by mechanical means or equipped with a screened window that opens.

(e) Each bed, none of which shall be portable, shall be solidly constructed.

(f) Bed mattresses shall be in a clean and safe condition.

(g) A program shall ensure that each client has clean linens upon arrival, when soiled, and a minimum of once per week.

(h) Sleeping quarters serving male and female clients shall be structurally separated.

(i) Sleeping quarters are structurally separated if permanent structures, such as doors and walls, prevent occupants in a room from seeing and communicating with occupants in other bedrooms.

(ii)(A) Sleeping quarters serving male and female clients shall not exit into a common hallway, except as provided by subsection B below.

(B) A program may have sleeping quarters serving male and female clients that exit into a common hallway only after it submits, and the Office of Licensing approves, a written policy describing how the program will reliably separate male and female clients during sleeping hours, and an accurate to-scale floor plan of each building where client-sleeping quarters are located.

(i) A program shall have and comply with a written policy and procedures regarding the times when clients shall be prohibited from entering each other's bedrooms and how it shall preserve client safety and privacy.

(j) Bedrooms housing children shall be inaccessible to adult clients at all times.

(k)(i) A bedroom on the ground floor shall have a minimum of one window that may be used to evacuate the room in case of fire.

(ii) A bedroom that is not on the ground floor shall have a minimum of two exits from that floor, at least one of which shall exit directly to outside the building, that may be used to evacuate the room in case of fire.

(7) Client Bathrooms

(a) Each multiple occupant bathroom shall be designated for males only or for females only.

(b) Each bathroom shall be maintained in good operating order and in a clean and safe condition.

(c) Each bathroom shall be equipped with personal hygiene supplies, including but not limited to toilet paper, clean towels or air hand-dryers, soap, and trash receptacle.

(d) Bathrooms shall be well lighted and ventilated by mechanical means or equipped with a screened window that opens.

(e) A program shall provide a minimum of one toilet, one sink, and one tub or shower, for each six clients.

(f) Toilets, showers, and bathtubs shall be designed to preserve each client's privacy.

(8) Notwithstanding Subsections R501-19-7(6)(h), (i), and (j), and R501-19-7(7)(a), a program may permit a client's child to share sleeping quarters and bathrooms with the client after the Office of Licensing approves the program's written policies and procedures describing how the program will prevent the client's child from having any direct access with other clients when the child is not directly supervised by the child's parent or direct care staff.

(9) Furniture and equipment shall be of sufficient quantity, variety, and quality to meet program and client needs.

(10) All furniture and equipment shall be maintained in a clean and safe condition.

(11) Each client shall have a minimum of thirty cubic feet of private storage space, such as dressers, trunks, closets, or lockers.

R501-19-8. Laundry Service.

(1) A program shall contract with a laundry service or shall provide laundry appliances and supplies for washing and drying.

(a) Each client shall have a dirty laundry hamper or a cloth or mesh bag for personal linens and clothing:

(b) all used personal linens and clothing shall be laundered at least weekly or more often as needed;

(c) subject to Subsection R501-2-15(4), clients who launder their own linens or clothing shall have weekly access to laundry appliances and supplies for washing and drying;

(d) a program that provides common laundry of linens or clothing shall provide hampers for soiled laundry separate from storage for clean laundry; and

(e) laundry appliances shall be maintained in a clean and safe operating condition.

R501-19-9. Food Service.

(1)(a) A program shall contract with or employ a dietitian to plan nutritious, appetizing, snacks and meals.

(b) A current weekly menu shall be posted in the kitchen.

(c) A program shall provide snacks and three daily meals in accordance with the dietitian's menu.

(2) A program shall maintain a current log of each client's food allergies and other individual dietary needs, and comply with the instructions of the client's physician or dietician.

(3) A program shall establish, post, and comply with kitchen safety and sanitation rules.

(4) A program kitchen shall have clean, safe, and operational equipment and supplies for the preparation, storage, serving, and clean up of food.

(5) A safe and clean dining area shall be provided, with tables and chairs suitable for the age and size of each client.

(6) A program's food service establishment shall be managed by a food safety manager certified in accordance with Title 26, Chapter 15a.

(7) Except for a familial status home as defined by the Federal Fair Housing Act 42 U.S.C. 3602(k), no staff or client shall prepare food for anyone other than themselves without first obtaining a food handler certification.

R501-19-10. Additional Rules for Substance Abuse Treatment Programs.

(1)(a) In addition to Sections R501-19-1 through R501-19-9 and other applicable subsections, substance abuse treatment programs shall comply with this section, R501-19-10.

(b) In the event of any conflict between Rules, the more restrictive provision shall apply.

(2) A substance abuse program providing services to adults only may utilize male-only and female-only dormitory-style sleeping arrangements if it submits, and the Office of Licensing approves, a written policy describing a treatment-related necessity for a dormitory arrangement.

(a) A dormitory shall provide a minimum of 50 square feet per person.

(b) A minimum of 3 feet shall be maintained between beds and 2 feet at the end of each bed.

(c) Storage space shall not be counted when calculating square footage requirements.

(d) Each client shall have a minimum of thirty cubic feet of private storage space.

(3) A dormitory shall have a fully functional automatic fire suppression system.

(4) A minimum of one licensed substance abuse counselor or mental health therapist shall be:

(a) on duty during any group or individual therapy session; and

(b) shall be on duty or on call at all other times.

(5) A substance abuse treatment program shall also hire or contract with mental health therapists to perform Section R501-19-4 Staff Requirements and Section R501-19-6 Client Services.

R501-19-11. Additional Rules for Programs Serving Children.

(1)(a) In addition to Sections R501-19-1 through R501-19-9 and other applicable subsections, a residential treatment program providing services to children shall comply with this section, R501-19-11.

(b) In the event of any conflict between Rules, the more restrictive provision shall apply.

(2) A program's educational services shall be accredited by an accrediting entity recognized by the Utah State Board of Education, or the program shall present an educational service plan and educational funding plan in accordance with Section 62A-2-108.1.

(a) The program course descriptions shall be provided to the client's guardian prior to accepting any payment or executing a contract to provide services.

(b) The program course descriptions shall be reviewed and updated annually.

(c) Modifications to the course descriptions shall be provided to the client's guardian annually and upon request.

(d) The program shall monitor and document each client's academic records including academic progress, reports, standardized testing, grades, credits earned, and diploma's awarded, and shall communicate this information to the client's guardian quarterly and upon request.

(3)(a) A client enrolled or attempting to enroll in a school may not attend public, private, or parochial school unless there is presented a certificate of immunization from a licensed physician or authorized representative of the state or local health department stating that the student has received immunization against communicable diseases as required by Rule R396-100, unless exempted as provided in Section 53A-11-302.

(b) A program that admits a child without a certificate of immunization shall obtain the certificate and any required immunizations within 7 calendar days of the date of admission.

(4) In addition to the requirements of Subsection R501-2-7(6), the client manual shall include detailed descriptions of:

(a) the program's academic accreditation, or disclosure that the school is not accredited;

(b) the program's course descriptions, criteria for awarding course credit, and whether credits are transferable;

(c) the program's grading, progress assessment, and testing policies and procedures;

(d) the program's academic and career counseling, activities and methods;

(e) the program's treatment and academic graduation requirements;

(f) the program's post-graduation planning services;

(g) the program's policies and procedures regarding the provision of services to adults in the same facility as children; and

(h) an emergency transportation plan, describing how the program shall safely transport clients to the client's guardian, or a person designated by the client's guardian in writing, within 48 hours.

(5) A program may provide services to an adult in the same facility as a child, in accordance with Subsection 62A-2-106(1)(a)(iii), only after the Office of Licensing approves the program's assessment of risk factors and methods of reducing assessed risks. In order for a client who was a child when admitted to the program to qualify to remain in the program after the client's 18th birthday, the client shall have:

(a) resided at the program at least 3 months immediately preceding the client's 18th birthday;

(b) not completed the program's course of treatment or academic graduation requirements;

(c) signed a voluntary consent form, that has previously been approved by the Office of Licensing and that describes the client's right to leave the program at any time, on a date following the client's 18th birthday;

(i) an individual who is 18 years old or older and under the jurisdiction of the Utah juvenile courts is not required to sign the consent form described in Subsection R501-19-11(5)(c).

(6) Except as permitted by Subsection R501-19-7(8), a child shall not share a bedroom with a person who is more than 3 years older or younger than the child.

(7)(a) Each client shall receive a minimum of one counseling session each week by a mental health therapist, or an intern in a supervised clinical training internship who is certified under Title 58, Chapter 60.

(b) A mental health therapist may increase or decrease the number of counseling sessions required by clearly explaining the treatment reasons for the change in writing in the client's treatment plan.

(c) The client's record shall document the time and date of each service provided and include the signature of the mental health

therapist or the intern in a supervised clinical training internship who is certified under Title 58, Chapter 60.

(8) A minimum of two direct care staff shall be on duty at all times.

(9) A minimum of one male direct care staff shall be on duty when a male client is present, and a minimum of one female direct care staff shall be on duty when a female client is present.

(10) On duty staff shall ensure that no adult has unsupervised direct access to a child, who is not the adult's child and who is residing at or visiting the program, unless the adult has first received a background screening clearance in accordance with Section 62A-2-120 and Rule R501-14.

(11)(a) A program may delegate the responsibility for direct supervision of a child to the child's parent in its written policies and procedures, which shall describe how the program shall monitor the parent's supervision of the child.

(b) A program that permits a client's child to reside with the client shall:

(i) provide the client with parenting skills training;

(ii) provide oversight to ensure that the child is receiving appropriate care and treatment, including but not limited to clothing, food, medication, and education, in accordance with the child's needs while the child resides at the program; and

(iii) provide the child with appropriate care and treatment, including but not limited to clothing, food, medication, and education, in accordance with the child's needs if the child's parent fails to do so, while the child resides at the program.

R501-19-12. Additional Rules for Programs Serving Vulnerable Adults or People With Disabilities.

(1)(a) In addition to Subsection R501-19-1 through R501-19-9 and other applicable subsections, a residential treatment program providing services to persons with disabilities shall comply with this section, R501-19-12 and Rule R710-3, Assisted Living Facilities.

(b) In the event of any conflict between Rules, the more restrictive provision shall apply.

(2) A minimum direct care staff ratio of one direct care staff on duty for every six clients, and never fewer than two direct care staff on duty, shall be maintained between 7:00 a.m. and 11:00 p.m.

(3) A minimum direct care staff ratio of one direct care staff on duty for every ten clients, and never fewer than two direct care staff on duty in each building where clients sleep, shall be maintained between 11:00 p.m. and 7:00 a.m.

(4) A minimum direct care staff ratio of one direct care staff on duty for every six clients, and never fewer than two direct care staff on duty, shall be maintained during any off-site activity.

(5) A program shall comply with a staffing ratio that is more restrictive when required by a client's treatment plan or a contract with the Department of Human Services or its Divisions.

(6) A minimum of 2 direct care staff shall be on duty at all times.

(7) A minimum of one male direct care staff shall be on duty when a male client is present, and a minimum of one female direct care staff shall be on duty when a female client is present.

R501-19-13. Additional Rules for a Residential Treatment Group (Capacity 4-16).

(1)(a) In addition to Sections R501-19-1 through R501-19-9 and other applicable subsections, a residential treatment program licensed to provide services to 4-16 clients shall comply with this section, R501-19-13.

(b) In the event of any conflict between Rules, the more restrictive provision shall apply.

(2) A residential treatment group whose staff resides with clients in a familial status home, as defined by the Federal Fair Housing Act, 42 U.S.C. 3602(k), is excused from compliance with any laws, such as zoning laws, which discriminate against or make a dwelling unavailable because of its occupants' familial status.

(3)(a) A residential treatment group shall maintain a minimum of one mental health therapist on call at all times.

(b) A residential treatment group shall hire or contract with mental health therapists to perform Sections R501-19-4, Staff Requirements and R501-19-6, Client Services.

R501-19-14. Additional Rules for a Residential Treatment Facility (Capacity 17-49).

(1)(a) In addition to Sections R501-19-1 through R501-19-9 and other applicable subsections, a residential treatment program licensed to provide services to 17-49 clients shall comply with this section, R501-19-14.

(b) In the event of any conflict between Rules, the more restrictive provision shall apply.

(2) A residential treatment facility shall:

(a) maintain a minimum of one mental health therapist on call at all times; and

(b) maintain a minimum of one medical practitioner available on staff or by contract to provide any necessary medical services.

R501-19-15. Additional Rules for a Residential Treatment Center (Capacity 50-99).

(1)(a) In addition to Sections R501-19-1 through R501-19-9 and other applicable subsections, a residential treatment program licensed to provide services to 50-99 clients shall comply with this section, R501-19-15.

(b) In the event of any conflict between Rules, the more restrictive provision shall apply.

(2) A residential treatment center shall:

(a) maintain a mental health therapist on duty for a minimum of 8 hours daily, Monday through Friday, between the hours of 7:00 a.m. and 11:00 p.m.;

(b) maintain a medical practitioner on duty for a minimum of 40 hours weekly, between the hours of 7:00 a.m. and 11:00 p.m.;

(i) a substance abuse program providing services to adults only may contract with an off-site provider for the medical services described in Subsection R501-19-15(2)(b);

(c) maintain a minimum of one mental health therapist and one medical practitioner on-call at all times; and

(d) maintain a cook, kitchen staff, and maintenance staff.

R501-19-16. Additional Rules for a Residential Treatment Campus (Capacity 100 plus).

(1)(a) In addition to Sections R501-19-1 through R501-19-9 and other applicable subsections, a residential treatment program licensed to provide services to 100 or more clients shall comply with this section, R501-19-16.

(b) In the event of any conflict between Rules, the more restrictive provision shall apply.

2. A residential treatment campus shall:

(a) maintain a mental health therapist on duty for a minimum of 8 hours daily, between the hours of 7:00 a.m. and 11:00 p.m.;

(b) maintain a minimum of one mental health therapist on call at all times;

(c) maintain a medical practitioner on duty for a minimum of 40 hours weekly, between the hours of 7:00 a.m. and 11:00 p.m., and on call at all other times;

(d) maintain a full time cook and kitchen staff; and

(e) maintain a full time facility maintenance staff.

R501-19-17. Additional Rules for Programs Serving Clients That Offend Violently or Sexually.

(1)(a) In addition to Sections R501-19-1 through R501-19-9 and any other applicable subsections, a residential treatment program providing services to a person that has offended violently or sexually shall comply with this section, R501-19-17.

(b) In the event of any conflict between Rules, the more restrictive provision shall apply.

(2) A program may provide services to a person that has offended violently or sexually only after the program provides documentation of review and approval by a mental health therapist with documented expertise in clients who offend violently or sexually, of the program's:

(a) treatment services;

(b) detailed assessment of individual and community risk factors particular to the program site;

(c) specific methods for reducing assessed risks; and

(d) detailed description of the security measures it shall employ to protect each client, staff, and the community.

(3) A program shall comply with its approved risk reduction policies and procedures.

(4) A program providing services to persons that offend violently or sexually shall maintain a minimum direct care staff ratio of one direct care staff on duty for every four clients, and never fewer than two direct care staff on duty.

(a) A program shall comply with a staffing ratio that is more restrictive when required by a client's treatment plan or a contract with the Department of Human Services or its Divisions.

(5) A minimum of one male direct care staff shall be on duty when a male client is present, and a minimum of one female direct care staff shall be on duty when a female client is present.

R501-19-18. Compliance.

Any licensee that is in operation on the effective date of this Rshall be given 90 days after the effective date to achieve compliance with this rule.

KEY: human services, licensing, residential treatment

Date of Enactment or Last Substantive Amendment: [~~May 2, 2000~~2007

Notice of Continuation: April 25, 2005

Authorizing, and Implemented or Interpreted Law: 62A-2-101 et seq.; 62A-2-106; 62A-2-108.2

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End of the Notices of Proposed Rules Section

NOTICES OF CHANGES IN PROPOSED RULES

After an agency has published a PROPOSED RULE in the *Utah State Bulletin*, it may receive public comment that requires the PROPOSED RULE to be altered before it goes into effect. A CHANGE IN PROPOSED RULE allows an agency to respond to comments it receives.

As with a PROPOSED RULE, a CHANGE IN PROPOSED RULE is preceded by a RULE ANALYSIS. This analysis provides summary information about the CHANGE IN PROPOSED RULE including the name of a contact person, anticipated cost impact of the rule, and legal cross-references.

Following the RULE ANALYSIS, the text of the CHANGE IN PROPOSED RULE is usually printed. The text shows only those changes made since the PROPOSED RULE was published in an earlier edition of the *Utah State Bulletin*. Additions made to the rule appear underlined (e.g., example). Deletions made to the rule appear struck out with brackets surrounding them (e.g., [example]). A row of dots in the text between paragraphs (· · · · ·) indicates that unaffected text, either whole sections or subsections, was removed to conserve space. If a CHANGE IN PROPOSED RULE is too long to print, the Division of Administrative Rules will include only the RULE ANALYSIS. A copy of rules that are too long to print is available from the agency or from the Division of Administrative Rules.

While a CHANGE IN PROPOSED RULE does not have a formal comment period, there is a 30-day waiting period during which interested parties may submit comments. The 30-day waiting period for CHANGES IN PROPOSED RULES published in this issue of the *Utah State Bulletin* ends August 31, 2007. At its option, the agency may hold public hearings.

From the end of the waiting period through November 29, 2007, the agency may notify the Division of Administrative Rules that it wants to make the CHANGE IN PROPOSED RULE effective. When an agency submits a NOTICE OF EFFECTIVE DATE for a CHANGE IN PROPOSED RULE, the PROPOSED RULE as amended by the CHANGE IN PROPOSED RULE becomes the effective rule. The agency sets the effective date. The date may be no fewer than 30 days nor more than 120 days after the publication date of this issue of the *Utah State Bulletin*. Alternatively, the agency may file another CHANGE IN PROPOSED RULE in response to additional comments received. If the Division of Administrative Rules does not receive a NOTICE OF EFFECTIVE DATE or another CHANGE IN PROPOSED RULE, the CHANGE IN PROPOSED RULE filing, along with its associated PROPOSED RULE, lapses and the agency must start the process over.

CHANGES IN PROPOSED RULES are governed by *Utah Code* Section 63-46a-6 (2001); and *Utah Administrative Code* Rule R15-2, and Sections R15-4-3, R15-4-5, R15-4-7, and R15-4-9.

The Changes in Proposed Rules Begin on the Following Page.

Environmental Quality, Air Quality
R307-405
Permits: Major Sources in Attainment
or Unclassified Areas (PSD)

NOTICE OF CHANGE IN PROPOSED RULE

DAR File No.: 29796
 Filed: 07/11/2007, 15:41

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this change in proposed rule is to add the effective date of the incorporate by reference of 40 CFR 52.01 in Section R307-405-3 which is consistent with the rest of the rule.

SUMMARY OF THE RULE OR CHANGE: During the comment period, the Division of Air Quality staff discovered that there was one reference to a definition in 40 CFR 52.01 that did not specify the version of the CFR that should be used. The rule was changed to incorporate by reference the definition, effective 07/01/2006, to be consistent with the rest of the rule. (DAR NOTE: This change in proposed rule has been filed to make additional changes to a proposed amendment that was published in the May 1, 2007, issue of the Utah State Bulletin, on page 18. Underlining in the rule below indicates text that has been added since the publication of the proposed rule mentioned above; strike-out indicates text that has been deleted. You must view the change in proposed rule and the proposed amendment together to understand all of the changes that will be enforceable should the agency make this rule effective.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 19-2-104

THIS RULE OR CHANGE INCORPORATES BY REFERENCE THE FOLLOWING MATERIAL: 40 CFR 52.01, July 1, 2006

ANTICIPATED COST OR SAVINGS TO:

❖ **THE STATE BUDGET:** Because these revisions do not create any new requirements, no change in costs is expected to the state budget.

❖ **LOCAL GOVERNMENTS:** Because these revisions do not create any new requirements, no change in costs is expected for local governments.

❖ **OTHER PERSONS: IMPACT ON SMALL BUSINESSES:** Because these revisions do not create any new requirements, no change in costs is expected for small businesses. **IMPACT ON OTHER PERSONS:** Because these revisions do not create any new requirements, no change in costs is expected for other persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Because these revisions do not create any new requirements, no change in costs is expected for affected persons.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Because these revisions do not

create new requirements, no change to costs is expected for businesses. Richard W. Sprott, Executive Director

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

Mat E. Carlile at the above address, by phone at 801-536-4136, by FAX at 801-536-0085, or by Internet E-mail at MCARLILE@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 08/31/2007.

THIS RULE MAY BECOME EFFECTIVE ON: 09/08/2007

AUTHORIZED BY: Cheryl Heying, Director

R307. Environmental Quality, Air Quality.
R307-405. Permits: Major Sources in Attainment or Unclassified Areas (PSD).

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R307-405-3. Definitions.

(1) Except as provided in (2) below, the definitions contained in 40 CFR 52.21(b), effective July 1, 2006, are hereby incorporated by reference.

(2) (a)(i) "Major Source Baseline Date" means:

(A) in the case of particulate matter:

(I) for Davis, Salt Lake, Utah and Weber Counties, the date that EPA approves the PM10 maintenance plan that was adopted by the Board on July 6, 2005;

(II) for all other areas of the State, January 6, 1975;

(B) in the case of sulfur dioxide:

(I) for Salt Lake County, the date that EPA approves the sulfur dioxide maintenance plan that was adopted by the Board on January 5, 2005;

(II) for all other areas of the State, January 6, 1975; and

(C) in the case of nitrogen dioxide, February 8, 1988.

(ii) "Minor Source Baseline Date" means the earliest date after the trigger date on which a major stationary source or a major modification subject to 40 CFR 52.21 or R307-405 submits a complete application under the relevant regulations. The trigger date is:

(A) In the case of particulate matter and sulfur dioxide, August 7, 1977, and

(B) in the case of nitrogen dioxide, February 8, 1988.

(iii) The baseline date is established for each pollutant for which increments or other equivalent measures have been established if:

(A) the area in which the proposed source or modification would construct is designated as attainment or unclassifiable under section 107(d)(i)(D) or (E) of the Act for the pollutant on the date of its complete application under 40 CFR 52.21 or R307-405; and

(B) in the case of a major stationary source, the pollutant would be emitted in significant amounts, or, in the case of a major modification, there would be a significant net emissions increase of the pollutant.

(iv) Any minor source baseline date established originally for the TSP increments shall remain in effect and shall apply for purposes of determining the amount of available PM10 increments, except that the executive secretary shall rescind a minor source baseline date where it can be shown, to the satisfaction of the executive secretary, that the emissions increase from the major stationary source, or net emissions increase from the major modification, responsible for triggering that date did not result in a significant amount of PM10 emissions.

(b) In the definition of "baseline area" in 40 CFR 52.21(b)(15)(ii)(b) insert the words "or R307-405" after "Is subject to 40 CFR 52.21".

(c) "Reviewing Authority" means the executive secretary.

(d)(i) The term "Administrator" shall be changed to "executive secretary" throughout R307-405, except as provided in (ii).

(ii) The term "Administrator" shall be changed to "EPA Administrator" in the following incorporated sections:

- (A) 40 CFR 52.21(b)(17),
- (B) 40 CFR 52.21(b)(37)(i),
- (C) 40 CFR 52.21(b)(43),
- (D) 40 CFR 52.21(b)(48)(ii)(c),
- (E) 40 CFR 52.21(b)(50)(i),
- (F) 40 CFR 52.21(l)(2),
- (G) 40 CFR 52.21(p)(2), and
- (H) 40 CFR 51.166(q)(2)(iv).

(e) The following definitions or portions of definitions that apply to clean units and pollution control projects are not incorporated because these provisions were vacated by the DC Court of Appeals on June 24, 2005:

(i) in the definition of "major modification" in 40 CFR 52.21(b)(2), subparagraph (iii)(h),

(ii) in the definition of "net emissions increase" in 40 CFR 52.21(b)(3), subparagraph (iii)(b),

(iii) in the definition of "net emissions increase" in 40 CFR 52.21(b)(3), subparagraph (vi)(d),

(iv) the definition of "pollution control project" in 40 CFR 52.21(b)(32), and

(v) the definition of "clean unit" in 40 CFR 52.21(b)(42).

(f) The following definitions or portions of definitions that apply to the equipment repair and replacement provisions are not incorporated because these provisions were vacated by the DC Circuit Court of Appeals on March 17, 2006:

(i) in the definition major modification in 40 CFR 52.21(b)(2), the second sentence in subparagraph (iii)(a),

(ii) the definition of "process unit" in 40 CFR 52.21(b)(55),

(iii) the definition of "functionally equivalent component" in 40 CFR 52.21(b)(56),

(iv) the definition of "fixed capital cost" in 40 CFR 52.21 (b)(57), and

(v) the definition of "total capital investment" in 40 CFR 52.21(b)(58).

(3) "Air Quality Related Values," as used in analyses under 40 CFR 52.21 (p) that is incorporated by reference in R307-405-17, means those special attributes of a Class I area, assigned by a federal land manager, that are adversely affected by air quality.

(4) "Heat input" means heat input as defined in 40 CFR 52.01(g), effective July 1, 2006, that is hereby incorporated by reference.

(5) "Title V permit" means any permit or group of permits

covering a Part 70 source that is issued, renewed, amended, or revised pursuant to R307-415.

(6) "Title V Operating Permit Program" means R307-415.

(7) The definition of "Good Engineering Practice (GEP) Stack Height" as defined in R307-410 shall apply in this rule.

(8) The definition of "Dispersion Technique" as defined in R307-410 shall apply in this rule.

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KEY: air pollution, PSD, Class I area

Date of Enactment or Last Substantive Amendment: 2007

Notice of Continuation: June 16, 2006

Authorizing, and Implemented or Interpreted Law: 19-2-104

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Labor Commission, Antidiscrimination and Labor, Labor **R610-1-3** Coverage

NOTICE OF CHANGE IN PROPOSED RULE

DAR File No.: 30008

Filed: 07/13/2007, 10:40

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this change in proposed rule is to conform Utah's state minimum wage standards to recent increases in the federal minimum wage.

SUMMARY OF THE RULE OR CHANGE: This rule change raises the Utah minimum wage from \$5.15 to \$7.25 over a period of two years. This rule leaves the training wage for minor employees at \$4.25 for the first 90 days of employment, thereafter a minor employee will be paid at the established minimum wage. (DAR NOTE: This change in proposed rule has been filed to make additional changes to a proposed amendment that was published in the June 15, 2007, issue of the Utah State Bulletin, on page 41. Underlining in the rule below indicates text that has been added since the publication of the proposed rule mentioned above; strike-out indicates text that has been deleted. You must view the change in proposed rule and the proposed amendment together to understand all of the changes that will be enforceable should the agency make this rule effective.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 34-23-101 et seq.; 34-28-1 et seq.; 34-40-101 et seq.; and 63-46b-1 et seq.

ANTICIPATED COST OR SAVINGS TO:

❖ **THE STATE BUDGET:** In light of the expansive reach of the federal minimum wage, most, if not all, of the employers in Utah will be covered by its requirements. Therefore, the Labor Commission does not anticipate that increasing Utah's minimum wage will have any significant effect on the State budget since virtually all employers will be required to abide

by the federal minimum wage increase. The Labor Commission anticipates that the amendment will have no fiscal impact on its minimum wage enforcement obligations.

❖ LOCAL GOVERNMENTS: In light of the expansive reach of the federal minimum wage, most, if not all, of the employers in Utah will be covered by its requirements. Therefore, the Labor Commission does not anticipate that increasing Utah's minimum wage will have any significant effect on local government since virtually all employers will be required to abide by the federal minimum wage increase.

❖ OTHER PERSONS: In light of the expansive reach of the federal minimum wage, most, if not all, of the employers in Utah will be covered by its requirements. Therefore, the Labor Commission does not anticipate that increasing Utah's minimum wage will have any significant effect on small businesses and persons other than businesses, since virtually all employers will be required to abide by the federal minimum wage increase.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The Labor Commission does not anticipate that increasing Utah's minimum wage will result in any significant increases in compliance costs for affected persons since virtually all employers will be required to abide by the federal minimum wage increase. The Labor Commission anticipates that the amendment will have no fiscal impact on its minimum wage enforcement obligations.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: In almost all circumstances, businesses are required to pay employees the minimum wage established by federal law. Consequently, the Utah minimum wage requirement has no additional impact and will not impose additional burden on businesses. Sherrie Hayashi, Commissioner

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

LABOR COMMISSION
ANTIDISCRIMINATION AND LABOR, LABOR
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:

Heather Morrison at the above address, by phone at 801-530-6921, by FAX at 801-530-7601, or by Internet E-mail at hmorrison@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 08/31/2007.

THIS RULE MAY BECOME EFFECTIVE ON: 09/08/2007

AUTHORIZED BY: Sherrie Hayashi, Commissioner

R610. Labor Commission, Antidiscrimination and Labor, Labor. R610-1. Minimum Wage, Clarify Tip Credit, and Enforcement. R610-1-3. Coverage.

A. All employers employing workers in the state of Utah, except those exempted by Section 34-40-104, shall pay the established minimum hourly wages of \$5.~~45~~⁸⁵ an hour for all hours employed effective through ~~July 23~~^{September 8}, 2007; ~~\$5.85~~^{6.55} an hour for all hours employed effective July 24, ~~2007~~²⁰⁰⁸; ~~[\$6.55 an hour for all hours employed effective July 24, 2008;~~ and \$7.25 an hour for all hours employed effective July 24, 2009.

B. As per Sections 34-23-301 and 34-40-103, effective through July 23, 2007, a minor employee shall be paid at least \$4.25 per hour for the first 90 days of employment with an employer; and thereafter, ~~[shall be paid the]~~ minimum wage established in subsection A of this rule.

C. Any employer claiming exemption under Subsection 34-40-104(1)(k), shall provide to the Division a statistical report of the average wage paid within 60 days of the end of the regular operating season. The Division may, upon notice, perform an on-site inspection to verify the report in accordance with Sections 34-40-201 and 34-40-203.

KEY: wages, minors, labor, time

Date of Enactment or Last Substantive Amendment: 2007

Notice of Continuation: November 30, 2006

Authorizing, and Implemented or Interpreted Law: 34-23-101 et seq.; 34-28-1 et seq.; 34-40-101 et seq.; 63-46b-1 et seq.

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End of the Notices of Changes in 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).

Commerce, Administration **R151-35** Powersport Vehicle Franchise Act Rule

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE No.: 30195
FILED: 07/13/2007, 13:52

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: The Powersport Vehicle Franchise Act (PVFA), Section 13-35-101 et seq., governs the distribution and sales of powersport vehicles through franchise agreements and regulates the relationship between franchisors and franchisees. Section 13-35-104 authorizes the Utah Powersport Vehicle Franchise Advisory Board and the Department of Commerce to promulgate rules regarding the administration of the PVFA.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No comments have been received regarding this rule in the last five years.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The rule is necessary to administer the registration of franchisees and franchisors and to conduct adjudicative proceedings before the Board. Therefore, the rule should be continued.

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

AUTHORIZED BY: Francine Giani, Executive Director

EFFECTIVE: 07/13/2007



Commerce, Real Estate **R162-107** Unprofessional Conduct

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE No.: 30197
FILED: 07/16/2007, 12:20

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Subsection 61-2b-29(2)(l) specifies that unprofessional conduct as defined by statute or rule is grounds for disciplinary action. Subsection 61-2b-6(1)(l) requires the Division of Real Estate to adopt, with the concurrence of the Utah Appraiser Licensing and Certification Board, rules for the administration of the licensing chapter. The rule is necessary for administration of the chapter because it defines certain aspects of unprofessional conduct.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: 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: Since unprofessional conduct, "as defined by statute or rule", is grounds for disciplinary action against a licensed or certified appraiser, it is

necessary to have rules that list certain acts as unprofessional conduct. Therefore, this rule should be continued.

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

COMMERCE
 REAL ESTATE
 HEBER M WELLS BLDG
 160 E 300 S
 SALT LAKE CITY UT 84111-2316, or
 at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
 Shelley Wismer at the above address, by phone at 801-366-0145, by FAX at 801-366-0315, or by Internet E-mail at swismer@utah.gov

AUTHORIZED BY: Derek Miller, Director

EFFECTIVE: 07/16/2007



Environmental Quality, Air Quality
R307-105
 General Requirements: Emergency Controls

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 30183
 FILED: 07/13/2007, 08:33

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 19-2-112 allows the executive director of the Department of Environmental Quality, with the concurrence of the Governor, to declare an air pollution emergency and order reductions in emissions of air pollutants. Rule R307-105 establishes the levels of air pollutants that create an emergency, as well as other factors used in determining that an emergency exists.

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 about this rule since its last review.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Rule R307-105 is required under 40 CFR Section 51.151. Therefore, this rule should be continued.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:
 Mat E. Carlile at the above address, by phone at 801-536-4136, by FAX at 801-536-0085, or by Internet E-mail at MCARLILE@utah.gov

AUTHORIZED BY: Cheryl Heying, Director

EFFECTIVE: 07/13/2007



Environmental Quality, Air Quality
R307-121
 General Requirements: Eligibility of Expenditures for Purchase of Vehicles that Use Cleaner Burning Fuels for Corporate and Individual Income Tax Credits

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 30184
 FILED: 07/13/2007, 08:36

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Sections 59-7-605 and 59-10-1009 authorize income tax credit for those purchasing a new vehicle that uses clean fuels and for those who retrofit a vehicle to use clean fuels. Rule R307-121 sets forth conditions for eligibility and the process of application for corporate and individual income tax credits.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: R307-121 has been amended twice: 1) DAR No. 25495, effective 01/09/2003, and no comments were received during this comment period; and 2) DAR No. 29797, effective 07/13/2007, and no comments were received during this comment period. No other comments were received about this rule since its last review.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Rule R307-121 is authorized and required by Sections 59-7-605 and 59-10-1009. Therefore, this rule should be continued.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

Mat E. Carlile at the above address, by phone at 801-536-4136, by FAX at 801-536-0085, or by Internet E-mail at MCARLILE@utah.gov

AUTHORIZED BY: Cheryl Heying, Director

EFFECTIVE: 07/13/2007

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Environmental Quality, Air Quality **R307-401** Permit: New and Modified Sources

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 30185
FILED: 07/13/2007, 08:38

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 19-2-108 states that, "[t]he board shall require that notice be given to the executive secretary by any person planning to construct a new installation which will or might reasonably be expected to be a source or indirect source of air pollution or to make modifications to an existing installation which will or might reasonably be expected to increase the amount of or change the character or effect of air contaminants discharged..." Rule R307-401 sets forth the requirements that the owner or operator of a source of air pollution must address in giving notice to the executive secretary. Subsection 19-2-104(3)(q) states that the Air Quality Board may make rules to meet the requirements of federal air pollution laws. Rule R307-401 is also required by Section II, Review of New and Modified Air Pollution Sources, of the State Implementation Plan. This plan is required under the Clean Air Act, 42 U.S.C. 7410 and 40 CFR 51 subpart I.

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 about this rule since its last review.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Rule R307-401 is required by Section 19-2-108. Rule R307-401 is also required by

Section II, Review of New and Modified Air Pollution Sources, of the State Implementation Plan, which is incorporated by reference under Rule R307-110. This plan is required under the Clean Air Act, 42 U.S.C. 7410 and 40 CFR 51 subpart I. Without this plan, EPA would be required to impose a federal implementation plan. Therefore, this rule should be continued.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

Mat E. Carlile at the above address, by phone at 801-536-4136, by FAX at 801-536-0085, or by Internet E-mail at MCARLILE@utah.gov

AUTHORIZED BY: Cheryl Heying, Director

EFFECTIVE: 07/13/2007

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Environmental Quality, Air Quality **R307-403**

Permits: New and Modified Sources in Nonattainment Areas and Maintenance Areas

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 30186
FILED: 07/13/2007, 08:39

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 19-2-108 states that, "[t]he board shall require that notice be given to the executive secretary by any person planning to construct a new installation which will or might reasonably be expected to be a source or indirect source of air pollution or to make modifications to an existing installation which will or might reasonably be expected to increase the amount of or change the character or effect of air contaminants discharged..." Rule R307-403 requires sources that expect to locate in nonattainment or maintenance areas, to meet special requirements to ensure that the area continues to make reasonable progress towards attaining and maintaining federal health-based standards. Subsection 19-2-104(3)(q) says the Air Quality Board may make rules to "meet the requirements of federal air pollution laws". Rule R307-403 is also required by Section II, Review of New and Modified Air Pollution

Sources, of the State Implementation Plan. This plan is required under the Clean Air Act, 42 U.S.C. 7410 and 40 CFR 51.165.

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 about this rule since its last review.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Rule R307-403 is required by Section 19-2-108. Rule R307-403 is also required by Section II, Review of New and Modified Air Pollution Sources, of the State Implementation Plan, which is incorporated by reference under Rule R307-110. This plan is required under the Clean Air Act, 42 U.S.C. 7410 and 40 CFR 51.165. Without the state plan, EPA would be required to impose a federal implementation plan. Therefore, this rule should be continued.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

Mat E. Carlile at the above address, by phone at 801-536-4136, by FAX at 801-536-0085, or by Internet E-mail at MCARLILE@utah.gov

AUTHORIZED BY: Cheryl Heying, Director

EFFECTIVE: 07/13/2007



**Environmental Quality, Air Quality
 R307-405**

**Permits: Major Sources in Attainment
 or Unclassified Areas (PSD)**

**FIVE YEAR NOTICE OF REVIEW AND
 STATEMENT OF CONTINUATION**

DAR FILE NO.: 30187
 FILED: 07/13/2007, 08:40

**NOTICE OF REVIEW AND
 STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 19-2-108 states that, "[t]he board shall require that notice be given to the executive secretary by any person planning to construct a new installation which will or might reasonably be expected to be a source or indirect source of air pollution or to make

modifications to an existing installation which will or might reasonably be expected to increase the amount of or change the character or effect of air contaminants discharged..." Rule R307-405 implements the federal Prevention of Significant Deterioration (PSD) permitting program for major sources and major modifications in attainment areas and maintenance areas as required by 40 CFR 51.166. Subsection 19-2-104(3)(q) states that the Air Quality Board may meet the requirements of federal laws. Rule R307-405 is also required by Section VIII, Prevention of Significant Deterioration of the State Implementation Plan. This plan is required under the Clean Air Act, 42 U.S.C. 7410 and 40 CFR 51.166.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: Rule R307-405 was amended once since its last review, under DAR No. 29796. No comments were received.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Rule R307-405 is required by Section 19-2-108. Rule R307-405 is also required by Section VIII, Prevention of Significant Deterioration of the State Implementation Plan, which is incorporated by reference under Rule R307-110. This plan is required under the Clean Air Act, 42 U.S.C. 7410 and 40 CFR 51.166. Without this plan, EPA would be required to impose a federal implementation plan. Therefore, this rule should be continued.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

Mat E. Carlile at the above address, by phone at 801-536-4136, by FAX at 801-536-0085, or by Internet E-mail at MCARLILE@utah.gov

AUTHORIZED BY: Cheryl Heying, Director

EFFECTIVE: 07/13/2007



**Environmental Quality, Air Quality
 R307-406**

Visibility

**FIVE YEAR NOTICE OF REVIEW AND
 STATEMENT OF CONTINUATION**

DAR FILE NO.: 30188
 FILED: 07/13/2007, 08:41

**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 19-2-108 states that, "[t]he board shall require that notice be given to the executive secretary by any person planning to construct a new installation which will or might reasonably be expected to be a source or indirect source of air pollution or to make modifications to an existing installation which will or might reasonably be expected to increase the amount of or change the character or effect of air contaminants discharged..." Rule R307-406 sets forth the criteria to be used by the Division of Air Quality in notices of intent to construct under Rule R307-401 for new or modified major sources whose air pollution may affect visibility in Utah's Class I areas--Zion, Bryce, Capitol Reef, Arches, and Canyonlands National Parks. Subsection 19-2-104(3)(q) states that the Air Quality Board may make rules to "meet the requirements of federal air pollution laws." Rule R307-406 is also required by Section XVII, Visibility Protection, of the State Implementation Plan. This plan is required under the Clean Air Act, 42 U.S.C. 7410 and 40 CFR 51 subpart P.

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 about this rule since its last review.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Rule R307-406 is required by Section 19-2-108. Rule R307-406 is also required by Section XVII, Visibility Protection, of the State Implementation Plan, which is incorporated by reference under Rule R307-110. This plan is required under Clean Air Act, 42 U.S.C. 7410 and 40 CFR 51 subpart P. Without this plan, EPA would be required to impose a federal implementation plan. Therefore, this rule should be continued.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

Mat E. Carlile at the above address, by phone at 801-536-4136, by FAX at 801-536-0085, or by Internet E-mail at MCARLILE@utah.gov

AUTHORIZED BY: Cheryl Heying, Director

EFFECTIVE: 07/13/2007



Environmental Quality, Air Quality
R307-410
Permits: Emission Impact Analysis

**FIVE YEAR NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION**

DAR FILE NO.: 30189
FILED: 07/13/2007, 08:42

**NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 19-2-108 states that, "[t]he board shall require that notice be given to the executive secretary by any person planning to construct a new installation which will or might reasonably be expected to be a source or indirect source of air pollution or to make modifications to an existing installation which will or might reasonably be expected to increase the amount of or change the character or effect of air contaminants discharged..." Subsection 19-2-104(1) states that the Air Quality Board may make rules "(a) regarding the control, abatement, and prevention of air pollution from all sources..." Rule R307-410 establishes procedures and requirements for evaluating the expected impact of emissions from new or modified sources that require an approval order under Rule R307-401. Rule R307-410 also establishes the procedures and requirements for evaluating the impact of emissions of hazardous air pollutants. These evaluations help to determine the control requirements necessary to attain and maintain the federal health standards for air quality. Subsection 19-2-104(3)(q) states that the Air Quality Board may make rules to meet the requirements of federal air pollution laws. Rule R307-410 is also required by Section II, Review of New and Modified Air Pollution Sources and Section XVIII, Demonstration of GEP Stack Height, of the State Implementation Plan. This plan is required under the Clean Air Act, 42 U.S.C. 7410 and 40 CFR 51 subpart I, and 40 CFR 51.118.

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 about this rule since its last review.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Rule R307-410 is required by Section 19-2-108. Rule R307-410 is also required by Section II, Review of New and Modified Air Pollution Sources and Section XVIII, Demonstration of GEP Stack Height, of the State Implementation Plan, which are incorporated by reference under Rule R307-110. This plan is required under the Clean Air Act, 42 U.S.C. 7410 and 40 CFR 51 subpart I, and 40 CFR 51.118. Without this plan, EPA would be required to impose a federal implementation plan. Therefore, this rule should be continued.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

Mat E. Carlile at the above address, by phone at 801-536-4136, by FAX at 801-536-0085, or by Internet E-mail at MCARLILE@utah.gov

AUTHORIZED BY: Cheryl Heying, Director

EFFECTIVE: 07/13/2007

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

Mat E. Carlile at the above address, by phone at 801-536-4136, by FAX at 801-536-0085, or by Internet E-mail at MCARLILE@utah.gov

AUTHORIZED BY: Cheryl Heying, Director

EFFECTIVE: 07/13/2007

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Environmental Quality, Air Quality
R307-414
Permits: Fees for Approval Orders

**FIVE YEAR NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION**

DAR FILE NO.: 30190
FILED: 07/13/2007, 08:43

**NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Subsection 19-1-201(2)(i) allows the Department of Environmental Quality to establish a schedule of fees for actions and services of the department, which is approved annually by the Legislature. Subsection 19-2-104(3)(o) states that the Air Quality Board may require sources of air pollution to pay a fee sufficient to cover reasonable costs for reviewing and acting upon the notice of intent required by Rule R307-401 and for implementing and enforcing the requirements of the approval order issued to the source. Rule R307-414 sets forth procedures for billing sources of air pollution.

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 about this rule since its last review.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The fees required by Rule R307-414 are allowed under Subsections 19-1-201(2)(i) and 19-2-104(3)(o). The fees required under Rule R307-414 and approved annually by the Legislature comprise a substantial portion of the budget of the Division of Air Quality. Without these fees, the Division would not be able to review and act upon the applications by sources. Therefore, this rule should be continued.

◆ ————— ◆

Environmental Quality, Air Quality
R307-415
Permits: Operating Permit
Requirements

**FIVE YEAR NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION**

DAR FILE NO.: 30191
FILED: 07/13/2007, 08:44

**NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Subsection 19-2-109.1(2)(a) requires that all sources subject to Title V of the Clean Air Act obtain an operating permit, and Rule R307-415 sets forth the requirements and procedures for obtaining the permit. Rule R307-415 is consistent with Title V and with 40 CFR Part 70. Subsection 19-2-109.1(4)(a) states that, [t]he Board shall establish a proposed annual emission fee that conforms to Title V of the 1990 Clean Air Act for each ton of regulated pollutant applicable to all sources required to obtain a permit." Subsection 19-1-201(2)(i) allows the Department of Environmental Quality to establish a schedule of fees for actions and services of the department, which is approved annually by the Legislature.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: Rule R307-415 was amended once since its last review under DAR No. 28814, effective 09/07/2006. No comments were received.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Rule R307-415 is required by Title V of the Clean Air Act and 40 CFR Part 70, and Section 19-2-109.1. The fees required by Rule R307-415 are allowed under Subsection 19-1-201(2)(i). The fees required

under Rule R307-415 and approved annually by the Legislature comprise a substantial portion of the budget of the Division of Air Quality. Without these fees, the Division would not be able to issue and enforce operating permits. Therefore, this rule should be continued.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

Mat E. Carlile at the above address, by phone at 801-536-4136, by FAX at 801-536-0085, or by Internet E-mail at MCARLILE@utah.gov

AUTHORIZED BY: Cheryl Heying, Director

EFFECTIVE: 07/13/2007

◆ ————— ◆
Environmental Quality, Air Quality

R307-417

Permits: Acid Rain Sources

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 30192
 FILED: 07/13/2007, 08:45

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 19-2-109.1 requires that all sources of air pollution that are subject to Title IV or V of the federal Clean Air Act must obtain an operating permit. Rule R307-417 incorporates by reference the federal requirements under Title IV, 40 CFR Part 72, as in effect on 07/01/1998, into Utah's air quality rules, so that Utah has the authority to include those requirements in operating permits for sources subject to Title IV.

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 about this rule since its last review.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Rule R307-417 is required by Title IV and V of the Clean Air Act and 40 CFR Part 70 and 72, and Section 19-2-109.1. Therefore, this rule should be continued.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

Mat E. Carlile at the above address, by phone at 801-536-4136, by FAX at 801-536-0085, or by Internet E-mail at MCARLILE@utah.gov

AUTHORIZED BY: Cheryl Heying, Director

EFFECTIVE: 07/13/2007

◆ ————— ◆
Environmental Quality, Air Quality

R307-420

Permits: Ozone Offset Requirements in Davis and Salt Lake Counties

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 30193
 FILED: 07/13/2007, 08:46

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Subsection 19-2-104(1) states that the Air Quality Board may make rules "(a) regarding the control, abatement, and prevention of air pollution from all sources and the establishment of the maximum quantity of air contamination that may be emitted by any air contaminant source." The purpose of Rule R307-420 is to require emission reductions from existing sources to offset emission increases from new or modified sources of ozone precursors in Salt Lake and Davis Counties. The emission offset will minimize growth of ozone precursors to ensure that these areas will continue to maintain the ozone national ambient air quality standards.

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

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Rule R307-420 is required to minimize the growth in emissions of ozone precursors in Salt Lake and Davis Counties. This rule supports Section IX.D (Ozone Maintenance Plan) of the State Implantation Plan, incorporated by reference under Section R307-110-13. Therefore, this rule should be continued.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

Mat E. Carlile at the above address, by phone at 801-536-4136, by FAX at 801-536-0085, or by Internet E-mail at MCARLILE@utah.gov

AUTHORIZED BY: Cheryl Heying, Director

EFFECTIVE: 07/13/2007

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

Mat E. Carlile at the above address, by phone at 801-536-4136, by FAX at 801-536-0085, or by Internet E-mail at MCARLILE@utah.gov

AUTHORIZED BY: Cheryl Heying, Director

EFFECTIVE: 07/13/2007

Environmental Quality, Air Quality
R307-421

Permits: PM10 Offset Requirements in
Salt Lake County and Utah County

**FIVE YEAR NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION**

DAR FILE No.: 30194
FILED: 07/13/2007, 08:46

**NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Subsection 19-2-104(1) states that the Air Quality Board may make rules "(a) regarding the control, abatement, and prevention of air pollution from all sources and the establishment of the maximum quantity of air contamination that may be emitted by any air contaminant source." The purpose of Rule R307-421 is to require emission reductions from existing sources to offset emission increases from new or modified sources of PM10 precursors in Salt Lake and Utah Counties. The emission offset will minimize growth of PM10 precursors to ensure that these areas will continue to maintain the PM10 national ambient air quality standard.

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 about this rule since its last review.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Rule R307-421 is required to minimize the growth in emissions of PM10 precursors in Salt Lake County and Utah Counties. This rule supports the PM10 Maintenance Plan, incorporated by reference under Section R307-110-10. Therefore, this rule should be continued.

Money Management Council,
Administration

R628-2

Investment of Funds of Public
Education Foundations Established
Under Section 53A-4-205 or Funds
Acquired by Gift, Devise or Bequest

**FIVE YEAR NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION**

DAR FILE No.: 30177
FILED: 07/10/2007, 15:12

**NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule is enacted under Subsection 51-7-13(2)(c) which allows funds of public education foundations to be invested under council rule. The Council has rulemaking authority in Subsection 51-7-18(2)(b).

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: There have been no comments supporting or opposing this rule since the last five-year review.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The Money Management Council reviewed this rule in its June 2007 meeting. There were no public education foundations present and there was one representative from a higher education institution present. There have been no comments in opposition to this rule, and none were heard in this meeting. The Council reviewed the rule in detail and agreed to a minor reference change to bring that section in line with the Money Management Act. Because

of the long term, permanent nature of public education foundation funds, there has to be a rule in place with different investment structures than what is needed for most public funds that are generally short-term funds. This rule provides for investment in high quality longer term securities and funds.

Having these criteria in a rule allows the Council to respond rapidly to any changes in the markets. Therefore, this rule should be continued.

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

MONEY MANAGEMENT COUNCIL
ADMINISTRATION
Room E315 EAST OFFICE BLDG
STATE CAPITOL COMPLEX
PO BOX 142315
SALT LAKE CITY UT 84114-2315, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Ann Pedroza at the above address, by phone at 801-538-1883, by FAX at 801-538-1465, or by Internet E-mail at apedroza@utah.gov

AUTHORIZED BY: Bruce B. Cohne, Chair

EFFECTIVE: 07/10/2007



Natural Resources, Water Rights
R655-1
Wells Used for the Discovery and
Production of Geothermal Energy in the
State of Utah

FIVE YEAR NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION

DAR FILE No.: 30182
FILED: 07/12/2007, 14:40

NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Under Section 73-22-5, the Division of Water Rights is given jurisdiction and authority to require that all wells for the discovery and production of water to be used for geothermal energy production of water in the State of Utah, be drilled, operated, maintained, and abandoned in a manner as to safeguard life, health, property, the public welfare, and to encourage maximum economic recovery.

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 Division of Water Rights maintains jurisdiction and authority to require that all wells for the discovery and production of water to be used for geothermal energy production of water in the State of Utah, be drilled, operated, maintained, and abandoned in a manner as to safeguard life, health, property, the public welfare, and to encourage maximum economic recovery so this rule should be continued.

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

NATURAL RESOURCES
WATER RIGHTS
Room 220
1594 W NORTH TEMPLE
SALT LAKE CITY UT 84116-3154, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Kaelyn Anfinson at the above address, by phone at 801-538-7370, by FAX at 801-538-7442, or by Internet E-mail at KAELYNANFINSEN@utah.gov

AUTHORIZED BY: Jerry Olds, Director

EFFECTIVE: 07/12/2007



Natural Resources, Water Rights
R655-2
Procedure for Administrative
Proceedings Before the Division of
Water Rights Commenced Prior to
January 1, 1988

FIVE YEAR NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION

DAR FILE No.: 30181
FILED: 07/12/2007, 14:39

NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 63-46b-5 established and governed the administrative procedures for informal adjudicative proceedings before the Division of Water Rights that commenced prior to 01/01/1988.

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

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule should be continued to govern all hearings which are held by the State Engineer on matters within his jurisdiction for all adjudicative proceedings that commenced prior to 01/01/1988.

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

NATURAL RESOURCES
WATER RIGHTS
Room 220
1594 W NORTH TEMPLE
SALT LAKE CITY UT 84116-3154, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Kaelyn Anfinson at the above address, by phone at 801-538-7370, by FAX at 801-538-7442, or by Internet E-mail at KAELYNANFINSEN@utah.gov

AUTHORIZED BY: Jerry Olds, Director

EFFECTIVE: 07/12/2007



Natural Resources, Wildlife Resources
R657-14
Commercial Harvesting of Protected
Aquatic Wildlife

**FIVE YEAR NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION**

DAR FILE NO.: 30173
FILED: 07/09/2007, 07:59

**NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS

AUTHORIZE OR REQUIRE THE RULE: Under Sections 23-14-3, 23-14-18, and 23-14-19, the Wildlife Board is authorized and required to regulate and prescribe the means by which wildlife may be taken.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments supporting or opposing Rule R657-14 were received since 07/12/2002, when the rule was last reviewed.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Rule R657-14 provides the procedures, standards, and requirements for: harvesting protected aquatic wildlife for use as fish bait; commercially harvesting brine shrimp and brine shrimp eggs; and seining protected wildlife. The provisions adopted in this rule are effective. Continuation of this rule is necessary for continued success for allowing harvesting of protected aquatic wildlife for use as fish bait and seining protected wildlife.

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

NATURAL RESOURCES
WILDLIFE RESOURCES
1594 W NORTH TEMPLE
SALT LAKE CITY UT 84116-3154, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Staci Coons at the above address, by phone at 801-538-4718, by FAX at 801-538-4709, or by Internet E-mail at stacicoons@utah.gov

AUTHORIZED BY: James F Karpowitz, Director

EFFECTIVE: 07/09/2007



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*. Statute permits an agency to make a rule effective "on any date specified by the agency that is no fewer than seven calendar days after the close of the public comment period . . . , nor more than 120 days after the publication date." Subsection 63-46a-4(9).

Abbreviations

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

Administrative Services

Finance

No. 29910 (AMD): R25-7. Travel-Related Reimbursements for State Employees.
Published: May 15, 2007
Effective: July 3, 2007

Education

Administration

No. 29935 (REP): R277-416. Experimental and Developmental Programs.
Published: June 1, 2007
Effective: July 9, 2007

No. 29931 (AMD): R277-464. Highly Impacted Schools.
Published: June 1, 2007
Effective: July 9, 2007

No. 29932 (NEW): R277-488. Critical Languages Pilot Program.
Published: June 1, 2007
Effective: July 9, 2007

No. 29933 (NEW): R277-489. Optional Extended-Day Kindergarten - Responsibilities, Timelines, and Funding.
Published: June 1, 2007
Effective: July 9, 2007

No. 29934 (AMD): R277-603. Basic Skills Education Program.
Published: June 1, 2007
Effective: July 9, 2007

No. 29936 (REP): R277-611. Medical Recommendations by School Personnel to Parents.
Published: June 1, 2007
Effective: July 9, 2007

No. 29937 (REP): R277-617. Authorization of Student Clubs and Organizations.
Published: June 1, 2007
Effective: July 9, 2007

Environmental Quality

Air Quality

No. 29797 (R&R): R307-121. General Requirements: Eligibility of Expenditures for Purchase of Vehicles that Use Cleaner Burning Fuels for Corporate and Individual Income Tax Credits.
Published: May 1, 2007
Effective: July 13, 2007

No. 29798 (REP): R307-122. General Requirements: Eligibility of Expenditures for Purchase and Installation Costs of Fireplaces and Wood Stoves that Use Cleaner Burning Fuels.
Published: May 1, 2007
Effective: July 13, 2007

No. 29652 (AMD): R307-130-4. Options.
Published: April 1, 2007
Effective: July 13, 2007

Health

Epidemiology and Laboratory Services; HIV/AIDS, Tuberculosis Control/Refugee Health

No. 29911 (AMD): R388-804. Special Measures for the Control of Tuberculosis.
Published: June 1, 2007
Effective: July 16, 2007

Human Services

Public Guardian (Office of)

No. 29950 (NEW): R549-1. Eligibility and Services Priority.
Published: June 1, 2007
Effective: July 9, 2007

Insurance

Administration

No. 29947 (AMD): R590-220. Submission of Accident and Health Insurance Filings.
Published: June 1, 2007
Effective: July 12, 2007

No. 29949 (AMD): R590-225. Submission of Property and Casualty Rate and Form Filings.
Published: June 1, 2007
Effective: July 12, 2007

NOTICES OF RULE EFFECTIVE DATES

No. 29951 (AMD): R590-227. Submission of Annuity Filings.
Published: June 1, 2007
Effective: July 12, 2007

Labor Commission

Industrial Accidents

No. 29948 (AMD): R612-2-27. Commission Approval of Health Care Treatment Protocol.
Published: June 1, 2007
Effective: July 10, 2007

Natural Resources

Parks and Recreation

No. 29806 (AMD): R651-205-16. Huntington Reservoir.
Published: May 1, 2007
Effective: July 9, 2007

No. 29913 (AMD): R651-207-1. Yearly Registration Fee.
Published: June 1, 2007
Effective: July 9, 2007

No. 29914 (AMD): R651-611. Fee Schedule.
Published: June 1, 2007
Effective: July 9, 2007

Wildlife Resources

No. 29923 (AMD): R657-5. Taking Big Game.
Published: June 1, 2007
Effective: July 9, 2007

Tax Commission

Administration

No. 29941 (AMD): R861-1A-41. Date of Assessment Pursuant to Ann. Sections 59-1-302.1 and 59-1-706.
Published: June 1, 2007
Effective: July 16, 2007

Auditing

No. 29942 (AMD): R865-19S-58. Materials and Supplies Sold to Owners, Contractors and Repairmen of Real Property Pursuant to Utah Code Ann. Sections 59-12-102 and 59-12-103.
Published: June 1, 2007
Effective: July 16, 2007

No. 29943 (AMD): R865-20T-2. Methods of Paying Taxes on Cigarettes and Tobacco Products Pursuant to Utah Code Ann. Sections 59-14-205 and 59-14-303.
Published: June 1, 2007
Effective: July 16, 2007

Motor Vehicle Enforcement

No. 29940 (AMD): R877-23V-4. License Holder Prohibitions Pursuant to Utah Code Ann. Section 41-3-210.
Published: June 1, 2007
Effective: July 16, 2007

No. 29938 (AMD): R877-23V-8. Signs and Identification Pursuant to Utah Code Ann. Section 41-3-105.
Published: June 1, 2007
Effective: July 16, 2007

No. 29930 (AMD): R877-23V-14. Dealer Identification of Fees Associated with Issuance of Temporary Permits Pursuant to Utah Code Ann Sections 41-3-301 and 41-3-302.
Published: June 1, 2007
Effective: July 16, 2007

Property Tax

No. 29928 (AMD): R884-24P-68. Property Tax Exemption for Taxable Tangible Personal Property With a Total Aggregate Fair Market Value of \$3,500 or Less Pursuant to Utah Code Ann. Section 59-2-1115.
Published: June 1, 2007
Effective: July 16, 2007

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, 2007, including notices of effective date received through July 16, 2007, the effective dates of which are no later than August 1, 2007. 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
Administrative Services					
<u>Administration</u>					
R13-2	Access to Records	29771	5YR	04/02/2007	2007-8/119
R13-2	Access to Records	29772	AMD	05/22/2007	2007-8/3
<u>Administrative Rules</u>					
R15-3-5	Statutory Provisions that Require Rulemaking Pursuant to Subsection 63-46a-4(11)	29554	AMD	04/30/2007	2007-6/5
R15-4-10	Estimates of Anticipated Cost or Savings, and Compliance Cost	30111	EMR	07/01/2007	2007-14/38
<u>Facilities Construction and Management</u>					
R23-1	Procurement of Construction	29965	5YR	05/24/2007	2007-12/59
R23-19	Facility Use Rules	29964	5YR	05/24/2007	2007-12/59
R23-19	Facility Use Rule	29812	R&R	06/07/2007	2007-9/3
R23-20	Free Speech Activities	29811	NEW	06/07/2007	2007-9/11

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CODE REFERENCE	TITLE	FILE NUMBER	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
R23-25	Administrative Rules Adjudicative Proceedings	29474	AMD	04/11/2007	2007-4/2
<u>Finance</u>					
R25-7	Travel-Related Reimbursements for State Employees	29910	AMD	07/03/2007	2007-10/3
R25-14	Payment of Attorneys Fees in Death Penalty Cases	29424	5YR	01/17/2007	2007-4/54
<u>Fleet Operations</u>					
R27-4	Vehicle Replacement and Expansion of State Fleet	30212	5YR	07/25/2007	Not Printed
R27-5	Fleet Tracking	29457	5YR	01/29/2007	2007-4/54
R27-6	Fuel Dispensing Program	29515	5YR	02/14/2007	2007-5/19
R27-8	State Vehicle Maintenance Program	29534	5YR	02/21/2007	2007-6/36
R27-10	Identification Mark for State Motor Vehicles	29939	5YR	05/14/2007	2007-11/84
<u>Fleet Operations, Surplus Property</u>					
R28-1	State Surplus Property Disposal	29550	5YR	02/26/2007	2007-6/36
R28-7	Surplus Property Rate Schedule	29946	5YR	05/15/2007	2007-11/84
<u>Records Committee</u>					
R35-2-2	Declining Requests for Hearings	29081	AMD	01/05/2007	2006-20/2
<u>Risk Management</u>					
R37-1	Risk Management General Rules	30046	5YR	06/08/2007	2007-13/140
R37-2	Risk Management State Workers' Compensation Insurance Administration	30047	5YR	06/08/2007	2007-13/140
R37-3	Risk Management Adjudicative Proceedings	30048	5YR	06/08/2007	2007-13/141
Agriculture and Food					
<u>Administration</u>					
R51-2	Administration Procedures for Informal Proceedings Before the Utah Department of Agriculture and Food	29405	5YR	01/11/2007	2007-3/56
<u>Animal Industry</u>					
R58-1	Admission and Inspection of Livestock, Poultry, and Other Animals	29506	5YR	02/08/2007	2007-5/19
R58-6	Poultry	29504	5YR	02/08/2007	2007-5/20
R58-8	Testing and Vaccination of Bovine Livestock for Brucellosis Control (5YR EXTENSION)	29512	NSC	06/07/2007	Not Printed
R58-8	Testing and Vaccination of Bovine Livestock for Brucellosis Control	30041	5YR	06/07/2007	2007-13/142
R58-18	Elk Farming	29505	5YR	02/08/2007	2007-5/20
R58-22	Equine Infectious Anemia (EIA)	29503	5YR	02/08/2007	2007-5/21
R58-23	Equine Viral Arteritis (EVA)	29342	NEW	02/28/2007	2007-1/5
<u>Plant Industry</u>					
R68-19	Compliance Procedures	29453	5YR	01/29/2007	2007-4/55
R68-20	Utah Organic Standards	29347	AMD	02/28/2007	2007-1/6
<u>Regulatory Services</u>					
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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	

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	30150	R850-30	5YR	06/27/2007	2007-14/56
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	29501	R307-105	NSC	07/13/2007	Not Printed
	30183	R307-105	5YR	07/13/2007	2007-15/62
	29662	R307-110	5YR	03/15/2007	2007-7/151
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	29526	R307-326-1	NSC	03/09/2007	Not Printed
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	29461	R652-140	NEW	03/26/2007	2007-4/37
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	29555	R156-1-102	NSC	03/09/2007	Not Printed
	29353	R156-40a	NEW	02/22/2007	2007-2/9
	29397	R156-75	5YR	01/09/2007	2007-3/58
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	29331	R698-100	NSC	04/02/2007	Not Printed
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	29664	R307-325	5YR	03/15/2007	2007-7/160
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	29009	R307-340	CPR	03/09/2007	2007-3/46
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<u>trauma registry</u>					
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<u>trauma system</u>					
Health, Health Systems Improvement, Emergency Medical Services	30205	R426-5	5YR	07/18/2007	Not Printed
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Natural Resources, Forestry, Fire and State Lands	29800	R652-130	NSC	04/03/2007	Not Printed
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	29663	R307-320	5YR	03/15/2007	2007-7/160
<u>trucking industries</u>					
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	29911	R388-804	AMD	07/16/2007	2007-11/27
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Environmental Quality, Environmental Response and Remediation	29838	R311-200	5YR	04/18/2007	2007-10/112
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	29568	R311-201	NSC	04/18/2007	Not Printed
	29839	R311-201	5YR	04/18/2007	2007-10/113
	29840	R311-202	5YR	04/18/2007	2007-10/114
	29569	R311-202	NSC	04/18/2007	Not Printed
	29570	R311-203	NSC	04/18/2007	Not Printed
	29841	R311-203	5YR	04/18/2007	2007-10/114
	29842	R311-204	5YR	04/18/2007	2007-10/115
	29571	R311-204	NSC	04/18/2007	Not Printed
	29572	R311-205	NSC	04/18/2007	Not Printed
	29843	R311-205	5YR	04/18/2007	2007-10/116
	29844	R311-206	5YR	04/18/2007	2007-10/116
	29573	R311-206	NSC	04/18/2007	Not Printed
	29574	R311-207	NSC	04/18/2007	Not Printed
	29845	R311-207	5YR	04/18/2007	2007-10/117
	29846	R311-208	5YR	04/18/2007	2007-10/118
	29575	R311-208	NSC	04/18/2007	Not Printed
	29576	R311-209	NSC	04/18/2007	Not Printed
	29847	R311-209	5YR	04/18/2007	2007-10/118
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	30142	R994-405	5YR	06/26/2007	2007-14/61
	29963	R994-406	5YR	05/22/2007	2007-12/71
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