

# UTAH STATE BULLETIN

OFFICIAL NOTICES OF UTAH STATE GOVERNMENT  
Filed May 16, 2014, 12:00 a.m. through June 02, 2014, 11:59 p.m.

Number 2014-12  
June 15, 2014

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The *Utah State Bulletin (Bulletin)* is an official noticing publication of the executive branch of Utah state government. The Division of Administrative Rules, part of the Department of Administrative Services, produces the *Bulletin* under authority of Section 63G-3-402.

The Portable Document Format (PDF) version of the *Bulletin* is the official version. The PDF version of this issue is available at <http://www.rules.utah.gov/publicat/bulletin.htm>. Any discrepancy between the PDF version and other versions will be resolved in favor of the PDF version.

Inquiries concerning the substance or applicability of an administrative rule that appears in the *Bulletin* should be addressed to the contact person for the rule. Questions about the *Bulletin* or the rulemaking process may be addressed to: Division of Administrative Rules, PO Box 141007, Salt Lake City, Utah 84114-1007, telephone 801-538-3764. Additional rulemaking information and electronic versions of all administrative rule publications are available at <http://www.rules.utah.gov/>.

The information in this *Bulletin* is summarized in the *Utah State Digest (Digest)* of the same volume and issue number. The *Digest* is available by e-mail subscription or online. Visit <http://www.rules.utah.gov/publicat/digest.htm> for additional information.

Division of Administrative Rules, Salt Lake City 84114

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Utah state bulletin.

Semimonthly.

1. Delegated legislation--Utah--Periodicals. 2. Administrative procedure--Utah--Periodicals.

I. Utah. Division of Administrative Rules.

KFU440.A73S7

348.792'025--DDC

85-643197

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# **SPECIAL NOTICES**

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

### **Notice for July 2014 Medicaid Rate Changes**

Effective July 1, 2014, Utah Medicaid will adjust its rates consistent with legislative intent and appropriations. Rate adjustments include new codes priced consistent with approved Medicaid methodologies as well as potential adjustments to existing codes. Nursing home rate changes will include adjustments to the flat rate, fair rental value and case mix components consistent with adopted payment methodology. All rate changes are posted to the web and can be viewed at: <http://health.utah.gov/medicaid/stplan/bcrp.htm>

**End of the Special Notices Section**



# EXECUTIVE DOCUMENTS

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Under authority granted by the Utah Constitution and various federal and state statutes, the Governor periodically issues **EXECUTIVE DOCUMENTS**, which can be categorized as either Executive Orders, Proclamations, and Declarations. Executive Orders set policy for the executive branch; create boards and commissions; provide for the transfer of authority; or otherwise interpret, implement, or give administrative effect to a provision of the Constitution, state law or executive policy. Proclamations call special or extraordinary legislative sessions; designate classes of cities; publish states-of-emergency; promulgate other official formal public announcements or functions; or publicly avow or cause certain matters of state government to be made generally known. Declarations designate special days, weeks or other time periods; call attention to or recognize people, groups, organizations, functions, or similar actions having a public purpose; or invoke specific legislative purposes (such as the declaration of an agricultural disaster).

The Governor's Office staff files **EXECUTIVE DOCUMENTS** that have legal effect with the Division of Administrative Rules for publication and distribution.

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## **Governor's Proclamation 2014/06/E: Calling the Sixtieth Legislature Into the Sixth Extraordinary Session**

### PROCLAMATION

**WHEREAS**, since the close of the 2014 General Session of the 60th Legislature of the State of Utah, certain matters have arisen which require immediate legislative attention; and

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

**NOW, THEREFORE, I, GARY R. HERBERT**, Governor of the State of Utah, by virtue of the authority vested in me by the Constitution and Laws of the State of Utah, do by this Proclamation call the Senate only of the 60th Legislature into the Sixth Extraordinary Session at the State Capitol in Salt Lake City, Utah, on the 21st day of May 2014, at 1:30 p.m., for the following purpose:

For the Senate to consent to appointments made by the Governor to positions within state government of the State of Utah since the close of the 2014 General Session of the Legislature of the State of Utah.

IN TESTIMONY WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Utah. Done at the Utah State Capitol in Salt Lake City, Utah, this 19th day of May 2014.

(State Seal)

**Gary R. Herbert**  
Governor

ATTEST:

**Spencer J. Cox**  
Lieutenant Governor

2014/06/E





## NOTICES OF PROPOSED RULES

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A state agency may file a **PROPOSED RULE** when it determines the need for a substantive change to an existing rule. With a **NOTICE OF PROPOSED RULE**, an agency may create a new rule, amend an existing rule, repeal an existing rule, or repeal an existing rule and reenact a new rule. Filings received between May 16, 2014, 12:00 a.m., and June 02, 2014, 11:59 p.m. are included in this, the June 15, 2014, 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 (example). Deletions made to existing rules are struck out with brackets surrounding them (~~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 usually printed. If a **PROPOSED RULE** is too long to print, the Division of Administrative Rules may 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 July 15, 2014. The agency may accept comment beyond this date and will indicate 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 hold a hearing on a specific **PROPOSED RULE**. Section 63G-3-302 requires that a hearing request be received by the agency proposing the rule "in writing not more than 15 days after the publication date of the proposed rule."

From the end of the public comment period through October 13, 2014, 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 OF A CHANGE IN PROPOSED RULE**, the **PROPOSED RULE** lapses.

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 63G-3-301, Rule R15-2, and Sections R15-4-3, R15-4-4, R15-4-5a, R15-4-9, and R15-4-10.

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

## Administrative Services, Administration

### R13-2

### Access to Records

#### NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 38569

FILED: 06/02/2014

#### RULE ANALYSIS

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The Department determined that amendments were necessary after reviewing the statutory authorization for rulemaking related to records management and records access.

**SUMMARY OF THE RULE OR CHANGE:** This amendment, in Section R13-2-1, clarifies the authority upon which the rule relies. In Section R13-2-2, it updates the definition of terms. In Section R13-2-3, it addresses rulemaking authorized by Subsection 63A-12-104(2) and designates that records management activities occur at the division level. In Section R13-2-4, it clarifies provisions previously promulgated in response to the rulemaking authorized by Subsection 63G-2-204(2)(d) that permits a governmental entity to enact rules specifying where and to whom requests for access are directed. In Section R13-2-5, pursuant to Section 63G-2-401, authorization to delegate the duties of the chief administrative officer related to GRAMA appeals, this amendment informs the public to whom appeals may be directed. In Section R13-2-6, this amendment clarifies where the department's GRAMA schedule of fees may be obtained. In Section R13-2-7, this amendment clarifies that forms are not required to submit a GRAMA request or a GRAMA appeal, but it provides the web address of forms that are available. Finally, in Section R13-2-8, it modifies the descriptive section title to clarify that this section addresses access to permanent or historical records in the custody of the Division of Archives and Records Service.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 63A-12-104 and Subsection 63G-2-204(2)(d)

#### ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** This amendment provides clarification, but does not change the GRAMA request process established by statute. It does not change the costs associated with fulfilling a GRAMA request. There may be a slight savings in terms of time realized by a state agency that submits a GRAMA request or an appeal to the correct location, thereby avoiding delays that may accrue when a request or an appeal is misdirected. Having noted that, state agencies do not typically submit GRAMA requests to the department. This amendment does not alter fees associated with the fulfillment of a GRAMA request. For FY 2015, those

fees are found in H.B. 8 (2014 General Legislative Session). Additionally, the rule will have no measurable impact to the department's budget. Statute requires the department to manage records. This rule provides clarification as to what level that activity will occur. Statute requires the department to respond to GRAMA requests. This rule provides clarification as to where requests shall be directed.

◆ **LOCAL GOVERNMENTS:** This amendment provides clarification, but does not change the GRAMA request process established by statute. It does not change the costs associated with fulfilling a GRAMA request. There may be a slight savings in terms of time realized by a local government entity that submits a GRAMA request or an appeal to the correct location, thereby avoiding delays that may accrue when a request or an appeal is misdirected. This amendment does not alter fees associated with the fulfillment of a GRAMA request. For FY 2015, those fees are found in H.B. 8 (2014).

◆ **SMALL BUSINESSES:** This amendment provides clarification, but does not change the GRAMA request process established by statute. It does not change the costs associated with fulfilling a GRAMA request. There may be a slight savings in terms of time realized by small businesses that submit a GRAMA request or an appeal to the correct location, thereby avoiding delays that may accrue when a request or an appeal is misdirected. This amendment does not alter fees associated with the fulfillment of a GRAMA request. For FY 2015, those fees are found in H.B. 8 (2014).

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** This amendment provides clarification, but does not change the GRAMA request process established by statute. It does not change the costs associated with fulfilling a GRAMA request. There may be a slight savings in terms of time realized by persons who submits a GRAMA request or an appeal to the correct location, thereby avoiding delays that may accrue when a request or an appeal is misdirected. This amendment does not alter fees associated with the fulfillment of a GRAMA request. For FY 2015, those fees are found in H.B. 8 (2014).

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** This amendment will have no measurable impact to persons who submit a GRAMA request or a GRAMA appeal. By clarifying where requests and appeals are to be directed, the amendment may help to avoid delays associated with persons misdirecting GRAMA requests or appeals.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** This amendment will not have a fiscal impact on businesses. It does not change the process or the fees associated with submitting a GRAMA request.

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

ADMINISTRATIVE SERVICES  
ADMINISTRATION  
ROOM 3120 STATE OFFICE BLDG

450 N STATE ST  
 SALT LAKE CITY, UT 84114-1201  
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
 ♦ Kenneth Hansen by phone at 801-538-3777, by FAX at 801-538-3844, or by Internet E-mail at khansen@utah.gov  
 ♦ Marilee Richins by phone at 801-538-3215, by FAX at 801-538-3844, or by Internet E-mail at mprichins@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/15/2014

THIS RULE MAY BECOME EFFECTIVE ON: 07/22/2014

AUTHORIZED BY: Kimberly Hood, Executive Director

**R13. Administrative Services, Administration.**

**R13-2. Management of Records and Access to Records.**

**R13-2-1. Authority and Purpose and Authority.**

Under authority of ~~[Subsections 63G-2-204(2)(d), and] Section 63A-12-104(2) and 63G-2-204(2)(d)~~, this rule ~~[provides procedures for access and denial of access to government records]specifies how permanent and historical records in the custody of the Division of Archives and Records Service may be accessed, at what level the requirements of Title 63A, Chapter 12, are undertaken, and where and to whom requests for access to records shall be directed.~~

**R13-2-2. Definitions.**

Terms used in this rule are defined in Section 63G-2-103. Additional terms are defined as follows:

- (1) "Department" means the Department of Administrative Services ~~created by Section 63A-1-104.~~
- (2) "Division" means a division of the Department of Administrative Services ~~listed in Section 63A-1-109.~~
- (3) "Office" means an office of the Department of Administrative Services.]

**R13-2-3. Public Records Management Duties [Records Officer].**

~~[Each division director shall comply with Section 63A-12-103 and shall appoint a records officer to perform the following functions:~~

- ~~(a) the duties set forth in Section 63A-12-103; and~~
- ~~(b) review and respond to requests for access to division records.]The department shall undertake the duties specified in Section 63A-12-103 at the division level, and at the department level by the executive director's office for areas not otherwise under the function of a division.~~

**R13-2-4. Requests for Access.**

(1) Except as provided by Section R13-2-8 regarding access to permanent or historical records in the custody of the Division of Archives and Records Service, a request for access to records shall be made in writing, include the information required by Section 63G-2-204, and be directed to the records officer of the [office or] division which the requester believes ~~[generated or ]~~possesses the records.

~~(2) [The offices and divisions of the department are as described in Sections 63A-1-104 and 63A-1-109 and are located at the corresponding address indicated below]Requests may be submitted to:~~

- ~~(a) Administrative Services, including the Executive Director's Office, and the Office of Child Welfare Parental Defense, 3120 State Office Building, Salt Lake City, UT 84114.~~
- ~~(b) Administrative Rules, [5110 State Office Building]PO Box 141007, Salt Lake City, UT 84114-1007.~~
- ~~(c) Archives and Records Service, 346 S. Rio Grande Street, Salt Lake City, UT 84101-1106.~~
- ~~(d) [Child Welfare Parental Defense, 3120 State Office Building, Salt Lake City, UT 84114.~~
- ~~(e) Debt Collection, Division of Finance, 2110 State Office Building, Salt Lake City, UT 84114.~~
- ~~(f) ]Facilities Construction and Management, 4110 State Office Building, Salt Lake City, UT 84114.~~
- ~~(g)(e) Finance, including the Office of State Debt Collection, and Consolidated Budget and Accounting, 2110 State Office Building, Salt Lake City, UT 84114.~~
- ~~(h)(f) Fleet Operations, 4120 State Office Building, Salt Lake City, UT 84114.~~
- ~~(i)(g) Purchasing and General Services, including the Surplus Property Program, 3150 State Office Building, Salt Lake City, UT 84114.~~
- ~~(j)(h) Risk Management, 5120 State Office Building, Salt Lake City, UT 84114.]~~
- ~~(k) Surplus Property, Division of Purchasing and General Services, 3150 State Office Building, Salt Lake City, UT 84114.~~

**R13-2-5. Appeal of [Office or Division]a Fee Waiver Denial, Access Determination Decision, or Extraordinary Circumstances Claims or Dates.**

~~[(1) Except as provided by R13-2-8, if a requester is dissatisfied with the initial decision rendered by an office or division, the requester may appeal the decision to the department executive director under the procedures of Section 63G-2-401 et seq.~~

~~(2) An individual may contest the accuracy or completeness of a document pertaining to that individual pursuant to Section 63G-2-603. This type of request shall be made to the records officer.]To appeal the decision of a records officer, a requester shall submit a written notice of appeal providing information required by Subsection 63G-2-401(2) to the department's designated chief administrative officer for GRAMA appeals: DAS GRAMA Appeals Officer, Division of Administrative Rules, PO Box 141007, Salt Lake City, UT 84114-1007.~~

**R13-2-6. Fees.**

(1) A schedule of fees that may be charged in response to a records request ~~[fee schedule for the actual costs of providing a record] may be obtained [from an office or division ]~~by contacting the records officer. The fee schedule is also available in the annual appropriations bill and posted on the department's website at <http://www.das.utah.gov/>.

(2) Fees for providing a record may be waived under certain circumstances described in Subsection 63G-2-203(4). ~~[Requests]A request for [this waiver of fees]a fee waiver [may]shall be made in writing to the records officer as part of the records request.~~

**R13-2-7. Forms.**

(1) ~~Request and appeal forms~~ are available at <http://archives.utah.gov/recordsmanagement/forms/forms-grama.html>, or from the records officer ~~[of each office or division]~~.

(2) ~~These forms are provided as a convenience, and a requester is not required to use these forms as long as information required by the statute is provided.~~

**R13-2-8. Access to Permanent or Historical Records in the Custody of the Division of Archives and Records Service.**

(1) An individual need not submit a formal records request to inspect public records of permanent or historical value stored at the state archives.

(2) An individual may request access to records that are noncurrent records of permanent or historical value in the custody of the state archives. The individual shall direct that request to the state archives' research center, 346 S Rio Grande, Salt Lake City, UT 84101-1106.

(3) If the requester is dissatisfied with the initial decision rendered by the research center, or if the state archives' research center denies access to these records, the requester may appeal the decision to the state archivist under the procedures of Section 63G-2-401 et seq.

**KEY:** ~~[freedom of information,]~~ public information, ~~[confidentiality of information,]~~ access to information, **GRAMA requests, GRAMA appeals**

**Date of Enactment or Last Substantive Amendment:** ~~August 7, 2012~~ 2014

**Notice of Continuation:** October 4, 2011

**Authorizing, and Implemented or Interpreted Law:** 63G-2-204(2)(d); 63A-12-104(2)

Capitol Preservation Board (State),  
Administration  
**R131-4**  
Capitol Preservation Board General  
Procurement Rule

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 38557

FILED: 05/28/2014

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The Capitol Preservation Board (CPB) is amending this rule to comply with recent updates to the Utah Procurement Code, Title 63G, Chapter 6a. S.B. 179 of the 2014 General Legislative Session is a considerable update to the Utah Procurement Code. It has been renumbered, part numbers have been substantially changed and provisions related to procurement, protests, and appeals have been substantially changed. The CPB is updating this rule to comply with the Utah Procurement Code, and CPB statutes.

**SUMMARY OF THE RULE OR CHANGE:** The changes: replace Section R131-4-101, the Purpose, and delete Section R131-4-410, Sole Source Procurement. In Section R131-4-101, the CPB is explaining that all provisions in the new Section R131-4-101 shall supersede any conflicting provisions elsewhere in Rule R131-4 and Rule R131-1. (DAR NOTE: A corresponding 120-day (emergency) rule that is effective as of 05/21/2014 is under DAR No. 38546 in this issue, June 15, 2014, of the Bulletin.)

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Title 63G, Chapter 6a

**ANTICIPATED COST OR SAVINGS TO:**

◆ **THE STATE BUDGET:** The state's budget will not be affected, because the change is simply amending this rule to comply with recent legislation to the Utah Procurement Code. The CPB is explaining that the amended provisions in Section R131-4-101 shall supersede any conflicting provision elsewhere in Rule R131-4, and Rule R131-1. If there is any impact, it is created by the statute.

◆ **LOCAL GOVERNMENTS:** Local governments' budgets will not be affected, because the change is simply amending this rule to comply with recent legislation to the Utah Procurement Code. The CPB is explaining that the amended provisions in Section R131-4-101 shall supersede any conflicting provision elsewhere in Rule R131-4, and Rule R131-1. If there is any impact, it is created by the statute.

◆ **SMALL BUSINESSES:** Small businesses' budgets will not be affected, because the change is simply amending this rule to comply with recent legislation to the Utah Procurement Code. The CPB is explaining that the amended provisions in Section R131-4-101 shall supersede any conflicting provision elsewhere in Rule R131-4, and Rule R131-1. If there is any impact, it is created by the statute.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** No other person's budget will be affected, because the change is simply amending this rule to comply with recent legislation to the Utah Procurement Code. The CPB is explaining that the amended provisions in Section R131-4-101 shall supersede any conflicting provision elsewhere in Rule R131-4, and Rule R131-1. If there is any impact, it is created by the statute.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** There are no compliance costs for any person, because the change is simply amending this rule to comply with recent legislation to the Utah Procurement Code. The CPB is explaining that the amended provisions in Section R131-4-101 shall supersede any conflicting provision elsewhere in Rule R131-4, and Rule R131-1. If there is any impact, it is created by the statute.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** There is no fiscal impact on businesses. If there is any impact, it is created by the statute.

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

CAPITOL PRESERVATION BOARD (STATE)  
ADMINISTRATION  
ROOM E110 EAST BUILDING  
420 N STATE ST  
SALT LAKE CITY, UT 84114-2110  
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Alan Bachman by phone at 801-538-3105, by FAX at 801-538-3313, or by Internet E-mail at abachman@utah.gov  
◆ Allyson Gamble by phone at 801-537-9156, by FAX at 801-538-3221, or by Internet E-mail at agamble@utah.gov  
◆ Chiarina Bautista by phone at 801-538-3240, by FAX at 801-538-3313, or by Internet E-mail at cglead@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/15/2014

THIS RULE MAY BECOME EFFECTIVE ON: 07/22/2014

AUTHORIZED BY: Allyson Gamble, Executive Director

**R131. Capitol Preservation Board (State), Administration.**  
**R131-4. Capitol Preservation Board General Procurement Rule.**  
**R131-4-101. [Purpose.] Compliance With Utah Procurement Code, as Amended by Senate Bill 179 of the 2014 Utah Legislative Session.**

[The underlying purposes and policies of R131-4 are:

(1) to comply with the Capitol Preservation Board statute which requires the board to adopt rules that are substantially similar to the requirements of the Utah Procurement Code, Title 63G-6;

(2) to ensure the fair and equitable treatment of all persons who deal with the Capitol Preservation Board;

(3) to provide increased economy in Capitol Preservation Board procurement activities; and

(4) to foster effective broad-based competition within the free enterprise system.

(1) All provisions of this Rule R131-4-101 shall supersede any conflicting provisions or any provisions related to protests or appeals of this Rule R131-4, Capitol Preservation Board General Procurement Rule, as well any conflicting provisions or any provisions related to protests or appeals of Rule R131-1, Procurement of Architectural and Engineering Services.

(2) The purpose of the Utah Procurement Code in Section 63G-6a-102 is incorporated as part of this Rule R131-4 and Rule R131-1.

(3) The definitions of the Utah Procurement Code in Sections 63G-6a-103 and 63G-6a-104 shall apply to Rules R131-4 and R131-1 and in the case of conflict, shall supersede any other definitions in Rules R131-4 and R131-1.

(4) Procurements performed by the Division of Facilities Construction and Management or the Division of Purchasing, on behalf of the Capitol Preservation Board, shall be performed in accordance with the applicable Utah Procurement Code, Title 63G, Chapter 6a, provisions as well as the applicable administrative rules of

the agency that is managing the procurement for the Capitol Preservation Board.

(5) Any exemption allowed under Section 63G-6a-107 shall be allowed notwithstanding any other provision in Rules R131-4 or R131-1.

(6) Notwithstanding any other provision in Rules R131-4 or R131-1, there shall be compliance with the federal contract prohibition provisions of the Sudan Accountability and Divestment Act of 2007 (Pub. L. No. 110-174) that prohibit contracting with a person doing business in Sudan.

(7) The prequalification process of Section 63G-6a-403 may be used and there is no cost amount threshold under Section 63G-6a-404 for use of any approved vendor list.

(8) Notwithstanding any other provision in Rules R131-4 or R131-1, public notice shall comply with Section 63G-6a-406.

(9) There shall be compliance with 63G-6a-408, Small Purchases, and Rule R131-4-409 sets the thresholds for purchases for the Capitol Preservation Board.

(10) A Request for Information under Part 5 of the Utah Procurement Code, Sections 63G-6a-5-1 through 63G-6a-505 may be used.

(11) Part 6 of the Utah Procurement Code, Bidding, Sections 63G-6a-601 through 63G-6a-612 shall apply to the Capital Preservation Board and supersede any conflicting provision in Rule R131-4.

(12) Part 7 of the Utah Procurement Code, Requests for Proposals, Sections 63G-6a-701 through 63G-6a-711 shall apply and supersede any conflicting provision in Rule 131-4.

(13) Section 63G-6a-802, regarding sole sources, shall apply to the Capitol Preservation Board and replace Rule R131-4-410. There shall be a publication of notice for a sole source procurement in accordance with Section 63G-6a-406, if the cost of the procurement exceeds \$50,000 except that no publication of notice is required if any of the following apply:

(a) the procurement of public utility services pursuant to a sole source contract; or

(b) any other procurement in which the specifications, in the reasonable discretion of the Executive Director, can only be met by one source.

(14) Section 63G-6a-803, Emergency Procurement, shall apply to the Capitol Preservation Board, and to the extent allowed by law, Rule R131-4-411 shall also apply.

(15) Part 9 of the Utah Procurement Code, Cancellations, Rejections, and Debarment, Sections 63G-6a-901 through 63G-6a-905, shall apply to the Capitol Preservation Board and supersede any conflicting provisions in Rules R131-4 or R131-1.

(16) Part 10 of the Utah Procurement Code, Preferences, Sections 63G-6a-1001 through 1004, shall apply to the Capitol Preservation Board and supersede any conflicting provisions in Rules R131-4 or R131-1.

(17) Part 11 of the Utah Procurement Code, Bonds, Sections 63G-6a-1101 through 63G-6a-1105, shall apply to the Capitol Preservation Board and supersede and conflicting provisions in Rules R131-4 or R131-1.

(18) Part 12 of the Utah Procurement Code, Contracts and Change Orders, Sections 63G-6a-1201 through 63G-6a-1210, shall apply to the Capitol Preservation Board and supersede any conflicting provisions in Rules R131-4 and R131-1.

~~(19) Part 13 of the Utah Procurement Code, General Construction Provisions, Sections 63G-6a-1301 through 63G-6a-1303, shall apply to the Capitol Preservation Board and supersede any conflicting provisions in Rules R131-4 or R131-1.~~

~~(20) Part 15 of the Utah Procurement Code, Architect-Engineer Services, Sections 63G-6a-1501 through 63G-6a-1506, shall apply to the Capitol Preservation Board and supersede any conflicting provisions in Rules R131-4 or Rule R131-1. An evaluation committee shall consist of at least three people who meet the same ethical requirements as an evaluation committee in a Request for Proposals process.~~

~~(21) The following statutes in the Utah Procurement Code shall apply to the Capitol Preservation Board and supersede any conflicting provisions in Rules R131-4-801 through R131-4-1001 as well as Rule 131-1:~~

~~(a) Part 16 of the Utah Procurement Code, Controversies and Protests, Sections 63G-6a-1601 through 63G-6a-1604. Intervention shall be allowed under identical procedures as specified in administrative rules enacted by the Procurement Policy Board in Title R33, Utah Administrative Code, of the State of Utah;~~

~~(b) Part 17 of the Utah Procurement Code, Procurement Appeals Board, Sections 63G-6a-1701 through 63G-6a-1706;~~

~~(c) Part 18 of the Utah Procurement Code, Appeals to Court and Court Proceedings, Sections 63G-6a-1801 through 63G-6a-1802;~~

~~(d) Part 19 of the Utah Procurement Code, General Provisions Related to Protest or Appeal, Sections 63G-6a-1901 through 63G-6a-1911;~~

~~(e) Part 20 of the Utah Procurement Code, Records, Sections 63G-6a-2001 through 63G-6a-2004;~~

~~(f) Part 21 of the Utah Procurement Code, Interaction Between Procurement Units, Sections 63G-6a-2101 through 63G-6a-2105; and~~

~~(g) Part 24 of the Utah Procurement Code, Unlawful Conduct and Penalties, Sections 63G-6a-2401 through 63G-6a-2407.~~

**[R131-4-410. Sole Source Procurement.**

~~(1) Conditions for Use of Sole Source Procurement.~~

~~The procedures concerning sole source procurement in this rule may be used if, in the discretion of the executive director, a requirement is reasonably available only from a single source. Examples of circumstances which could also necessitate sole source procurement are:~~

~~(a) there is only one qualified source for the required craftsmanship, supply, service, or construction item; or~~

~~(b) the level of craftsmanship and quality to replicate restore is critical to the best interests of the state.~~

~~(c) the award to a specific supplier, service provider, or contractor is a condition of a donation that will fund the full cost of the supply, service, or construction item.~~

~~(d) where the compatibility of product design, equipment, accessories, or replacement parts is the paramount consideration;~~

~~(e) where a sole supplier's item is needed for trial use or testing;~~

~~(f) procurement of public utility services; or~~

~~(g) when it is a condition of a donation that will fund the full cost of the supply, material, equipment, service, or construction item.~~

~~(2) Written Determination. The determination as to whether a procurement shall be made as a sole source shall be made by the executive director in writing and may cover more than one procurement.~~

~~(3) Negotiation in Sole Source Procurement. The executive director shall negotiate with the sole source vendor for considerations of price, delivery, and other terms.]~~

**KEY: contracts, public buildings, procurement**

**Date of Enactment or Last Substantive Amendment: [February 29, 2008]2014**

**Notice of Continuation: April 11, 2011**

**Authorizing, and Implemented or Interpreted Law: 63C-9-301**

Commerce, Occupational and  
Professional Licensing  
**R156-15A-231**  
Administration of Building Code  
Training Fund and Factory Built  
Housing Fees Account

**NOTICE OF PROPOSED RULE**  
(Amendment)

DAR FILE NO.: 38549

FILED: 05/22/2014

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The Division and Uniform Building Code Commission (UBCC) Education Advisory Committee reviewed the current rule and determined that it was necessary to propose an amendment to establish a deadline for submitting a Request for Reimbursement to the Division following an event, class, or seminar that has been approved for UBCC grant money.

**SUMMARY OF THE RULE OR CHANGE:** Continuing education providers currently have no limitations on when the request for reimbursement must be submitted to the Division following their approved event, class, or seminar. Currently, requests for reimbursement are being submitted up to six months following the event, class, or seminar. Such delays cause difficulty in accurate accounting and tracking of the fund. The UBCC Education Committee recommended a rule change that would set a 60-day deadline for submitting the request for reimbursement unless there are extenuating circumstances preventing submission of the request. The Board also recommended that extenuating circumstances be submitted to the Division in writing. As a result, Subsection R156-15A-231(3)(d) is being added.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 15A-1-205 and Subsection 15A-1-

204(6) and Subsection 58-1-106(1)(a) and Subsection 58-1-202(1)(a)

**ANTICIPATED COST OR SAVINGS TO:**

◆ **THE STATE BUDGET:** The Division will incur minimal costs of approximately \$100 to print and distribute the rule once the proposed amendments are made effective. Any costs incurred will be absorbed in the Division's current budget.

◆ **LOCAL GOVERNMENTS:** The proposed amendment only applies to those government agencies that have applied for and received funding grants to teach code classes to individuals involved in the construction trades. The proposed amendment establishes a deadline in the current procedure, which might result in minimal additional administrative cost impact for a provider to obtain the necessary receipts to submit with the request for reimbursement within the proposed deadline. These costs, if any, cannot be quantified.

◆ **SMALL BUSINESSES:** The proposed amendment only applies to those schools, colleges, universities, government agencies, and professional associations or organizations involved in the construction trades that have applied for and received funding grants to teach code classes to individuals involved in the construction trades. Some of the above-referenced business types, who are impacted by the proposed rule, may qualify as a small business. The proposed amendment establishes a deadline in the current procedure, which might result in minimal additional administrative cost impact for a provider to obtain the necessary receipts to submit with the request for reimbursement within the proposed deadline. These costs, if any, cannot be quantified.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** The proposed amendment only applies to those schools, colleges, universities, government agencies, and professional associations or organizations involved in the construction trades that have applied for and received funding grants to teach code classes to individuals involved in the construction trades. The proposed amendment establishes a deadline in the current procedure, which might result in minimal additional administrative cost impact for a provider to obtain the necessary receipts to submit with the request for reimbursement within the proposed deadline. These costs, if any, cannot be quantified.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** The proposed amendment only applies to those schools, colleges, universities, government agencies, and professional associations or organizations involved in the construction trades that have applied for and received funding grants to teach code classes to individuals involved in the construction trades. The proposed amendment establishes a deadline in the current procedure, which might result in minimal additional administrative cost impact for a provider to obtain the necessary receipts to submit with the request for reimbursement within the proposed deadline. These costs, if any, cannot be quantified.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** This rule filing establishes a deadline by which a person must request reimbursement of costs attendant to construction-related education that is provided pursuant to a Division funding grant. The costs, if any, of submitting reimbursement forms and receipts to the Division should not be affected by this deadline. Therefore, no fiscal impact to businesses is anticipated.

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:**

◆ Robyn Barkdull by phone at 801-530-6727, by FAX at 801-530-6511, or by Internet E-mail at rbarkdull@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/15/2014

THIS RULE MAY BECOME EFFECTIVE ON: 07/22/2014

AUTHORIZED BY: Mark Steinagel, Director

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**R156. Commerce, Occupational and Professional Licensing.  
R156-15A. State Construction Code Administration and Adoption of Approved State Construction Code Rule.  
R156-15A-231. Administration of Building Code Training Fund and Factory Built Housing Fees Account.**

In accordance with Subsection 15A-1-209(5)(c), the Division shall use monies received under Subsection 15A-1-209(5)(a) to provide education regarding codes and code amendments to building inspectors and individuals engaged in construction-related trades or professions. In accordance with Subsection 58-56-17.5(2)(c), the Division shall use a portion of the monies received under Subsection 58-56-17.5(1) to provide education for factory built housing. The following procedures, standards, and policies are established to apply to the administration of these separate funds:

(1) The Division shall not approve or deny education grant requests from the Building Code Training Fund or from the Factory Built Housing Fees Account until the Uniform Building Code Commission (UBCC) Education Advisory Committee ("the Committee"), created in accordance with Subsections 58-1-203(1)(f) and R156-15A-201(1)(a), has considered and made its recommendations on the requests.

(2) Appropriate funding expenditure categories include:

(a) grants in the form of reimbursement funding to the following organizations that administer code related or factory built housing educational events, seminars or classes:

(i) schools, colleges, universities, departments of universities, or other institutions of learning;

(ii) professional associations or organizations; and

(iii) governmental agencies.

(b) costs or expenses incurred as a result of educational events, seminars, or classes directly administered by the Division;

(c) expenses incurred for the salary, benefits or other compensation and related expenses resulting from the employment of a Board Secretary;

(d) office equipment and associated administrative expenses required for the performance of the duties of the Board Secretary, including but not limited to computer equipment, telecommunication equipment and costs and general office supplies; and

(e) other related expenses as determined by the Division.

(3) The following procedure shall be used for submission, review and payment of funding grants:

(a) A funding grant applicant shall submit a completed "Application for Building Code Training Funds Grant" or a "Factory Built Housing Education Grant Application" a minimum of 15 days prior to the meeting at which the request is to be considered and prior to the training event on forms provided for that purpose by the Division. Applications received less than 15 days prior to a meeting may be denied.

(b) Payment of approved funding grants will be made as reimbursement after the approved event, class, or seminar has been held and the required receipts, invoices and supporting documentation, including proof of payment, if requested by the Division or Committee, have been submitted to the Division.

(c) Approved funding grants shall be reimbursed only for eligible expenditures which have been executed in good faith with the intent to ensure the best reasonable value.

(d) A Request for Reimbursement of an approved funding grant shall be submitted to the Division within 60 days following the approved event, class, or seminar unless an extenuating circumstance occurs. Written notice must be given to the Division of such an extenuating circumstance. Failure to submit a Request for Reimbursement within 60 days shall result in non-payment of approved funds, unless an extenuating circumstance has been reviewed and accepted by the Division.

(4) The Committee shall consider the following in determining whether to recommend approval of a proposed funding request to the Division:

(a) the fund balance available and whether the proposed request meets the overall training objectives of the fund, including but not limited to:

(i) the need for training on the subject matter;

(ii) the need for training in the geographical area where the training is offered; and

(iii) the need for training on new codes being considered for adoption;

(b) the prior record of the program sponsor in providing codes training including:

(i) whether the subject matter taught was appropriate;

(ii) whether the instructor was appropriately qualified and prepared; and

(iii) whether the program sponsor followed appropriate and adequate procedures and requirements in providing the training and submitting requests for funding;

(c) costs of the facility including:

(i) the location of a facility or venue, or the type of event, seminar or class;

(ii) the suitability of said facility or venue with regard to the anticipated attendance at or in connection with additional non-funded portions of an event or conference;

(iii) the duration of the proposed educational event, seminar, or class; and

(iv) whether the proposed cost of the facility is reasonable compared to the cost of alternative available facilities;

(d) the estimated cost for instructor fees including:

(i) the experience or expertise of the instructor in the proposed training area;

(ii) the quality of training based upon events, seminars or classes that have been previously taught by the instructor;

(iii) the drawing power of the instructor, meaning the ability to increase the attendance at the proposed educational event, seminar or class;

(iv) travel expenses; and

(v) whether the proposed cost for the instructor or instructors is reasonable compared to the costs of similar educational events, seminars, or classes;

(e) the estimated cost of advertising materials, brochures, registration and agenda materials, including:

(i) printing costs that may include creative or design expenses; and

(ii) whether delivery or mailing costs, including postage and handling, are reasonable compared to the cost of alternate available means of delivery;

(f) other reasonable and comparable cost alternatives for each proposed expense item; and

(g) any other information the Committee reasonably

believes may assist in evaluating a proposed expenditure.

(5) Joint function.

(a) "Joint function" means a proposed event, class, seminar, or program that provides code or code related or factory built housing education and education or activities in other areas.

(b) Only the prorated portions of a joint function that are code and code related or factory built housing education are eligible for a funding grant.

(c) In considering a proposed funding request that involves a joint function, the Committee shall consider whether:

(i) the expenses subject to funding are reasonably prorated for the costs directly related to the code and code amendment or factory built housing education; and

(ii) the education being proposed will be reasonable and successful in the training objective in the context of the entire program or event.

(6) Advertising materials, brochures and agenda or training materials for a Building Code Training funded educational event, seminar, or class shall include a statement that acknowledges that partial funding of the training program has been provided by the Utah Division of Occupational and Professional Licensing from the 1% surcharge funds on all building permits.

(7) Advertising materials, brochures and agenda or training materials for a Factory Built Housing Fees Account funded educational event, seminar, or class shall include a statement that acknowledges that partial funding of the training program has been



provided by the Utah Division of Occupational and Professional Licensing from surcharge fees on factory built housing sales.

**KEY: contractors, building codes, building inspection, licensing**  
**Date of Enactment or Last Substantive Amendment:**  
**[September 24, 2012]2014**  
**Authorizing, and Implemented or Interpreted Law: 58-1-106(1)**  
**(a); 58-1-202(1)(a); 15A-1-204(6); 15A-1-205**

**Commerce, Occupational and  
Professional Licensing  
R156-40a-302a  
Qualifications for Licensure**

**NOTICE OF PROPOSED RULE  
(Amendment)**

DAR FILE NO.: 38548  
FILED: 05/22/2014

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The Division and Athletic Trainers Licensing Board are proposing an amendment to the rule. This proposed rule filing is the result of a Canadian athletic trainer beginning graduate school at the University of Utah who, upon applying for licensure, found she did not meet the educational program accreditation requirements as set forth in the existing rule and requested to meet with the Board. After learning of the issues associated with her program accreditation, Board members realized the rule was more exclusionary than originally intended. The Board, with the support of the Utah Athletic Trainers Association, voted to amend the rule so that licensure by qualified individuals, especially international applicants, would be more accessible, while still requiring completion of an accredited educational program and national/international certification.

**SUMMARY OF THE RULE OR CHANGE:** The approved athletic training curriculum requirement is expanded to include "any program of education, training and experience approved by the Board of Certification, Inc. (BOC) or its successor." The BOC is the only athletic trainer certification body in the United States. The BOC also certifies athletic trainers internationally in Canada and, soon to be, in Ireland.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 58-40a-101 and Subsection 58-1-106(1)(a) and Subsection 58-1-202(1)(a)

**ANTICIPATED COST OR SAVINGS TO:**

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

♦ **LOCAL GOVERNMENTS:** The proposed amendments only apply to applicants for licensure as an athletic trainer. As a result, the proposed amendments do not apply to local governments.

♦ **SMALL BUSINESSES:** The proposed amendments only apply to applicants for licensure as an athletic trainer. Licensed athletic trainers and applicants for licensure may work in a small business; however, the proposed amendments would not directly affect the business.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** The proposed amendments only apply to applicants for licensure as an athletic trainer. The proposed amendments will enable licensure for more international candidates because the athletic training curriculum requirement will include any program of education, training, and experience approved by the BOC. The Division does not anticipate any increased costs as a result of adding this additional certifying body.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** The proposed amendments only apply to applicants for licensure as an athletic trainer. The proposed amendments will enable licensure for more international candidates because the athletic training curriculum requirement will include any program of education, training, and experience approved by the BOC. The Division does not anticipate any increased costs as a result of adding this additional certifying body.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** This filing establishes that an individual may qualify for licensure as an athletic trainer by completed curriculum that is approved by the Board of Certification, which is an internationally-recognized certification body. This amendment will increase educational options for individuals seeking licensure, but it is anticipated to have no effect, fiscal or otherwise, on businesses.

**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:**

♦ Debra Hobbins by phone at 801-530-6789, by FAX at 801-530-6511, or by Internet E-mail at dhobbins@utah.gov

**INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/15/2014**

**THIS RULE MAY BECOME EFFECTIVE ON: 07/22/2014**

AUTHORIZED BY: Mark Steinagel, Director

**R156. Commerce, Occupational and Professional Licensing.  
R156-40a. Athletic Trainer Licensing Act Rule.  
R156-40a-302a. Qualifications for Licensure.**

In accordance with Subsection 58-40a-302(1), the "athletic training curriculum requirement" shall be:

(1) the curriculum program standard for accreditation set forth in the Standards for the Accreditation of Entry-Level Athletic Training Education Programs, revised June 8, 2006, published by the Commission on Accreditation of Athletic Training Education (CAATE), which is hereby adopted and incorporated by reference; or

(2) a program of education, training and experience approved by the Board of Certification, Inc. (BOC), or its successor.

**KEY:** licensing, occupational licensing, athletic trainer

**Date of Enactment or Last Substantive Amendment:** [~~June 28, 2012~~]**2014**

**Notice of Continuation:** November 21, 2011

**Authorizing, and Implemented or Interpreted Law:** 58-40a-101, 58-1-106(1)(a), 58-1-202(1)(a)

**Commerce, Occupational and  
Professional Licensing  
R156-68  
Utah Osteopathic Medical Practice Act  
Rule**

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 38552

FILED: 05/22/2014

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The Division and the Physicians Licensing Board and Osteopathic Physician and Surgeon's Licensing Board reviewed the rule and determined amendments needed to be made to reflect current standards.

**SUMMARY OF THE RULE OR CHANGE:** Subsection R156-68-302b(l) is added to require a candidate who has failed exams three times to provide a narrative to the Division and Board as part of the application process. The narrative will assist in determining qualifications for licensure. In Section R156-68-302c, amendments delete the requirement for a candidate who fails specific exams three times to complete additional education before being able to sit for the final exam. The reason for the change is that, starting in August 2014, the Division will not be responsible for testing approvals and management of testing issues. Instead, the Federation

of State Medical Boards will approve and manage all testing issues for all member states. Sections R156-68-502 and R156-68-602 are updated to reflect the current edition (2012-2013) of the American Medical Association (AMA) Code of Ethics.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 58-68-101 and Subsection 58-1-106(1)(a) and Subsection 58-1-202(1)(a)

**MATERIALS INCORPORATED BY REFERENCES:**

- ◆ Updates Code of Medical Ethics, published by American Medical Association (AMA), 2012-2013

**ANTICIPATED COST OR SAVINGS TO:**

◆ **THE STATE BUDGET:** The Division will incur minimal costs of approximately \$50 to print and distribute the rule once the proposed amendments are made effective. Any costs incurred will be absorbed in the Division's current budget. It should also be noted that an AMA Code of Ethics book costs approximately \$60 to purchase on the American Medical Association website.

◆ **LOCAL GOVERNMENTS:** The proposed amendments only apply to licensed osteopathic physicians/surgeons and applicants for licensure in that classification. As a result, the proposed amendments do not apply to local governments.

◆ **SMALL BUSINESSES:** The proposed amendments only apply to licensed osteopathic physicians/surgeons and applicants for licensure in that classification. Licensees and applicants for licensure may work in a small business; however, the proposed amendments would not directly affect the business.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** The proposed amendments only apply to licensed osteopathic physicians/surgeons and applicants for licensure in that classification. If an individual wishes to purchase an updated copy of the AMA Code of Ethics book, it costs approximately \$60 to purchase on the American Medical Association website.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** The proposed amendments only apply to licensed osteopathic physicians/surgeons and applicants for licensure in that classification. If an individual wishes to purchase an updated copy of the AMA Code of Ethics book, it costs approximately \$60 to purchase on the American Medical Association website.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** This rule filing clarifies the licensing procedures for an individual who fails the licensing exam multiple times. In addition, it adopts and incorporates by reference an updated code of medical ethics to govern the medical practice of licensees. Both amendments affect individuals rather than businesses. Therefore, no fiscal impact to businesses is anticipated.

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:  
 ♦ April Ellis by phone at 801-530-6254, by FAX at 801-530-6511, or by Internet E-mail at [aprilellis@utah.gov](mailto:aprilellis@utah.gov)

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/15/2014

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:  
 ♦ 06/24/2014 09:30 AM, Heber Wells Bldg, 160 E 300 S, Conference Room 403, Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 07/22/2014

AUTHORIZED BY: Mark Steinagel, Director

**R156. Commerce, Occupational and Professional Licensing.**  
**R156-68. Utah Osteopathic Medical Practice Act Rule.**  
**R156-68-302b. Qualifications for Licensure - Examination Requirements.**

- (1) In accordance with Subsection 58-68-302(1)(g), the required licensing examination sequence is the following:
- (a) the NBOME parts I, II and III;
  - (b) the NBOME parts I, II and the NBOME COMPLEX Level III;
  - (c) the NBOME part I and the NBOME COMPLEX Level II and III;
  - (d) the NBOME COMPLEX Level I, II and III;
  - (e) the FLEX components I and II on which the applicant shall achieve a score of not less than 75 on each component;
  - (f) the NBME examination parts I, II and III on which the applicant shall achieve a score of not less than 75 on each part;
  - (g) the USMLE, steps 1, 2 and 3 on which the applicant shall achieve a score of not less than 75 on each step;
  - (h) the LMCC examination, Parts 1 and 2;
  - (i) the NBME part I or the USMLE step 1 and the NBME part II or the USMLE step 2 and the NBME part III or the USMLE step 3;
  - (j) the FLEX component 1 and the USMLE step 3; or
  - (k) the NBME part I or the USMLE step 1 and the NBME part II or the USMLE step 2 and the FLEX component 2.
- (l) A candidate who fails any combination of the USMLE, FLEX, NBME and NBOME three times shall provide a narrative regarding the failure and may be requested to meet with the Board and Division.

- (2) In accordance with Subsections 58-68-302(1)(g), (2) (c) and (3)(d), an applicant may be required to take the SPEX examination if the applicant:
  - (a) has not practiced in the past five years;
  - (b) has had disciplinary action within the past five years;
- or
  - (c) has had a substance use disorder, physical or mental impairment within the past five years which may affect the applicant's ability to safely practice.
- (3) In accordance with Subsection (2) above, the passing score on the SPEX examination is 75.
- (4) In accordance with Subsection 58-68-302(2)(c), the medical specialty certification shall be current certification in an AOA, ABMS, or AAPS member specialty board.

**R156-68-302c. Qualifications for Licensure - Requirements for Admission to the Examinations.**

- (1) Admission to the NBOME examination shall be in accordance with policies and procedures of the NBOME. The division and the board have no responsibility for or ability to facilitate an individual's admission to the NBOME examination.
- (2) Admission to the USMLE steps 1 and 2 shall be in accordance with policies and procedures of the FSMB and the NBME. The division and the board have no responsibility for or ability to facilitate an individual's admission to steps 1 and 2 of the USMLE.
- (3) Requirements for admission to the USMLE step 3 are:
  - (a) completion of the education requirements as set forth in Subsection 58-68-302(1)(d) and (e);
  - (b) passing scores on USMLE steps 1 and 2, or the FLEX component I, or the NBME parts I and II;
  - (c) have passed the first USMLE step taken, either 1 or 2, within seven years; and
  - (d) have not failed a combination of USMLE step 3, FLEX component II and NBME part III, three times.
- ~~(4) Candidates who fail a combination of USMLE step 3, FLEX component II and NBME part III three times must successfully complete additional education as required by the board before being allowed to retake the USMLE step 3.~~

**R156-68-502. Unprofessional Conduct.**

- "Unprofessional conduct" includes:
- (1) the prescribing for oneself any Schedule II or III controlled substance; however, nothing in this rule shall be interpreted by the division or the board to prevent a licensee from using, possessing, or administering to himself a Schedule II or III controlled substance which was legally prescribed for him by a licensed practitioner acting within his scope of licensure when it is used in accordance with the prescription order and for the use for which it was intended;
  - (2) knowingly, prescribing, selling, giving away or administering, directly or indirectly, or offering to prescribe, sell, furnish, give away or administer any scheduled controlled substance as defined in Title 58, Chapter 37 to a drug dependent person, as defined in Subsection 58-37-2(14) unless permitted by law and when it is prescribed, dispensed, or administered according to a proper medical diagnosis and for a condition indicating the use of that controlled substance is appropriate;

(3) knowingly engaging in billing practices which are abusive and represent charges which are grossly excessive for services rendered;

(4) directly or indirectly giving or receiving any fee, commission, rebate or other compensation for professional services not actually and personally rendered or supervised; however, nothing in this section shall preclude the legal relationships within lawful professional partnerships, corporations, or associations or the relationship between an approved supervising physician and physician assistants or advanced practice nurses supervised by them;

(5) knowingly failing to transfer a copy of pertinent and necessary medical records or a summary thereof to another physician when requested to do so by the subject patient or by his legally designated representative;

(6) failing to furnish to the board information requested by the board which is known by a licensee with respect to the quality and adequacy of medical care rendered to patients by osteopathic physicians licensed under the Utah Osteopathic Medical Practice Act;

(7) failing as an operating surgeon to perform adequate pre-operative and primary post-operative care of the surgical condition for a patient in accordance with the standards and ethics of the profession or to arrange for competent primary post-operative care of the surgical condition by a licensed physician and surgeon or osteopathic physician who is equally qualified to provide that care;

(8) billing a global fee for a procedure without providing the requisite care;

(9) supervising the providing of breast screening by diagnostic mammography services or interpreting the results of breast screening by diagnostic mammography to or for the benefit of any patient without having current certification or current eligibility for certification by the American Osteopathic Board of Radiology or the American Board of Radiology. However, nothing in this subsection shall be interpreted to prevent a licensed physician from reviewing the results of any breast screening by diagnostic mammography procedure upon a patient for the purpose of considering those results in determining appropriate care and treatment of that patient if the results are interpreted by a physician qualified under this subsection and a timely written report is prepared by the interpreting physician in accordance with the standards and ethics of the profession;

(10) failing of a licensee under Title 58, Chapter 68, without just cause to repay as agreed any loan or other repayment obligation legally incurred by the licensee to fund the licensee's education or training as an osteopathic physician;

(11) failing of a licensee under Title 58, Chapter 68, without just cause to comply with the terms of any written agreement in which the licensee's education or training as an osteopathic physician is funded in consideration for the licensee's agreement to practice in a certain locality or type of locality or to comply with other conditions of practice following licensure;

(12) a physician providing services to a department of health by participating in a system under which the physician provides the department with completed and signed prescriptions without the name and address of the patient, or date the prescription is provided to the patient when the prescription form is to be completed by authorized registered nurses employed by the

department of health which services are not in accordance with the provisions of Section 58-17a-620;

(13) engaging in alternative medical practice except as provided in Section R156-68-603; and

(14) violation of any provision of the American Medical Association's (AMA) "Code of Medical Ethics", [~~2008-2009~~2012-2013] edition, which is hereby incorporated by reference.

**R156-68-602. Medical Records.**

In accordance with Subsection 58-68-803(1), medical records shall be maintained to be consistent with the following:

(1) all applicable laws, regulations, and rules; and

(2) the AMA "Code of Medical Ethics", [~~2008-2009~~2012-2013] edition, which is hereby incorporated by reference.

**KEY: osteopaths, licensing, osteopathic physician**

**Date of Enactment or Last Substantive Amendment: [January 7,]2014**

**Notice of Continuation: February 7, 2013**

**Authorizing, and Implemented or Interpreted Law: 58-1-106(1)(a); 58-1-202(1)(a); 58-68-101**

## Health, Center for Health Data, Health Care Statistics **R428-1**

### Adoption of Health Data Plan

#### NOTICE OF PROPOSED RULE (Amendment)

DAR FILE NO.: 38571

FILED: 06/02/2014

#### RULE ANALYSIS

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** This amendment is in response to a review of Title R428 that identified inconsistencies in the structure of the rule.

**SUMMARY OF THE RULE OR CHANGE:** This amendment added a purpose statement; edited the rule title; notated all documents incorporated by reference for Title R428 rules in a single location using a standard framework.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Title 26, Chapter 33a

**MATERIALS INCORPORATED BY REFERENCES:**

- ◆ Adds Utah Ambulatory Surgical Submittal Manual, Data Element Descriptions and Definitions, published by Utah Department of Health, Office of Health Care Statistics, 11/04/2009
- ◆ Adds Utah Hospital Inpatient Discharge Data Submittal Manual, Data Element Descriptions and Definitions, published by Utah Department of Health, Office of Health Care Statistics, 02/12/2014

- ◆ Adds HEDIS 2014, Volume 3: Specifications for Survey Measures, published by NCQA, 2014
- ◆ Adds HEDIS 2014, Volume 5: HEDIS Compliance Audit: Standards, Policies, and Procedures, published by NCQA, 2014
- ◆ Adds Utah All-Payer Claims Database Data Submission Guide, published by Department of Health, Office of Health Care Statistics, 11/14/2003
- ◆ Adds Technical Specifications and Data Submission Procedures for the State of Utah All Payer Database (APD), published by Department of Health, Office of Health Care Statistics, 08/12/2009

ANTICIPATED COST OR SAVINGS TO:

- ◆ THE STATE BUDGET: This rule amendment clarifies which documents are incorporated by reference in the Title R428 rules, as well as makes technical changes for consistency. The Utah Department of Health (UDOH) determines that these changes will not create any cost or savings impact to the state budget or UDOH's budget, since the changes will not increase workload and can be carried out with existing budget.
- ◆ LOCAL GOVERNMENTS: This filing does not create any direct cost or savings impact to local governments since they are not directly affected by the rule; nor are local governments indirectly impacted because the rule does not create a situation requiring services from local governments.
- ◆ SMALL BUSINESSES: None--Small businesses are not impacted by this rule change, with all potentially impacted having more than 50 employees. As a result, the rule will have no effect on small business budgets for costs or savings.
- ◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: Minor technical changes, including the incorporation of documents referred to other Title R428 rules, will not create any cost or savings to businesses, individuals, local governments or persons that are not small businesses.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for persons affected by these changes to Rule R428-1. Although there are several modifications within this amendment, they simply reflect current practice.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: No effect on business because it makes no changes in current operations.

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

HEALTH  
 CENTER FOR HEALTH DATA,  
 HEALTH CARE STATISTICS  
 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:

- ◆ Mike Martin by phone at 801-538-9205, by FAX at 801-538-9916, or by Internet E-mail at mikemartin@utah.gov
- ◆ Norman Thurston by phone at 801-538-7052, by FAX at 801-237-0787, or by Internet E-mail at nthurston@utah.gov
- ◆ Rex Olsen by phone at 801-538-9498, by FAX at 801-536-0940, or by Internet E-mail at rolsen@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/15/2014

THIS RULE MAY BECOME EFFECTIVE ON: 07/22/2014

AUTHORIZED BY: David Patton, PhD, Executive Director

**R428. Health, Center for Health Data, Health Care Statistics.**

**R428-1. [Adoption of] Health Data Plan and Incorporated Documents.**

**R428-1-1. Legal Authority.**

This rule is promulgated in accordance with Title 26, Chapter 33a.

**R428-1-2. Purpose.**

This rule adopts and incorporates documents related to the collection, analysis, and dissemination of data covered in this title.

**R428-1-3. Health Data Plan Adoption.**

As required by Section 26-33a-104, the Health Data Committee adopts by rule the health data plan dated October 3, 1991.

**R428-1-4. Incorporation by Reference.**

The following documents are adopted and incorporated by reference:

- (1) Utah Hospital Inpatient Discharge Data Submittal Manual, Data Element Descriptions and Definitions, Version VI, February 2014
- (2) Utah Ambulatory Surgical Submittal Manual, Data Element Descriptions and Definitions, Version III, November 2009
- (3) HEDIS 2014, Volume 3: Specifications for Survey Measures, published by NCQA
- (4) HEDIS 2014, Volume 5: HEDIS Compliance Audit: Standards, Policies, and Procedures, published by NCQA
- (5) Technical Specifications and Data Submission Procedures for the State of Utah All Payer Database Version 1.3
- (6) Utah All-Payer Claims Database Data Submission Guide Version 2.0

**KEY: health, health policy, health planning**

**Date of Enactment or Last Substantive Amendment: [1991]2014**

**Notice of Continuation: November 21, 2011**

**Authorizing, and Implemented or Interpreted Law: 26-33a-104**

Health, Center for Health Data, Health  
Care Statistics  
**R428-2**  
Health Data Authority Standards for  
Health Data

**NOTICE OF PROPOSED RULE**

(Repeal and Reenact)  
DAR FILE NO.: 38562  
FILED: 06/02/2014

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** These changes are intended to create a consistent set of definitions across all rules used by the office and to pull together requirements regarding penalties, data disclosure, extensions, and exemptions. They also set forth the framework for a coordinated and simplified policy for data disclosure that reflects current Health Data Committee guidelines.

**SUMMARY OF THE RULE OR CHANGE:** Items in the repealed rule that no longer appear: 1) some definitions that duplicate statutory definitions have been removed; and 2) the subsection on data security has been removed. Items in the reenacted rule that are not in the old rule: 1) a subsection on extensions and exemptions; and 2) a subsection clarifying contractor liability. Other changes: 1) create a consistent set of definitions to be used across all of Title R428 rules; 2) clarify the requirements and procedures for data disclosure; 3) clarify penalties applicable under Title R428; 4) clarify the procedure for requesting and granting extensions and exemptions; 5) clarify the liability for complying with this rule when a data supplier uses a contractor; and 6) make other technical and conforming amendments.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Title 26, Chapter 33a

**ANTICIPATED COST OR SAVINGS TO:**

◆ **THE STATE BUDGET:** This amendment clarifies existing rule language as well as makes technical changes for consistency. The Utah Department of Health (UDOH) determines that these changes will not create any cost or savings impact to the state budget or UDOH's budget, since the changes will not increase workload and can be carried out with existing budget.

◆ **LOCAL GOVERNMENTS:** This filing does not create any direct cost or savings impact to local governments since they are not directly affected by the rule; nor are local governments indirectly impacted because the rule does not create a situation requiring services from local governments.

◆ **SMALL BUSINESSES:** None--Small businesses are not impacted by this rule change, with all potentially impacted having more than 50 employees. As a result, the rule will

have no effect on small business budgets for costs or savings.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Minor technical changes, including the clarification of rule language to reflect current policy by the Health Data Committee, will not create any cost or savings to businesses, individuals, local governments or persons that are not small businesses.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** There are no compliance costs for persons affected by these changes to Rule R428-2. Although there are several modifications within this amendment, they simply reflect current practice.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** No effect on business because it makes no changes in current operations

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

HEALTH  
CENTER FOR HEALTH DATA,  
HEALTH CARE STATISTICS  
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:**

◆ Mike Martin by phone at 801-538-9205, by FAX at 801-538-9916, or by Internet E-mail at mikemartin@utah.gov  
◆ Norman Thurston by phone at 801-538-7052, by FAX at 801-237-0787, or by Internet E-mail at nthurston@utah.gov  
◆ Rex Olsen by phone at 801-538-9498, by FAX at 801-536-0940, or by Internet E-mail at rolsen@utah.gov

**INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/15/2014**

**THIS RULE MAY BECOME EFFECTIVE ON: 07/22/2014**

**AUTHORIZED BY: David Patton, PhD, Executive Director**

**R428. Health, Center for Health Data, Health Care Statistics.  
R428-2. Health Data Authority Standards for Health Data.**

**[R428-2-1. Legal Authority.**

\_\_\_\_\_ This rule is promulgated under authority granted by Title 26, Chapter 33a.

**R428-2-2. Purpose.**

\_\_\_\_\_ This rule establishes the reporting standards which apply to data suppliers, and the classification, control, use, and release of data received by the committee pursuant to Title 26, Chapter 33a.

**R428-2-3. Definitions.**

The following definitions apply to all of R428:

A. "Office" means the Office of Health Care Statistics within the Utah Department of Health, which serves as staff to the Utah Health Data Committee.

B. "Committee" means the Utah Health Data Committee created by Section 26-1-7.

C. "Data element" means the specific information collected and recorded for the purpose of health care and health service delivery. Data elements include information to identify the individual, health care provider, data supplier, service provided, charge for service, payer source, medical diagnosis, and medical treatment.

D. "Data release, disclosure, or disclose" means the disclosure or the communication of health care data to any individual or organization outside the committee, its staff, and contracting agencies.

E. "Data supplier" means a health care facility, health care provider, self-funded employer, third-party payer, health maintenance organization, or government department required to provide health data under rules adopted by the committee.

F. "Health Data Plan" means the plan developed and adopted by the Health Data Committee under Chapter 33a, Title 26; Section 104.

G. "Health care provider" means any person, partnership, association, corporation, or other facility or institution that renders or causes to be rendered health care or professional services as a physician, registered nurse, licensed practical nurse, nurse-midwife, dentist, dental hygienist, optometrist, clinical laboratory technologist, pharmacist, physical therapist, podiatrist, psychologist, chiropractic physician, naturopathic physician, osteopathic physician, osteopathic physician and surgeon, audiologist, speech pathologist, certified social worker, social service worker, social service aide, marriage and family counselor, or practitioner of obstetrics, and others rendering similar care and services relating to or arising out of the health needs of persons or groups of persons, and officers, employees, or agents of any of the above acting in the course and scope of their employment.

I. "Health data" means information relating to the health status of individuals, health services delivered, the availability of health manpower and facilities, and the use and costs of resources and services to the consumer.

H. "Identifiable health data" means any item, collection, or grouping of health data that makes the individual supplying or described in the health data identifiable.

J. "Individual" means a natural person.

K. "Order" means a committee action that determines the legal rights, duties, privileges, immunities, or other interests of one or more specific persons, but not a class of persons.

L. "Report" means a compilation, study or data release developed from resource documents to display information in a simplified manner and designed to meet the needs of specific audiences or nontechnical users.

M. "Resource document" means contemplated tabulation formats defined in the Health Data Plan to display information, documents, or records containing measures relating to health care. These documents are classified as standard, special, and electronic.

**R428-2-4. Technical Assistance.**

The Office may provide technical consultation to a data supplier upon request and resource availability. The consultation shall be to enable a data supplier to submit health data according to R428.

**R428-2-5. Data Classification and Access Requirements.**

A. The Utah Health Data Authority Act, Section 108, specifically classifies all data, information, reports, statements, memoranda, or other data received by the committee as "strictly confidential." This strict classification means the committee's data are not public, and as such are exempt from the Classification and Release Requirements specified in the Government Records Access And Management Act, Chapter 2, Title 63, Utah Code Annotated. The committee shall establish guidelines for the protection, use and release of the data.

B. Persons having access to data under control of the committee shall not:

1. take any action that might provide information to any unauthorized individual or agency;

2. scan, copy, remove, or review any information to which specific authorization has not been granted;

3. discuss information with unauthorized persons which could lead to identification of individuals;

4. give access to any information by sharing passwords or file access codes.

C. Any person having access to data under control of the committee shall:

1. maintain the data in a safe manner which restricts unauthorized access;

2. limit use of the data to the purposes for which access is authorized;

3. report immediately any unauthorized access.

D. A failure to report known violations by others of responsibilities specified in 3 and 4 above is subject to the same punishment as a personal violation.

E. The Office shall deny a person access to the facilities, services and data as a consequence of any violation of the responsibilities specified in R428-2-5(C) and R428-2-5(D) above.

F. The committee may, pursuant to Chapter 33a, Title 26; Section 110, subject the person to legal prosecution for any unauthorized use, disclosure, or publication of its data.

**R428-2-6. Security.**

The Office shall implement procedures protecting data confidentiality. These procedures shall secure the committee's health data against unauthorized access.

**R428-2-7. Editing and Validation.**

A. The data supplier shall review each health data record prior to submission. The review shall consist of checks for accuracy, consistency, completeness, and conformity.

B. The Office may subject health data to edit checks. The Office may require the data supplier to correct health data failing an edit check. The data supplier may perform data validation before public disclosure.

1. The Office may, by first class U.S. mail or email, return to the submitting data supplier all health data failing an edit check. The submitting data supplier shall correct all returned health data and resubmit all corrected health data to the Office within 35 calendar days of the date the Office mails the records.

2. Data validation gives the data supplier the right to review, comment, and provide support for corrections of any information relating to its activities prior to public release. The data supplier shall return the validation document to the Office with comments and support for corrections within 35 calendar days of the date the Office mails the validation document. If the data supplier fails to return the information within the 35 day period, the committee may conclude that the information is correct and suitable for release.

3. The committee may note in its resource documents, reports, and publications that accurate appraisal of a certain category or entity cannot be presented because of a failure to comply with the committee's request for data, edit corrections, or data validation.

#### **R428-2-8. Error Rates.**

The committee may establish and order reporting quality standards based on non-reporting or edit failure rates:

#### **R428-2-9. Data Disclosure.**

A. The committee may release information, compilations, reports, statements, memoranda, or other data received or derived from its health data as specified in Chapter 33a, Title 26, Sections 107, 108, and 109. The Office may disclose the submitted data as resource documents or reports in either standard, special, or electronic format. The Office may prepare data for disclosure annually as standard or special resource documents specified in the health data plan. If the disclosure identifies a health care provider, the Office must adhere to the procedures specified in R428-2-9(B).

B. Prior to any release of a compilation, report, or resource document in which a health care provider is identified, the Office shall notify the data supplier and the health care provider by first class mail or email using the last known address. The data supplier and health care provider have the right to:

1. review the information to be disclosed and verify the accuracy of the information contained therein;

2. submit to the Office evidence of errors in the disclosure document;

3. develop written comments or alternate interpretations to the information reported for inclusion with the disclosure;

4. return the disclosure notice, evidence of errors, and comments within 35 calendar days of the date the Office mails the notice. The committee may interpret the failure to return the notice of disclosure within the designated time period as agreement that the reports are acceptable for release in any format outlined in the Health Data Plan.

5. the Office shall correct data it finds to be in error and provide data suppliers and health care providers notification of the corrections subject to the rights specified in R428-2-9(B).

C. The committee may allow exemptions to the notification procedures specified in R428-2-9(B):

1. The Office may release to the data supplier its data elements used to create compilations, reports, or resource documents without notification when a data supplier requests the data it supplied.

2. The Office may make additional disclosures to other requesters of compilations, reports, or resource documents previously reviewed under the procedures specified in R428-2-9(B).

D. The Office may, by its initiative, prepare and disclose special compilations, reports, studies or analyses relating to health care cost, quality, access, health promotion programs, or public health. These actions may be to meet legislative intent or upon request from individuals, government agencies, or private organizations.

E. The committee may make data available for disclosure in computer readable formats:

1. The public data set provides general health care data. The Director of the Office may approve written requests for the public data set without approval of the committee. Written requests must include the following:

a. the name, address, and telephone number of the requester;

b. a statement of the purpose for which the data will be used; and

c. the starting and ending dates for which data are requested.

2. The design of the research oriented data set is for bona fide research of health care cost, quality, access, health promotion programs, or public health issues. A research oriented data set is available by request to the committee. Requests for a research oriented data set must be accompanied by a completed request form as established by the committee. Request forms are included in Technical Manuals that are available from the Office. The committee requires documentation of the requester's:

a. need for the research oriented data set to conduct bona fide research;

b. intent to use the data to study, promote, or improve accessibility, quality, or cost effective health care;

c. integrity and ability to safeguard the data from any breach of confidentiality;

d. competency to effectively use the data in the manner proposed;

e. affiliation with an institutional review board; and

f. guarantee that no further disclosure will occur without prior approval of the Office.

#### **R428-2-10. Penalties.**

Pursuant to Section 26-23-6, any person that violates any provision of this rule may be assessed an administrative civil money penalty not to exceed \$3,000 upon an administrative finding of a first violation and up to \$5,000 for a subsequent similar violation within two years. A person may also be subject to penalties imposed by a civil or criminal court, which may not exceed \$5,000 or a class B misdemeanor for the first violation and a class A misdemeanor for any subsequent similar violation within two years.]

#### **R428-2-1. Legal Authority.**

This rule is promulgated under authority granted by Title 26, Chapter 33a.

#### **R428-2-2. Purpose.**

This rule establishes definitions, requirements, and general guidelines relating to the collection, control, use and release of data pursuant to Title 26, Chapter 33a.

#### **R428-2-3. Definitions.**

(1) The terms used in this rule are defined in Section 26-33a-102.



(2) In addition, the following definitions apply to all of Title R428:

(a) "Adjudicated claim" means a claim submitted to a carrier for payment where the carrier has made a determination whether the services provided fall under the carrier's benefit.

(b) "Ambulatory surgery data" means the consolidation of complete billing, medical, and personal information describing a patient, the services received, and charges billed for a surgical or diagnostic procedure treatment in an outpatient setting into a data record.

(c) "Ambulatory surgical facility" is defined in Section 26-21-2.

(d) "Carrier" means:

(i) an insurer engaged in the business of health care or dental insurance in the state of Utah, as defined in Section 31A-1-301;

(ii) a business under an administrative services organization or administrative services contract arrangement;

(iii) a third party administrator, as defined in Section 31A-1-301, licensed by the state of Utah that collects premiums or settles claims of residents of the state, for health care insurance policies or health benefit plans, as defined in Section 31A-1-301;

(iv) a governmental plan, as defined in Section 414 (d), Internal Revenue Code, that provides health care benefits;

(v) a program funded or administered by Utah for the provision of health care services, including Medicaid, the Utah Children's Health Insurance Program created under Section 26-40-103, and the medical assistance programs described in Title 26, Chapter 18 or any entity under a contract with the Utah Department of Health to serve clients under such a program;

(vi) a non-electing church plan, as described in Section 410 (d), Internal Revenue Code, that provides health care benefits;

(vii) a licensed professional employer organization as defined in Section 31a-40-102 acting as an administrator of a health care insurance plan;

(viii) a health benefit plan funded by a self-insurance arrangement;

(ix) the Public Employees' Benefit and Insurance Program created in Section 49-20-103.

(e) "Claim" means a request or demand on a carrier for payment of a benefit.

(f) "Covered period" means the calendar year on which the data used for calculation of HEDIS measures is based.

(g) "Data element" means the specific information collected and recorded for the purpose of health care and health service delivery. Data elements include information to identify the individual, health care provider, data supplier, service provided, charge for service, payer source, medical diagnosis, and medical treatment.

(h) "Discharge data" means the consolidation of complete billing, medical, and personal information describing a patient, the services received, and charges billed for a single inpatient hospital stay into a discharge data record.

(i) "Electronic media" means a compact disc, digital video disc, external hard drive, or other media where data is stored in digital form.

(j) "Electronic transaction" means to submit data directly via electronic connection from a hospital or ambulatory surgery facility to the Office according to Electronic Data Interchange standards established by the American National Standards Institute's Accredited

Standards Committee, known as the Health Care Transaction Set (837) ASC X 12N.

(k) "Eligible Enrollee" means an enrollee who meets the criteria outlined in the NCQA survey specifications.

(l) "Enrollee" means any individual who has entered into a contract with a carrier for health care or on whose behalf such an arrangement has been made.

(m) "Health care claims data" means information consisting of, or derived directly from, member enrollment, medical claims, and pharmacy claims that this rule requires a carrier to report.

(n) "Health Insurance" has the same meaning as found in Section 31A-1-301.

(o) "HEDIS" means the Healthcare Effectiveness Data and Information Set, a set of standardized performance measures developed by the NCQA.

(p) "HEDIS data" means the complete set of HEDIS measures calculated by the carriers according to NCQA specifications, including a set of required measures and voluntary measures defined by the department, in consultation with the carriers.

(q) "Hospital" means a facility that is licensed under Rule R432-100.

(r) "Level 1 data element" means a required reportable data element.

(s) "Level 2 data element" means a data element that is reported when the information is available from the patient's hospital record.

(t) "NCQA" means the National Committee for Quality Assurance, a not-for-profit organization committed to evaluating and reporting on the quality of managed care plans.

(u) "Office" means the Office of Health Care Statistics within the Utah Department of Health.

(v) "Order" means an action of the committee that determines the legal rights, duties, privileges, immunities, or other interests of one or more specific persons, but not a class of persons.

(w) "Patient Social Security number" is the social security number of a person receiving health care.

(x) "Performance Measure" means the quantitative, numerical measure of an aspect of the carrier, or its membership in part or in its entirety, or qualitative, descriptive information on the carrier in its entirety as described in HEDIS.

(y) "Public Use Data Set" means a data extract or a subset of a database that is deemed by the Office to not include identifiable data or where the probability of identifying individuals is minimal.

(z) "Report" means a disclosure of data or information collected or produced by the committee or Office, including but not limited to a compilation, study, or analysis designed to meet the needs of specific audiences.

(aa) "Research Data Set" means a data extract or subset of a database intended for use by investigators or researchers for bona fide research purposes that may include identifiable information or where there is more than a minimal probability that the data could be used to identify individuals.

(bb) "Record linkage number" is an irreversible, unique, encrypted number that will replace patient social security number.

(cc) "Sample file" means the data file containing records of selected eligible enrollees drawn by the survey agency from the carrier's sampling frame.

(dd) "Sampling Frame" means the carrier enrollment file as described criteria outlined by the NCOA survey specifications.

(ee) "Submission year" means the year immediately following the covered period.

(ff) "Survey agency" means an independent contractor on contract with the Office of Health Care Statistics.

(gg) "Utah Health Care Performance Measurement Plan" means the plan for data collection and public reporting of health-related measures, adopted by the Utah Health Data Committee to establish a statewide health performance reporting system.

(hh) "Uniform billing form" means the uniform billing form recommended for use by the National Uniform Billing Committee.

(ii) "Submittal Manual for Inpatient Data" means the document referenced in Subsection R428-1-4(1).

(jj) "Submittal Manual for Ambulatory Surgery Data" means the document referenced in Subection R428-1-4(2).

(kk) "NCOA Survey Specifications" means the document referenced in Subsection R428-1-4(3)

(ll) "NCOA HEDIS Specifications" means the document referenced in Subsection R428-1-4(4)

(mm) "Data Submission Guide for Claims Data" means the document referenced in Subsection R428-1-4(5) for data submissions required prior to May 15, 2014 and the document referenced in Subsection R428-1-4(6) for data submissions beginning May 15, 2014.

#### **R428-2-4. Technical Assistance.**

The Office may provide technical assistance or consultation to a data supplier upon request and resource availability. The consultation shall be to enable a data supplier to submit required data according to Title R428.

#### **R428-2-5. Data Classification and Access.**

(1) Data collected by the committee are not public, and as such are exempt from the classification and release requirements specified in Title 63g, Chapter 2, Government Records Access and Management Act.

(2) Any person having access to data collected or produced by the committee or the Office under Title 26, Chapter 33a shall not:

(a) take any action that might provide information to any unauthorized individual or agency;

(b) scan, copy, remove, or review any information to which specific authorization has not been granted;

(c) discuss information with unauthorized persons which could lead to identification of individuals;

(d) give access to any information by sharing passwords or file access codes.

(3) Any person having access to data collected or produced by the committee or the Office under Title 26, Chapter 33a shall:

(a) maintain the data in a safe manner which restricts unauthorized access;

(b) limit use of the data to the purposes for which access is authorized;

(c) report immediately any unauthorized access to the Office or its designated security officer.

(4) A failure to report known violations by others is subject to the same punishment as a personal violation.

(5) The Office shall deny a person access to the facilities, services and data as a consequence of any violation of the responsibilities specified in this section.

#### **R428-2-6. Editing and Validation.**

(1) Each data supplier shall review each required record prior to submission. The review shall consist of checks for accuracy, consistency, completeness, and conformity.

(2) The Office may subject submitted data to edit checks. The Office may require the data supplier to correct data failing an edit check as follows:

(a) The Office may, by first class U.S. mail or email, inform the submitting data supplier of any data failing an edit check.

(b) The submitting data supplier shall make necessary corrections and resubmit all corrected data to the Office within 10 business days of the date the Office notified the supplier.

#### **R428-2-7. Error Rates.**

The committee may establish and order reporting quality standards based on non-reporting or edit failure rates.

#### **R428-2-8. Data Disclosure.**

(1) The committee may disclose data received from data suppliers or data or information derived from this data as specified in Title 26, Chapter 33a.

(2) The Office may prepare reports relating to health care cost, quality, access, health promotion programs, or public health. These actions may be to meet legislative intent or upon request from individuals, government agencies, or private organizations. The Office may create reports in a variety of formats including print or electronic documents, searchable databases, web-sites, or other user-oriented methods for displaying information.

(3) Unless otherwise specified by the committee, the time period for data suppliers and health care providers to prepare a response as required in Subsections 26-33a-107(1) and 26-33a-107(3) shall be 15 business days. If a data supplier fails to respond in the specified time frame, the committee may conclude that the information is correct and suitable for release.

(4) The committee may note in a report that accurate appraisal of a certain category or entity cannot be presented because of a failure to comply with the committee's request for data, edit corrections, or data validation.

(5) The Office may release to the data supplier or its designee any data elements provided by the supplier without notification when a data supplier requests the data be so supplied.

(6) The committee may disclose data in computer readable formats.

(7) The Director of the Office may approve the disclosure of a public use data set upon receipt of a written request that includes the following:

(a) the name, address, e-mail and telephone number of the requester;

(b) a statement of the purpose for which the data will be used;

(c) agreement to other terms and conditions as deemed necessary by the Office.

(8) The committee may approve the release of a research data set to an institution, association or organization for bona fide research of health care cost, quality, access, health promotion programs, or public health issues. The requester must provide:

(a) the name, address, e-mail and telephone number of the requester and for each person who will have access to the research data set;

(b) a statement of the purpose for which the research data set will be used;

(c) the starting and ending dates for which the research data set is requested;

(d) an explanation of why a public use data set could not be used for to accomplish the stated research purposes, including a separate justification for each element containing identified data requested;

(e) evidence of the integrity and ability to safeguard the data from any breach of confidentiality;

(f) evidence of competency to effectively use the data in the manner proposed;

(g) a satisfactory review from an Office-approved institutional review board;

(h) a guarantee that no further disclosure will occur without prior approval of the Office;

(i) a signed agreement to comply with other terms and conditions as stipulated by the committee.

#### **R428-2-9. Penalties.**

(1) The Office, in cooperation with the committee, may apply civil penalties or subject violators to legal prosecution.

(2) Sections 26-23-6 and 26-33a-110 specify civil and criminal penalties for failure to comply with the requirements of Title R428 or Title 26, Chapter 33a.

(3) Notwithstanding Subsection R428-2-9(2), any person that violates any provision of Title R428 may be assessed an administrative civil money penalty not to exceed \$3,000 upon an administrative finding of a first violation and up to \$5,000 for a subsequent similar violation within two years. A person may also be subject to penalties imposed by a civil or criminal court, which may not exceed \$5,000 or a class B misdemeanor for the first violation and a class A misdemeanor for any subsequent similar violation within two years.

(4) Notwithstanding Subsection R428-2-9(2), a carrier that violates any provision of Title R428 may be assessed an administrative civil money penalty for each day of non-compliance. Fines may be imposed as follows:

(a) Not to exceed the sum of \$10,000 per violation

(b) Each day of violation is a separate violation.

#### **R428-2-10. Exemptions and Extensions.**

(1) The committee may grant exemptions or extensions from reporting requirements in Title R428 to data suppliers under certain circumstances.

(2) The committee may grant an exemption to a data supplier when the supplier demonstrates that compliance imposes an unreasonable cost.

(a) A data supplier may request an exemption from any particular requirement or set of requirements of Title R428. The data supplier must submit a request for exemption no less than 30 calendar days before the date the supplier would have to comply with the requirement.

(b) The committee may grant an exemption for a maximum of one calendar year. A data supplier wishing an additional exemption must submit an additional, separate request.

(3) The committee may grant an extension to a data supplier when the supplier demonstrates that technical or unforeseen difficulties prevent compliance.

(a) A data supplier may request an extension for any deadline required in Title R428. For each deadline for which the carrier requests an extension, the carrier must submit its request no less than 15 calendar days before the deadline in question.

(b) The committee may grant an extension for a maximum of 30 calendar days. A data supplier wishing an additional extension must submit an additional, separate request.

(4) The supplier requesting an extension or exemption shall include:

(a) The data supplier's name, mailing address, telephone number, and contact person;

(b) the dates the exemption or extension is to start and end;

(c) a description of the relief sought, including reference to specific sections or language of the requirement;

(d) a statement of facts, reasons, or legal authority in support of the request; and

(e) a proposed alternative to the requirement or deadline.

(5) A carrier that covers fewer than 2,500 individual Utah residents is exempt from all requirements of this title.

#### **R428-2-11. Contractor Liability.**

(1) A data supplier may contract with another entity to submit required data elements on their behalf under Title R428. In such cases, the data supplier must notify the Office of the identity and contact information of the contractor.

(2) Regardless of the existence of a contractor, the responsibility for complying with all requirements of Title R428 remains solely with the data supplier.

**KEY: health, health policy, health planning**

**Date of Enactment or Last Substantive Amendment: [~~April 26, 2012~~]2014**

**Notice of Continuation: November 30, 2011**

**Authorizing, and Implemented or Interpreted Law: 26-33a-104**

## Health, Center for Health Data, Health Care Statistics **R428-5** Appeal and Adjudicative Proceedings

### NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 38563

FILED: 06/02/2014

### RULE ANALYSIS

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** This amendment is in response to a review of Title R428 that identified inconsistencies in the writing of the rule.

**SUMMARY OF THE RULE OR CHANGE:** The changes make technical and conforming amendments--renumbering where necessary.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Title 26, Chapter 33a

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** This amendment makes technical changes that improve consistency and clarity of Rule R428-5. The Utah Department of Health (UDOH) determines that these changes will not create any cost or savings impact to the state budget or UDOH's budget, since the changes will not increase workload and can be carried out with existing budget.

◆ **LOCAL GOVERNMENTS:** This filing does not create any direct cost or savings impact to local governments since they are not directly affected by the rule; nor are local governments indirectly impacted because the rule does not create a situation requiring services from local governments.

◆ **SMALL BUSINESSES:** None--Small businesses are not impacted by this rule change, with all potentially impacted having more than 50 employees. As a result, the rule will have no effect on small business budgets for costs or savings.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Minor technical changes in Rule R428-5 will not create any cost or savings to businesses, individuals, local governments or persons that are not small businesses.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** There are no compliance costs for persons affected by these changes to Rule R428-5. Although there are several modifications within this amendment, they will not impact affected persons.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** No effect on business because it makes no changes in current operations.

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

HEALTH  
CENTER FOR HEALTH DATA,  
HEALTH CARE STATISTICS  
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:

- ◆ Mike Martin by phone at 801-538-9205, by FAX at 801-538-9916, or by Internet E-mail at mikemartin@utah.gov
- ◆ Norman Thurston by phone at 801-538-7052, by FAX at 801-237-0787, or by Internet E-mail at nthurston@utah.gov
- ◆ Rex Olsen by phone at 801-538-9498, by FAX at 801-536-0940, or by Internet E-mail at rolsen@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/15/2014

THIS RULE MAY BECOME EFFECTIVE ON: 07/22/2014

AUTHORIZED BY: David Patton, PhD, Executive Director

**R428. Health, Center for Health Data, Health Care Statistics.**

**R428-5. Appeal and Adjudicative Proceedings.**

**R428-5-1. Legal Authority.**

The Utah Health Data Committee is given rulemaking authority pursuant to Utah Code Annotated Title 26, Chapter 33a.

**R428-5-2. Purpose.**

The purpose of this rule is to establish procedures used by the Utah Health Data Committee for its adjudicative proceedings.

**R428-5-3. Type of Proceeding.**

~~[A.—]~~The actions of the committee and requests for committee action are designated as formal adjudicative proceedings. The committee may at any time before a final order is issued in any adjudicative proceeding convert a formal adjudicative proceeding to an informal adjudicative proceeding, or an informal adjudicative proceeding to a formal adjudicative proceeding if: ~~1.]~~ conversion of the proceeding is in the public interest[; ~~2.]~~ and conversion of the proceeding does not unfairly prejudice the rights of any party.

**R428-5-4. Formal Proceedings.**

~~[A.]~~(1) The committee or its designated representative shall preside over a formal proceeding initiated by a notice of committee action or in response to a request for committee action.

~~[B.]~~(2) The content of the notice of committee action shall comply with ~~[Section]~~Subsection 63G-4-201(2). Formal hearings shall be held at the next regularly scheduled committee meeting unless prior arrangements are made for an alternate date and proper notice is provided all parties.

~~[C.]~~(3) Within 30 calendar days of the mailing (electronic or paper) date of a notice of committee action, the respondent or his representative shall file with the ~~[Bureau]~~Office and with each person known to have a direct interest a written, signed response that includes:

- ~~[1.]~~(a) the agency's file number or other reference number;
- ~~[2.]~~(b) the name of the adjudicative proceeding;
- ~~[3.]~~(c) a statement of the relief or action sought;
- ~~[4.]~~(d) a statement of the facts;
- ~~[5.]~~(e) a statement summarizing the reasons for granting the relief requested.

~~[D.]~~(4) A conference may be scheduled by the Director of the ~~[Bureau]~~Office or the presiding officer to encourage settlement before the hearing.

~~[E.]~~(5) The committee or its designated representative as presiding officer shall have the authority to issue subpoenas at their discretion.

~~[F.]~~(6) Within a reasonable time after the hearing, or after the filing of any post-hearing papers permitted by the presiding officer, the presiding officer shall sign and issue an order that includes:

- ~~[1.]~~(a) a statement of the presiding officer's findings of fact;
- ~~[2.]~~(b) a statement of the presiding officer's conclusions of

law;

~~[3.]~~(c) a statement of the reasons for the presiding officer's decision;

- [4-](d) a statement of any relief ordered by the agency;  
 [5-](e) a notice of the right to apply for committee reconsideration;  
 [6-](f) a notice of any right to administrative or judicial review available;  
 [7-](g) the time limits applicable to any reconsideration or review.

#### **R428-5-5. Default and Reconsideration.**

[A-](1) The presiding officer may enter an order of default against a party if:

- [1-](a) a party in an informal adjudicative proceeding fails to participate in the adjudicative proceedings;  
 [2-](b) a party to a formal adjudicative proceeding fails to attend or participate in a properly scheduled hearing after receiving proper notice; or  
 [3-](c) a respondent in a formal adjudicative proceeding fails to file a response within the time frame specified in Subsection R428-5-4([C]3).

[4-](d) The order of default shall include a statement of the grounds for default and shall be mailed (electronic or paper) to all parties.

[5-](e) A defaulted party may seek to have the committee set aside the default order and any order in the adjudicative proceeding issued subsequent to the default order, by following the procedures outlined in the Utah Rules of Civil Procedure. A motion to set aside a default and any subsequent order shall be made to the presiding officer.

[6-](f) In an adjudicative proceeding begun by the agency, or in an adjudicative proceeding that has other parties besides the party in default, the presiding officer shall, after issuing the order of default, conduct any further proceedings necessary to complete the adjudicative proceeding without the participation of the party in default and shall determine all issues in the adjudicative proceeding, including those affecting the defaulting party.

[7-](g) In an adjudicative proceeding that has no parties other than the committee and the party in default, the presiding officer shall, after issuing the order of default, dismiss the proceeding.

[B-](2) Any party may file a written request for reconsideration with the committee stating the specific grounds upon which relief is requested. The request must be filed within 20 days after:

- [1-](a) the date that an Order of Review is issued in an informal adjudicative proceeding; or  
 [2-](b) the date that a request for review is denied; or  
 [3-](c) the date that a final order is issued in a formal adjudicative proceeding.

[4-](d) The request for reconsideration shall be filed with the committee and one copy shall be sent by mail (electronic or paper) to each party by the person making the request.

[5-](e) The committee may issue a written order granting or denying the request within 30 working days of filing of the request.

[6-](f) If the committee does not issue an order granting or denying the request within 30 working days after the request is filed, the request for reconsideration shall be considered denied.

#### **R428-5-6. Judicial Review.**

An aggrieved party may obtain judicial review of final committee action upon exhaustion of all available administrative remedies. The aggrieved party shall file a petition for judicial review

of final agency action within 30 calendar days after the final committee action is issued or is considered to have been issued under Section R428-5-5.

#### **R428-5-7. Declaratory Orders.**

[A-](1) Any person or agency may petition for a committee declaratory ruling of rights, status, or other legal relations under a specific statute or rule by submitting a written petition. The petition shall contain the following information:

- [1-](a) the specific statute or rule to be reviewed;  
 [2-](b) the situation or circumstances in which applicability is to be reviewed;  
 [3-](c) the reason or need for the applicability review;  
 [4-](d) the name, address, and telephone number where the petitioner can be contacted;

[5-](e) the date of submission and signature of the petitioner.  
 [B-](2) The committee or its authorized representative shall review and consider the petition and may issue a declaratory ruling setting forth:

- [1-](a) the applicability or non-applicability of the specific statute or rule;  
 [2-](b) the reasons for the applicability or non-applicability of the specific statute or rule;  
 [3-](c) any requirements imposed on the agency, petitioner, or any other person as a result of the ruling.

[C-](3) The committee may as appropriate:

- [1-](a) interview the petitioner;  
 [2-](b) consult with counsel or the Attorney General;  
 [3-](c) take any action the committee in its judgment deems necessary to provide that the petition receives adequate review and due consideration.

[D-](4) If the committee has not issued a declaratory order within 60 days after receipt of the petition, the petition is denied.

[E-](5) The committee will not issue a declaratory order concerning any action which could result in the Department imposing sanctions.

#### **R428-5-8. Informal Proceedings.**

[A-](1) The committee may convert a formal proceeding to informal as specified under Section R428-5-3. The Chairman of the committee or his designated representative shall act as presiding officer in an informal proceeding. No response or other pleading is required subsequent to the receipt of a notice of agency decision unless specifically requested and a hearing is not required to be held.

[B-](2) The presiding officer may schedule a conference to encourage settlement before issuing a decision.

[C-](3) Before issuing a final order in an informal proceeding, the presiding officer may convert the proceeding to a formal proceeding if such action is deemed to be in the public interest and does not unfairly prejudice the rights of any party.

[D-](4) Unless a time frame is specified elsewhere in this chapter, the presiding officer shall, within a reasonable time of receipt of a request for agency action, issue a signed order in writing stating:

- [1-](a) the decision;  
 [2-](b) the reasons for the decision;  
 [3-](c) notice of the right to any administrative or judicial review available;  
 [4-](d) the time limits for requesting review.

[E-1](5) Within 30 calendar days of the issuance of an order by the presiding officer, a party aggrieved by the decision may seek review of that order by filing a written request for review by the full committee. The request shall:

- (a[.]) be signed by the party requesting review;
- (b[.]) state the grounds for review and the relief requested;
- (c[.]) be dated the date of mailing; and
- (d[.]) be sent by mail (electronic or paper) to the presiding officer and to each party of the proceeding.

[2-](6) Within 15 calendar days of the mailing (electronic or paper) of the request for review, any party may file a response with the committee. A copy of the response must also be mailed (electronic or paper) to the presiding officer and each of the parties.

[3-](7) The committee may issue a notice granting or denying the request for review within 30 working days of filing of the request. If the committee does not issue a notice granting or denying the request within the 30 day period the request for review shall be considered denied.

[4-](8) If a review of the order is granted, the notice shall specify the date a hearing shall be conducted before the full committee.

[5-](9) Within a reasonable time from the completion of the hearing, the committee shall issue a written order on review which shall contain:

- (a[.]) a designation of the statute or rule permitting or requiring review;
- (b[.]) a statement of the issues reviewed;
- (c[.]) findings of fact as to each of the issues reviewed;
- (d[.]) conclusions of law as to each of the issues reviewed;
- (e[.]) the reasons for the disposition;
- (f[.]) whether the decision of the presiding officer or agency is to be affirmed, reversed, or modified, and whether all or any portion of the adjudicative proceeding is to be remanded;
- (g[.]) a notice of any right of further administrative reconsideration or judicial review available; and
- (h[.]) the time limit applicable to any review.

**KEY: health, health policy, health planning**

**Date of Enactment or Last Substantive Amendment:** [~~June 28, 2012~~]**2014**

**Notice of Continuation:** November 30, 2011

**Authorizing, and Implemented or Interpreted Law:** 26-33a-104

**Health, Center for Health Data, Health  
Care Statistics  
R428-10  
Health Data Authority Hospital Inpatient  
Reporting Rule**

**NOTICE OF PROPOSED RULE**

(Repeal and Reenact)  
DAR FILE NO.: 38564  
FILED: 06/02/2014

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** This filing is in response to a review of Title R428 that identified inconsistencies in the writing of the rule.

**SUMMARY OF THE RULE OR CHANGE:** Items from the repealed rule, no longer in the reenacted rule: subsections on definitions, exemptions, extensions, and waivers, and penalties. Items in the reenacted rule, that are not in the old rule: none. Other changes: removes definitions of terms, exemption, and extension procedures; and penalties from Rule R428-10 that are contained in Rule R428-2. Makes technical and conforming amendments. (DAR NOTE: the proposed repeal and reenactment of Rule R428-2 is under DAR No. 38562 in this issue, June 15, 2014, of the Bulletin.)

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Title 26, Chapter 33a

**ANTICIPATED COST OR SAVINGS TO:**

◆ **THE STATE BUDGET:** This amendment makes technical changes that improve consistency and clarity of Rule R428-10. The Utah Department of Health (UDOH) determines that these changes will not create any cost or savings impact to the state budget or UDOH's budget, since the changes will not increase workload and can be carried out with existing budget.

◆ **LOCAL GOVERNMENTS:** This filing does not create any direct cost or savings impact to local governments since they are not directly affected by the rule; nor are local governments indirectly impacted because the rule does not create a situation requiring services from local governments.

◆ **SMALL BUSINESSES:** None--Small businesses will not be impacted by this rule change--as a result, the rule will have no effect on small business budgets for costs or savings.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Minor technical changes in Rule R428-10 will not create any cost or savings to businesses, individuals, local governments or persons that are not small businesses.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** There are no compliance costs for persons affected by these changes to Rule R428-10. Although there are several modifications within this filing, they will not impact affected persons.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** No effect on business because it does not materially modify current operations.

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

HEALTH  
CENTER FOR HEALTH DATA,  
HEALTH CARE STATISTICS

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:**

- ◆ Mike Martin by phone at 801-538-9205, by FAX at 801-538-9916, or by Internet E-mail at mikemartin@utah.gov
- ◆ Norman Thurston by phone at 801-538-7052, by FAX at 801-237-0787, or by Internet E-mail at nthurston@utah.gov
- ◆ Rex Olsen by phone at 801-538-9498, by FAX at 801-536-0940, or by Internet E-mail at rolsen@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/15/2014

THIS RULE MAY BECOME EFFECTIVE ON: 07/22/2014

AUTHORIZED BY: David Patton, PhD, Executive Director

**R428. Health, Center for Health Data, Health Care Statistics.  
R428-10. Health Data Authority Hospital Inpatient Reporting Rule.**

**[R428-10-1. Legal Authority.]**

— This rule is promulgated under authority granted by Title 26, Chapter 33a, and in accordance with the Health Data Plan.

**R428-10-2. Purpose.**

— This rule establishes the reporting standards for inpatient discharge data by licensed hospitals. Inpatient discharge data are needed to develop and maintain a statewide hospital inpatient discharge data base.

**R428-10-3. Definitions.**

— These definitions apply to rule R428-10.

- (1) "Office" as defined in R428-2-3(A).
- (2) "Discharge data" means the consolidation of complete billing, medical, and personal information describing a patient, the services received, and charges billed for a single inpatient hospital stay into a discharge data record.
- (3) "Hospital" means a facility that is licensed under R432-100.
- (4) "Level 1 data element" means a required reportable data element.
- (5) "Level 2 data element" means a data element that is reported when the information is available from the patient's hospital record.
- (6) "Patient Social Security number" is the social security number of the patient receiving inpatient care.
- (7) "Record linkage number" is an irreversible, unique, encrypted number that will replace patient social security number. The Office assigns the number to serve as a control number for data analysis.
- (8) "Uniform billing form" means the uniform billing form recommended for use by the National Uniform Billing Committee.

**~~R428-10-4. Source of Inpatient Hospital Discharge Data Reporting.~~**

~~The reporting source for hospital inpatient discharge data is Utah licensed hospitals:~~

- ~~(1) A hospital facility, either general acute care, critical access, children's, long term, psychiatric or rehabilitation hospital, shall report discharge data records for each inpatient discharged from its facility.~~
- ~~(2) A hospital may designate an intermediary, such as the Utah Hospital Association, or may submit discharge data directly to the committee.~~
- ~~(3) Each hospital is responsible for compliance with these rules. Use of a designated intermediary does not relieve the hospital of its reporting responsibility.~~
- ~~(4) Each hospital shall designate a department within the hospital and a person responsible for submitting the discharge data records. This person shall also be responsible for communicating with the Office.~~

**R428-10-5. Data Submittal Schedule.**

— Each hospital shall submit to the Office a single discharge data record for each patient discharged according to the schedule shown in Table 1, Hospital Discharge Data Submittal Schedule, or a schedule mutually agreed upon by the Office and hospital. For a patient with multiple discharges, each hospital shall submit a single discharge data record for each discharge. For a patient with multiple billing claims each hospital shall consolidate the multiple billings into a single discharge data record for submission after the patient's discharge.

TABLE 1  
HOSPITAL DISCHARGE DATA SUBMITTAL SCHEDULE

PATIENT'S DATE OF DISCHARGE IS BETWEEN	DISCHARGE DATA RECORD IS DUE BY
January 1 through March 31	May 15
April 1 through June 30	August 15
July 1 through September 30	November 15
October 1 through December 31	February 15

**R428-10-6. Data Element Reporting.**

— Tables 2 and 3 display the reportable data elements by defined level. A hospital shall, as a minimum, report the required level 1 data elements shown in Table 2. Each hospital shall report level 2 data elements shown in Table 3 whenever the information is a part of the hospital's patient record. Beginning January 1, 1995, each hospital shall collect patient social security number as a level 1 (required) data element on the hospital discharge record, and report the patient social security number with the complete discharge record according to the submittal schedule. The Department shall adopt an encryption method to mask patient identity and replace patient social security number with a record linkage number as the control number. The Department may not retain the original record containing patient social security number and shall destroy the original record containing patient social security number after the Department assures the validity of the patient record. The Department of Health may conduct on-site audits to verify the accuracy of all submittals.

— Each hospital shall submit the reported data elements on compact disc, DVD, or send electronically through the Utah Health

Information Network or another compatible electronic data interchange network or other secure upload or secure email method. The Office shall accept data that complies with data standards established in R590-164, Uniform Health Billing Rule. The Office shall provide to each hospital, a Hospital Inpatient Discharge Data Submittal Technical Manual which outlines the specifications, format, and types of data to report. The revised Submittal Technical Manual is effective for discharges occurring on or after January 1, 2012.

TABLE 2  
REQUIRED LEVEL 1  
HOSPITAL INPATIENT DISCHARGE DATA ELEMENTS

CATEGORY	NAME
Provider	
1.	Provider identifier (hospital name)
Patient	
2.	Patient control number
3.	Patient's medical record number
4.	Patient Social Security Number
5.	Patient name
6.	Patient's address, city, state, zip
7.	Patient's date of birth
8.	Patient's gender
Service	
9.	Admission date
10.	Type of admission/visit
11.	Point of origin for admission or visit
12.	Patient's discharge status
13.	Statement covers period
14.	Condition codes (do not resuscitate, homeless, others)
Charge	
15.	Service line
16.	Revenue codes
17.	HCPCS Procedure codes including modifiers
18.	Unit or basis for measurement code
19.	Service units/days
20.	Total charges by revenue code
Payer	
21.	Payer's identification
22.	Patient's relationship to insured
Diagnosis and Treatment	
23.	Diagnosis version qualifier
24.	Principal diagnosis with present on admission
25.	Other diagnosis codes with present on admission
26.	Admitting diagnosis code
27.	Patient's reason for visit codes
28.	External cause of injury codes (E-code) with present on admission
29.	Principal ICD procedure code
30.	Other ICD procedure codes
31.	Date of principal procedure
Physician	
32.	Attending provider primary ID
33.	Operating physician primary ID
34.	Other operating physician primary ID
35.	Rendering physician primary ID
36.	Referring provider primary ID
Other	
37.	Type of bill

TABLE 3  
WHEN DATA ELEMENT IS AVAILABLE FROM THE  
HOSPITAL'S PATIENT RECORD  
LEVEL 2  
HOSPITAL INPATIENT DISCHARGE DATA ELEMENTS

CATEGORY	NAME
Patient	
1.	Patient marital status
2.	Patient race and ethnicity
Employer	
3.	Employer name
Charge	
4.	Prior payments
5.	Estimated amount due
Payer	
6.	Insured names
7.	Certificate/Social Security Number/Health Insurance Claim/Identification Number
8.	Insured group names
Physician	
9.	Attending provider secondary ID
10.	Attending provider specialty information
11.	Operating physician secondary ID
12.	Operating physician specialty information
13.	Other operating physician secondary ID
14.	Other operating physc. specialty information
15.	Rendering physician secondary ID
16.	Rendering physician specialty information
17.	Referring provider secondary ID
18.	Referring provider specialty information
19.	Resident ID
20.	Resident ID Type

**R428-10-7. Exemptions, Extensions, and Waivers.**

(1) Hospitals may submit requests for exemptions or waivers to the committee within 60 calendar days of the due date as listed in the hospital discharge data submittal schedule in R428-10-5, Table 1. Exemptions or waivers to the requirements of this rule may be granted for a maximum of one calendar year. A hospital wishing an exemption or waiver for more than one year must submit a request annually.

(2) Requests for extensions must be submitted to the Office at least ten working days prior to the due date as listed in the hospital discharge data submittal schedule. Extensions to the submittal schedule may be granted for a maximum of 30 calendar days. The hospital must separately request each additional 30 calendar day extension.

(3) The committee may grant exemptions or waivers when the hospital demonstrates that compliance imposes an unreasonable cost to the hospital. The Office may grant extensions when the hospital documents that technical or unforeseen difficulties prevent compliance. A petitioner requesting an exemption, extension, or waiver shall make the request in writing. A request for exemption, extension, or waiver must contain the following information:

(a) the petitioner's name, mailing address, telephone number, and contact person;

(b) the date the exemption, extension, or waiver is to start and end;



~~(c) a description of the relief sought, including reference to the specific sections of the rule;~~

~~(d) a statement of facts, reasons, or legal authority in support of the request; and~~

~~(e) a proposed alternative to the requirement.~~

~~(4) A form for exemption, extension, or waiver can be found in the technical manual available from the Office. Exemptions, extensions, or waivers may be granted for the following:~~

~~(a) Hospital exemption: All hospitals are subject to the reporting requirements. Reasons justifying an exemption might be a circumstance where the hospital makes no effort to charge any patient for service.~~

~~(b) Discharge data consolidation exemption: This exemption allows variation in the data consolidation requirement, such as allowing the hospital to submit multiple records containing the reportable data elements rather than a single consolidated discharge data record.~~

~~(c) Reportable data element exemption: Each request for a data element exemption must be made separately.~~

~~(d) Submission media exemption: This exemption allows variation in the submission media, such as uploading using secure sftp.~~

~~(e) Submittal schedule extension: The request must specifically document the technical or unforeseen difficulties that prevent compliance.~~

~~(f) Submission format waiver: This waiver allows variation in the submission format. Each request must state an alternative transfer electronic media, its format, and the record layout for the discharge data records. Granting of this waiver is dependent on the Office's ability to process the submittal media and format with available computer resources.~~

**R428-10-8. Penalties.**

~~Pursuant to Section 26-23-6, any person that violates any provision of this rule may be assessed an administrative civil money penalty not to exceed \$3,000 upon an administrative finding of a first violation and up to \$5,000 for a subsequent similar violation within two years. A person may also be subject to penalties imposed by a civil or criminal court, which may not exceed \$5,000 or a class B misdemeanor for the first violation and a class A misdemeanor for any subsequent similar violation within two years.]~~

**R428-10-1. Legal Authority.**

~~This rule is promulgated under authority granted by Title 26, Chapter 33a, and in accordance with the Health Data Plan.~~

**R428-10-2. Purpose.**

~~This rule establishes the reporting standards for inpatient discharge data by licensed hospitals. The data will be used to develop and maintain a statewide hospital discharge data base.~~

**R428-10-3. Source of Inpatient Hospital Discharge Data.**

~~(1) The source for hospital inpatient discharge data shall be Utah licensed hospitals.~~

~~(2) Each hospital shall report discharge data records for each inpatient discharged from its facility.~~

~~(3) For a patient with multiple discharges, each hospital shall submit a single discharge data record for each discharge. For a patient with multiple billing claims each hospital shall consolidate the multiple billings into a single discharge data record for submission after the patient's discharge.~~

(4) A hospital may designate an intermediary or may submit discharge data directly to the committee.

(5) Each hospital is responsible for compliance with these rules. Use of a designated intermediary does not relieve the hospital of its reporting responsibility.

(6) Each hospital shall designate a department or other appropriate entity within the hospital and a person responsible for submitting the discharge data records. This person shall also be responsible for communicating with the Office.

(7) The Department of Health may conduct on-site audits to verify the accuracy of all submittals.

**R428-10-4. Data Submittal Schedule.**

Each hospital shall submit to the Office discharge data according to the schedule shown in Table 1. The Director of the Office may approve an alternate schedule that meets the needs of the committee.

TABLE

(1) HOSPITAL DISCHARGE DATA SUBMITTAL SCHEDULE

PATIENT'S DATE OF DISCHARGE IS BETWEEN	DISCHARGE DATA RECORD IS DUE BY
January 1 through March 31	May 15
April 1 through June 30	August 15
July 1 through September 30	November 15
October 1 through December 31	February 15

**R428-10-5. Data Element Reporting.**

(1) Tables 2 and 3 list the required data elements. Each hospital shall collect and report all data elements shown in Table 2. Each hospital shall report data elements shown in Table 3 whenever the information is a part of the hospital's patient record. Hospitals shall base data submissions on the specifications in the Submittal Manual for Inpatient Data.

(2) Each hospital shall collect patient social security number as a required data element on the hospital discharge record and report the patient social security number with the complete discharge record according to the submittal schedule.

(3) The Office shall adopt an encryption method for the patient social security number by creating a record linkage number as the control number.

(4) Each hospital shall submit the reported data elements on encrypted electronic media acceptable to the Office or send electronically through the Utah Health Information Network or another compatible electronic data interchange network or other secure upload or secure email method.

(5) The Office shall accept data that complies with data standards established in Rule R590-164, Uniform Health Billing Rule.

TABLE

(2) LEVEL 1 DATA ELEMENTS

CATEGORY	NAME
Provider	
1.	Provider identifier (hospital name)
Patient	
2.	Patient control number
3.	Patient's medical record number
4.	Patient Social Security Number

5.	Patient name
6.	Patient's address, city, state, zip
7.	Patient's date of birth
8.	Patient's gender
Service	
9.	Admission date
10.	Type of admission/visit
11.	Point of origin for admission or visit
12.	Patient's discharge status
13.	Statement covers period
14.	Condition codes (do not resuscitate, homeless, others)
Charge	
15.	Service line
16.	Revenue codes
17.	HCPCS Procedure codes including modifiers
18.	Unit or basis for measurement code
19.	Service units/days
20.	Total charges by revenue code
Payer	
21.	Payer's identification
22.	Patient's relationship to insured
Diagnosis and Treatment	
23.	Diagnosis version qualifier
24.	Principal diagnosis with present on admission
25.	Other diagnosis codes with present on admission
26.	Admitting diagnosis code
27.	Patient's reason for visit codes
28.	External cause of injury codes (E-code) with present on admission
29.	Principal ICD procedure code
30.	Other ICD procedure codes
31.	Date of principal procedure
Physician	
32.	Attending provider primary ID
33.	Operating physician primary ID
34.	Other operating physician primary ID
35.	Rendering physician primary ID
36.	Referring provider primary ID
Other	
37.	Type of bill

TABLE

(3) LEVEL 2 DATA ELEMENTS

CATEGORY	NAME
Patient	
1.	Patient marital status
2.	Patient race and ethnicity
Employer	
3.	Employer name
Charge	
4.	Prior payments
5.	Estimated amount due
Payer	
6.	Insured names
7.	Certificate/Social Security Number/Health Insurance Claim/Identification Number
8.	Insured group names
Physician	
9.	Attending provider secondary ID
10.	Attending provider specialty information
11.	Operating physician secondary ID
12.	Operating physician specialty information
13.	Other operating physician secondary ID
14.	Other operating physicc. specialty information
15.	Rendering physician secondary ID
16.	Rendering physician specialty information
17.	Referring provider secondary ID

18.	Referring provider specialty information
19.	Resident ID
20.	Resident ID Type

**KEY: health, hospital policy, health planning**  
**Date of Enactment or Last Substantive Amendment: [~~May 31, 2012~~]2014**  
**Notice of Continuation: November 30, 2011**  
**Authorizing, and Implemented or Interpreted Law: 26-33a-104; 26-33a-108**

Health, Center for Health Data, Health Care Statistics  
**R428-11**  
 Health Data Authority Ambulatory Surgical Data Reporting Rule

**NOTICE OF PROPOSED RULE**  
 (Repeal and Reenact)  
 DAR FILE NO.: 38565  
 FILED: 06/02/2014

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** This filing is in response to a review of Title R428 that identified inconsistencies in the writing of the rule.

**SUMMARY OF THE RULE OR CHANGE:** Items in the repealed rule that are not in the reenacted rule: subsections for definitions, compiling of electronic transactions, data security and integrity, exemptions, extensions, and waivers, and penalties. Items in the reenacted rule not in the old rule: none. Other changes: removes definitions of terms, exemption and extension procedures, and penalties contained in Rule R428-2. Makes technical and conforming amendments. (DAR NOTE: the proposed repeal and reenactment of Rule R428-2 is under DAR No. 38562 in this issue, June 15, 2014, of the Bulletin.)

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Title 26, Chapter 33a

**ANTICIPATED COST OR SAVINGS TO:**

◆ **THE STATE BUDGET:** This amendment makes technical changes that improve consistency and clarity of Rule R428-11. The Utah Department of Health (UDOH) determines that these changes will not create any cost or savings impact to the state budget or UDOH's budget, since the changes will not increase workload and can be carried out with existing budget.

◆ **LOCAL GOVERNMENTS:** This filing does not create any direct cost or savings impact to local governments since they are not directly affected by the rule; nor are local governments indirectly impacted because the rule does not create a situation requiring services from local governments.

- ◆ **SMALL BUSINESSES:** None--Small businesses will not be impacted by this rule change--as a result, the rule will have no effect on small business budgets for costs or savings.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Minor technical changes in Rule R428-11 will not create any cost or savings to businesses, individuals, local governments or persons that are not small businesses.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** There are no compliance costs for persons affected by these changes to Rule R428-11. Although there are several modifications within this amendment, they will not impact affected persons.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** No effect on business because it does not materially modify current operations.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:  
 HEALTH  
 CENTER FOR HEALTH DATA,  
 HEALTH CARE STATISTICS  
 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:**  
 ◆ Mike Martin by phone at 801-538-9205, by FAX at 801-538-9916, or by Internet E-mail at mikemartin@utah.gov  
 ◆ Norman Thurston by phone at 801-538-7052, by FAX at 801-237-0787, or by Internet E-mail at nthurston@utah.gov  
 ◆ Rex Olsen by phone at 801-538-9498, by FAX at 801-536-0940, or by Internet E-mail at rolsen@utah.gov

**INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/15/2014**

**THIS RULE MAY BECOME EFFECTIVE ON: 07/22/2014**

**AUTHORIZED BY: David Patton, PhD, Executive Director**

**R428. Health, Center for Health Data, Health Care Statistics.  
 R428-11. Health Data Authority Ambulatory Surgical Data Reporting Rule.**

**[R428-11-1. Legal Authority.**

————— This rule is promulgated under authority granted by Title 26, Chapter 33a, and in accordance with the Health Data Plan.

**R428-11-2. Purpose.**

————— This rule establishes the reporting standards for ambulatory surgery data by licensed hospitals and ambulatory surgical facilities. The data are needed to develop and maintain a statewide ambulatory surgical data base.

**R428-11-3. Definitions.**

————— These definitions apply to rule R428-11.

- (1) "Office" as defined in R428-2-3(A).
- (2) "Ambulatory surgery data" means the consolidation of complete billing, medical, and personal information describing a patient, the services received, and charges billed for a surgical or diagnostic procedure treatment in an outpatient setting into a data record.
- (3) "Hospital" means a facility that is licensed under R432-100.
- (4) "Ambulatory surgical facility" means a facility that is licensed under R26-21-2.
- (5) "Patient Social Security number" is the social security number of the patient receiving health care.
- (6) "Record linkage number" is an irreversible, unique, encrypted number that will replace patient social security number. The Office assigns the number to serve as a control number for data analysis.
- (7) "Electronic media" means a magnetic tape or a diskette.
- (8) "Electronic transaction" means to submit data directly via electronic connection from a hospital or ambulatory surgery facility to the Office according to Electronic Data Interchange standards established by the American National Standards Institute's Accredited Standards Committee, known as the Health Care Transaction Set (837) ASC X 12N.
- (9) "Committee" means the Utah Health Data Committee created by Title 26, Chapter 33a.

**R428-11-4. Reporting Source of Ambulatory Surgical Data.**

————— The reporting sources for ambulatory surgery data are Utah licensed general acute care hospitals and ambulatory surgical facilities.

- (1) A general acute care hospital shall report discharge data records for each surgical outpatient discharged from its facility.
- (2) An ambulatory surgical facility shall report surgical and diagnostic procedure data records for each patient discharged from its facility.
- (3) A hospital or ambulatory surgical facility may designate an intermediary or may submit ambulatory surgery data directly to the Office.
- (4) Each hospital and ambulatory surgical facility is responsible for compliance with the rule. Use of a designated intermediary does not relieve the hospital or ambulatory surgical facility of its reporting responsibility.
- (5) Each hospital and ambulatory surgical facility shall designate a department and a person within the department who is responsible for submitting the discharge data records. This person shall also be responsible for communicating with the Office.

**R428-11-5. Electronic Media Data Submittal Schedule.**

————— Each hospital and ambulatory surgical facility shall submit to the Office a single outpatient surgical data record for each patient discharged according to the schedule shown in Table 1, Hospital and Ambulatory Surgical Facility Data Submittal Schedule, or a schedule mutually agreed upon by the Office and hospital or ambulatory surgical facility.

TABLE 1  
HOSPITAL AND AMBULATORY SURGICAL FACILITY  
DATA SUBMITTAL SCHEDULE

IF PATIENT'S DATE OF DISCHARGE IS BETWEEN:	DISCHARGE DATA RECORD IS DUE BY:
January 1 through March 31	May 15
April 1 through June 30	August 15
July 1 through September 30	November 15
October 1 through December 31	February 15

For a patient with multiple discharges, each hospital or ambulatory surgical facility submitting electronic media shall submit a single data record for each discharge. For a patient with multiple billing claims each hospital or ambulatory surgical facility shall consolidate the multiple billings into a single data record for submission after the patient's discharge.

**R428-11-6. Electronic Transaction Data Submittal.**

Hospitals and ambulatory surgical centers may request data submission by electronic transaction, as submitted to the payer through the Exemptions, Extensions, and Waivers process.

**R428-11-7. Selection of Records to Submit via Electronic Media.**

Each hospital or ambulatory surgical facility licensed in Utah shall report to the Office information relating to any patient surgical or diagnostic procedure falling within the types described in Table 2, as defined by the corresponding CPT codes and ICD-9-CM codes. In case of changes in the CPT and/or ICD-9-CM codes in future versions, the most current list shall override the lists in Table 2.

TABLE 2  
TYPES OF SURGICAL SERVICE TO BE SUBMITTED  
IF PERFORMED IN OPERATING OR PROCEDURE ROOM

DESCRIPTION	CPT CODES	ICD-9-CM CODES
Mastectomy	19120-19220	850-8599
Musculoskeletal	20000-29909	760-8499
Respiratory	30000-32999	300-3499
Cardiovascular	33010-37799	350-3999
Lymphatic	38100-38999	400-4199
Diaphragm	39501-39599	
Digestive System	40490-49999	420-5499
Urinary	50010-53899	550-5999
Male Genital	54000-55899	600-6499
Laparoscopy	56300-56399	
Female Genital	56405-58999	650-7199
Endocrine/Nervous	60000-64999	010-0799
Eye	65091-68899	080-1699
Ear	69000-69979	180-2099
Heart Catheterization	93501-93660	3721-3723
Nose, Mouth, Pharynx		210-2999

**R428-11-8. Data Element Reporting via Electronic Media.**

Table 3 displays the reportable data elements. Hospitals and ambulatory surgical facilities shall report the required data elements shown in Table 3, beginning December 15, 1997.

The Office shall provide to each hospital and ambulatory surgical facility an Ambulatory Surgery Data Submittal Technical Manual which outlines the specifications, format, and types of data to report. The Ambulatory Surgery Data Submittal Technical Manual is effective on November 15, 1997.

TABLE 3  
REQUIRED AMBULATORY SURGERY AND MAJOR PROCEDURE  
DATA ELEMENTS FOR ELECTRONIC MEDIA REPORTING

CATEGORY:	NAME:
Provider	
1	Medical care provider identifier
Patient	
2	Patient control number
3	Patient's medical chart number
4	Patient's Social Security Number
5	Patient's postal zip code for address
6	Patient's date of birth
7	Patient's gender
Service	
8	Admission date
9	Source of admission
10	Patient's status
11	Discharge date
Diagnosis and Treatment	
12	Diagnosis codes
13	Procedure codes
14	Date of principal procedure
15	Modifiers for procedure codes
16	ICD9 Procedure Codes
17	Related Diagnosis Codes
Charge	
18	Statement covers period
19	Total facility charge
20	Primary, secondary, and third sources of payment
Physician	
21	Performing physician ID
22	Additional physicians' IDs
23	Type of bill (for hospital, if applicable)

**R428-11-9. Compiling of Electronic Transactions.**

The Office shall retain records and data elements that meet specifications listed in Tables 2 and 3 and discard all other records and data elements received via electronic transaction.

**R428-11-10. Data Security and Integrity.**

The Office shall adopt an encryption method to mask patient identity and replace patient social security number with a record linkage number as the control number. The Office may not retain the original record containing patient social security number and shall destroy the original record containing patient social security number after the Department assures the validity of the patient record. The Department of Health may conduct on-site audits to verify the accuracy of limited data fields within 18 months of submittal.

**R428-11-11. Exemptions, Extensions, and Waivers.**

(1) Hospitals and ambulatory surgical facilities may submit requests for exemptions or waivers to the Committee at least 60 calendar days prior to the due date as listed in the data submittal schedule in R428-11-5, Table 1. Exemptions or waivers to the requirements of this rule may be granted for a maximum of one calendar year. A hospital or ambulatory surgical facility wishing an exemption or waiver for more than one year must submit a request annually.

(2) Requests for extensions must be submitted to the Office at least ten working days prior to the due date as listed in the data submittal schedule. Extensions to the submittal schedule may be granted for a maximum of 30 calendar days. The hospital or ambulatory surgical facility must separately request each additional 30 calendar day extension.

~~(3) The Committee may grant exemptions or waivers when the hospital or ambulatory surgical facility demonstrates that compliance imposes an unreasonable cost to the hospital. The Office may grant extensions when the hospital or ambulatory surgical facility documents that technical or unforeseen difficulties prevent compliance. A petitioner requesting an exemption, extension, or waiver shall make the request in writing. A request for exemption, extension, or waiver must contain the following information:~~

~~(a) the petitioner's name, mailing address, telephone number, and contact person;~~

~~(b) the date the exemption, extension, or waiver is to start and end;~~

~~(c) a description of the relief sought, including reference to the specific sections of the rule;~~

~~(d) a statement of facts, reasons, or legal authority in support of the request; and~~

~~(e) a proposed alternative to the requirement.~~

~~(4) A form for exemption, extension, or waiver can be found in the technical manuals available from the Office. Exemptions, extensions, or waivers may be granted for the following:~~

~~(a) Hospital or ambulatory surgical facility exemption: All hospitals and ambulatory surgical facilities are subject to the reporting requirements. Reasons justifying an exemption might be such as a circumstance where the hospital makes no effort to charge any patient for service.~~

~~(b) Discharge data consolidation exemption: This exemption allows variation in the data consolidation requirement, such as allowing the hospital to submit multiple records containing the reportable data elements rather than a single consolidated discharge data record.~~

~~(c) Reportable data element exemption: Each request for a data element exemption must be made separately.~~

~~(d) Submission media exemption: This exemption allows variation in the submission media, such as a paper copy of the uniform billing form.~~

~~(e) Submittal schedule extension: The request must specifically document the technical or unforeseen difficulties that prevent compliance.~~

~~(f) Submission format waiver: This waiver allows variation in the submission format. Each request must state an alternative transfer electronic media, its format, and the record layout for the discharge data records. Granting of this waiver is dependent on the Office's ability to process the submittal media and format with available computer resources.~~

**R428-11-12. Penalties.**

~~Pursuant to Section 26-23-6, any person that violates any provision of this rule may be assessed an administrative civil money penalty not to exceed \$3,000 upon an administrative finding of a first violation and up to \$5,000 for a subsequent similar violation within two years. A person may also be subject to penalties imposed by a civil or criminal court, which may not exceed \$5,000 or a class B misdemeanor for the first violation and a class A misdemeanor for any subsequent similar violation within two years.]~~

**R428-11-1. Legal Authority.**

~~This rule is promulgated under authority granted by Title 26, Chapter 33a, and in accordance with the Health Data Plan.~~

**R428-11-2. Purpose.**

This rule establishes the reporting standards for ambulatory surgery data by licensed hospitals and ambulatory surgical facilities. The data will be used to develop and maintain a statewide ambulatory surgical data base.

**R428-11-3. Source of Ambulatory Surgical Data.**

The reporting sources for ambulatory surgery data are Utah licensed general acute care hospitals and ambulatory surgical facilities.

(1) A general acute care hospital shall report discharge data records for each surgical outpatient discharged from its facility.

(2) An ambulatory surgical facility shall report surgical and diagnostic procedure data records for each patient discharged from its facility.

(3) For a patient with multiple discharges, each hospital or ambulatory surgical facility submitting electronic media shall submit a single data record for each discharge. For a patient with multiple billing claims each hospital or ambulatory surgical facility shall consolidate the multiple billings into a single data record for submission after the patient's discharge.

(4) A hospital or ambulatory surgical facility may designate an intermediary or may submit ambulatory surgery data directly to the Office.

(5) Each hospital and ambulatory surgical facility is responsible for compliance with the rule. Use of a designated intermediary does not relieve the hospital or ambulatory surgical facility of its reporting responsibility.

(6) Each hospital and ambulatory surgical facility shall designate a department or other appropriate entity and a person who is responsible for submitting the discharge data records. This person shall also be responsible for communicating with the Office.

(7) The Department of Health may conduct on-site audits to verify the accuracy of all submittals.

**R428-11-4. Data Submittal Schedule.**

Each hospital and ambulatory surgical facility shall submit to the Office outpatient surgical data according to the schedule shown in Table 1. The Director of the Office may approve an alternate schedule as long as it meets the needs of the committee.

TABLE

(1) DATA SUBMITTAL SCHEDULE

IF PATIENT'S DATE OF DISCHARGE IS BETWEEN:	DISCHARGE DATA RECORD IS DUE BY:
January 1 through March 31	May 15
April 1 through June 30	August 15
July 1 through September 30	November 15
October 1 through December 31	February 15

**R428-11-5. Data Element Reporting.**

(1) Each data supplier shall submit to the Office information relating to any patient surgical or diagnostic procedure falling within the types described in Table 2, as defined by the corresponding CPT codes and ICD-9-CM codes. In case of changes in the CPT and/or ICD-9-CM codes in future versions, the most current list shall override the lists in Table 2.

(2) Table 3 lists the required data elements. Each data supplier shall collect and submit all data elements shown in Table 3 based on the specifications in the Submittal Manual for Ambulatory Surgery Data.

(3) Each data supplier shall collect patient social security number as a required data element and report the patient social security number with the complete discharge record according to the submittal schedule.

(4) The Office shall adopt an encryption method for the patient social security number by creating a record linkage number as the control number.

(5) Each data supplier shall submit the reported data elements on encrypted electronic media acceptable to the Office or send them electronically through the Utah Health Information Network or another compatible electronic data interchange network or other secure upload or secure email method.

TABLE

(2) SURGICAL SERVICES TO BE SUBMITTED

DESCRIPTION	CPT CODES	ICD-9-CM CODES
Mastectomy	19120-19396	850-8599
Musculoskeletal	20000-29909	760-8499
Respiratory	30000-32999	300-3499
Cardiovascular	33010-37799	350-3999
Lymphatic	38100-38999	400-4199
Diaphragm	39501-39599	
Digestive System	40490-49999	420-5499
Urinary	50010-53899	550-5999
Male Genital	54000-55899	600-6499
Laparoscopy	56300-56399	
Female Genital	56405-58999	650-7199
Endocrine/Nervous	60000-64999	010-0799
Eye	65091-68899	080-1699
Ear	69000-69979	180-2099
Heart Catheterization	93501-93660	3721-3723
Nose, Mouth, Pharynx		210-2999

NOTE (1): IF PERFORMED IN OPERATING OR PROCEDURE ROOM

TABLE

(3) REQUIRED DATA ELEMENTS

CATEGORY:	NAME:
Provider	
1	Medical care provider identifier
Patient	
2	Patient control number
3	Patient's medical chart number
4	Patient's Social Security Number
5	Patient's postal zip code for address
6	Patient's date of birth
7	Patient's gender
Service	
8	Admission date
9	Source of admission
10	Patient's status
11	Discharge date
Diagnosis and Treatment	
12	Diagnosis codes
13	Procedure codes
14	Date of principal procedure
15	Modifiers for procedure codes
16	ICD9 Procedure Codes
17	Related Diagnosis Codes
Charge	
18	Statement covers period
19	Total facility charge

20	Primary, secondary, and third sources of payment
Physician	
21	Performing physician ID
22	Additional physicians' IDs
23	Type of bill (for hospital, if applicable)

**KEY: health, hospital policy, health planning**

**Date of Enactment or Last Substantive Amendment: [February 27, 2004]2014**

**Notice of Continuation: November 14, 2012**

**Authorizing, and Implemented or Interpreted Law: 26-33a-104; 26-33a-108**

Health, Center for Health Data, Health Care Statistics  
**R428-12**  
 Health Data Authority Survey of Enrollees in Health Plans

**NOTICE OF PROPOSED RULE**  
 (Amendment)  
 DAR FILE NO.: 38566  
 FILED: 06/02/2014

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** This amendment is in response to a review of Title R428 that identified inconsistencies in the writing of the rule.

**SUMMARY OF THE RULE OR CHANGE:** This amendment removes definitions of terms, exemption and extension procedures, and penalties contained in Rule R428-2. It also makes technical and conforming amendments.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Title 26, Chapter 33a

**ANTICIPATED COST OR SAVINGS TO:**

◆ **THE STATE BUDGET:** This amendment makes technical changes that improve consistency and clarity of Rule R428-12. The Utah Department of Health (UDOH) determines that these changes will not create any cost or savings impact to the state budget or UDOH's budget, since the changes will not increase workload and can be carried out with existing budget.

◆ **LOCAL GOVERNMENTS:** This filing does not create any direct cost or savings impact to local governments since they are not directly affected by the rule; nor are local governments indirectly impacted because the rule does not create a situation requiring services from local governments.

◆ **SMALL BUSINESSES:** None--Small businesses are not impacted by this rule change, with all potentially impacted having more than 50 employees. As a result, the rule will have no effect on small business budgets for costs or savings.

◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: Minor technical changes in Rule R428-12 will not create any cost or savings to businesses, individuals, local governments or persons that are not small businesses.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for persons affected by these changes to Rule R428-12. Although there are several modifications within this amendment, they will not impact affected persons.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: No effect on business because it makes no material change in current practices.

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

HEALTH  
 CENTER FOR HEALTH DATA,  
 HEALTH CARE STATISTICS  
 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:

- ◆ Mike Martin by phone at 801-538-9205, by FAX at 801-538-9916, or by Internet E-mail at mikemartin@utah.gov
- ◆ Norman Thurston by phone at 801-538-7052, by FAX at 801-237-0787, or by Internet E-mail at nthurston@utah.gov
- ◆ Rex Olsen by phone at 801-538-9498, by FAX at 801-536-0940, or by Internet E-mail at rolsen@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/15/2014

THIS RULE MAY BECOME EFFECTIVE ON: 07/22/2014

AUTHORIZED BY: David Patton, PhD, Executive Director

**R428. Health, Center for Health Data, Health Care Statistics.**  
**R428-12. Health Data Authority Survey of Enrollees in Health Plans.**

**R428-12-1. Legal Authority.**

This rule is promulgated under authority granted by Title 26, Chapter 33a [~~Utah Code Annotated~~] and in accordance with the Utah Health Plan Performance Measurement Plan.

**R428-12-2. Purpose.**

This rule establishes the process for the collection of [~~Health Plan~~]enrollee satisfaction data from Utah [~~licensed health plans~~. The data]carriers that are needed to promote informed consumer choice in [~~health~~]plan selection and measure the quality of care provided [~~by~~]to enrollees of Utah [~~licensed health maintenance organizations~~]carriers.

**[R428-12-3. Definitions.**

~~These definitions apply to rule R428-12:~~

- ~~(1) "Office" as defined in R428-2-3A.~~
- ~~(2) "Health plan" means:~~
  - ~~(a) "any insurer under a contract with the Utah Department of Health to serve clients under Title XIX or Title XXI of the Social Security Act;~~
  - ~~(b) a "Health Maintenance Organization (HMO)" defined as any person or entity operating in Utah which is licensed under Title 31A, Chapter 8, Utah Code;~~
  - ~~(c) a non-electing church plan as described in Section 410 (d), Internal Revenue Code; and~~
  - ~~(d) a "Preferred Provider Organization (PPO)" is defined as all commercial insurance companies engaged in the business of health care insurance in the state of Utah (as defined in 31A-1-301(75)(a) and (b)), and offers an insurance product where an insured member has the choice of using either an in-network provider at a discounted rate, also called preferred providers, or any out of network provider at a higher rate, also called non-preferred provider. Payments to preferred and non-preferred providers are paid according the preferred provider contract provisions as described in 31A-22-617(2)(a)(b).~~
- ~~(3) "NCQA" means the National Committee for Quality Assurance, a not-for-profit organization committed to evaluating and reporting on the quality of managed care plans.~~
- ~~(4) "Enrollee" means any individual who has entered into a contract with a health maintenance organization for health care or on whose behalf such an arrangement has been made.~~
- ~~(5) "Eligible Enrollee" means an enrollee who meets the criteria outlined by HEDIS 2012, Volume 3, Specifications for Survey Measures published by NCQA.~~
- ~~(6) "Sampling Frame" means the health plan enrollment file as described criteria outlined by HEDIS 2012, Volume 3, Specifications for Survey Measures published by NCQA. The sampling frame includes only records that meet the eligibility criteria in R428-12-3(4).~~
- ~~(7) "Sample file" means the data file containing records of selected eligible enrollees drawn by the survey agency from the health plan's sampling frame.~~
- ~~(8) "Survey agency" means an independent contractor on contract with the Office of Health Care Statistics.~~

**]R428-12-[4]3. Creating the Sampling Frame.**

(1) The sources for enrollment data are [~~health plan~~]Utah carriers [~~licensed in Utah~~]. Each [~~health plan~~]carrier shall include in the sampling frame all eligible enrollees. [~~The health plan may not exclude any record except those that do not meet eligibility criteria as specified in R428-12-3(4).~~]

(2) Each [~~health plan~~]carrier shall create the sampling frame according to the criteria outlined [~~by HEDIS 2012, Volume 3, in the NCQA Survey Specifications~~] [~~for Survey Measures published by NCQA~~].

(3) The sampling frame and procedures used by the reporting [~~health plan~~]carrier are subject to audit by the Office of Health Care Statistics [~~against aggregate statistics for the submitting health plan~~].

**R428-12-[5]4. Sampling Frame Submission.**

(1) The ~~[health plan shall create the sampling frame according to the eligibility criteria in R428-12-3(4). The health plan]~~carrier shall copy the sampling frame~~[(formatted as described by HEDIS 2012, Volume 3, Specifications for Survey Measures published by NCQA)]~~ using an electronic medium acceptable to the survey agency and then send to the survey agency.

(2) The ~~[health plan]~~carrier shall fill out the "Sample Description" sheet to be provided by the survey agency and send it with the electronic sample file. Each ~~[health plan]~~carrier shall submit to the survey agency the sampling frame for each of its ~~[health plan]~~ products no later than four weeks after the receipt of the sampling memo from the survey agency.

**~~[R428-12-6. Penalties.~~**

~~Pursuant to Section 26-23-6, any person that violates any provision of this rule may be assessed an administrative civil money penalty not to exceed \$3,000 upon an administrative finding of a first violation and up to \$5,000 for a subsequent similar violation within two years. A person may also be subject to penalties imposed by a civil or criminal court, which may not exceed \$5,000 or a class B misdemeanor for the first violation and a class A misdemeanor for any subsequent similar violation within two years.~~

**~~[R428-12-[7]5. Administration of Survey.~~**

~~Each year, the Utah Department of Health, in consultation with [health plans]carriers, will determine the target survey population and the scope of the survey.~~

**KEY: health maintenance organization, performance measurement, health care quality, preferred provider organization**

**Date of Enactment or Last Substantive Amendment: ~~[July 2, 2012]~~2014**

**Notice of Continuation: November 30, 2011**

**Authorizing, and Implemented or Interpreted Law: 26-33a-104; 26-33a-108**

## Health, Center for Health Data, Health Care Statistics

### R428-13

## Health Data Authority. Audit and Reporting of Health Plan Performance Measures

### NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 38567

FILED: 06/02/2014

### RULE ANALYSIS

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** This amendment is in response to a review of Title R428 that identified inconsistencies in the writing of the rule.

**SUMMARY OF THE RULE OR CHANGE:** This amendment removes definitions of terms, exemption and extension procedures, and penalties contained in Rule R428-2. It also makes technical and conforming amendments.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Title 26, Chapter 33a

**ANTICIPATED COST OR SAVINGS TO:**

◆ **THE STATE BUDGET:** This amendment makes technical changes that improve consistency and clarity of Rule R428-13. The Utah Department of Health (UDOH) determines that these changes will not create any cost or savings impact to the state budget or UDOH's budget, since the changes will not increase workload and can be carried out with existing budget.

◆ **LOCAL GOVERNMENTS:** This filing does not create any direct cost or savings impact to local governments since they are not directly affected by the rule; nor are local governments indirectly impacted because the rule does not create a situation requiring services from local governments.

◆ **SMALL BUSINESSES:** None--Small businesses are not impacted by this rule change, with all potentially impacted having more than 50 employees. As a result, the rule will have no effect on small business budgets for costs or savings.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Minor technical changes in Rule R428-13 will not create any cost or savings to businesses, individuals, local governments or persons that are not small businesses.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** There are no compliance costs for persons affected by these changes to Rule R428-13. Although there are several modifications within this amendment, they will not impact affected persons.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** No effect on business because it makes no material change in current practices.

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

HEALTH  
CENTER FOR HEALTH DATA,  
HEALTH CARE STATISTICS  
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:**

◆ Mike Martin by phone at 801-538-9205, by FAX at 801-538-9916, or by Internet E-mail at mikemartin@utah.gov  
◆ Norman Thurston by phone at 801-538-7052, by FAX at 801-237-0787, or by Internet E-mail at nthurston@utah.gov



◆ Rex Olsen by phone at 801-538-9498, by FAX at 801-536-0940, or by Internet E-mail at rolsen@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/15/2014

THIS RULE MAY BECOME EFFECTIVE ON: 07/22/2014

AUTHORIZED BY: David Patton, PhD, Executive Director

#### **R428. Health, Center for Health Data, Health Care Statistics.**

#### **R428-13. Health Data Authority. Audit and Reporting of Health Plan Performance Measures.**

##### **R428-13-1. Legal Authority.**

This rule is promulgated under authority granted by Title 26, Chapter 33a, Utah Code, and in accordance with the Utah Health Care Performance Measurement Plan.

##### **R428-13-2. Purpose.**

This rule establishes ~~the process for the collection of performance measurement data [collection and reporting system for health plans licensed in the State of ]~~from Utah ~~[and certain health plans. The data]carriers that~~ are needed to promote informed consumer choice in ~~[health-]plan selection and measure the quality of care provided [by-]to enrollees of Utah [health plans]carriers.~~

##### **[R428-13-3. Definitions.**

These definitions apply to rule R428-13:

- (1) "Office" as defined in R428-2-3A.
- (2) "Health plan" means:
  - (a) any insurer under a contract with the Utah Department of Health to serve clients under Title XIX or title XXI of the Social Security Act;
  - (b) a "Health Maintenance Organization (HMO)" is defined as any person or entity operating in Utah which is licensed under Title 31A, Chapter 8, Utah Code;
  - (c) a governmental plan as defined in Section 414(d), Internal Revenue Code;
  - (d) a non-electing church plan as described in Section 410 (d), Internal Revenue Code; and
  - (e) a "Preferred Provider Organization (PPO)" is defined as all commercial insurance companies engaged in the business of health care insurance in the state of Utah (as defined in 31A-1-301(75)(a) and (b)), and offers an insurance product where an insured member has the choice of using either an in network provider at a discounted rate, also called preferred providers, or any out of network provider at a higher rate, also called non-preferred provider. Payments to preferred and non-preferred providers are paid according the preferred provider contract provisions as described in 31A-22-617(2)(a)(b).
- (3) "Utah Health Care Performance Measurement Plan" means the plan for data collection and public reporting of health-related measures, adopted by the Utah Health Data Committee to establish a statewide health performance reporting system.
- (4) "NCQA" means the National Committee for Quality Assurance, a not-for-profit organization committed to evaluating and reporting on the quality of managed care plans.

(5) "Performance Measure" means the quantitative, numerical measure of an aspect of the health plan, or its membership in part or in its entirety, or qualitative, descriptive information on the health plan in its entirety as described in HEDIS.

(6) "HEDIS" means the Healthcare Effectiveness Data and Information Set, a set of standardized performance measures developed by the NCQA.

(7) "HEDIS data" means the complete set of HEDIS measures calculated by the health plans according to NCQA specifications, including a set of required measures and voluntary measures defined by the department, in consultation with the health plans.

(8) "Audited HEDIS data" means HEDIS data verified by an NCQA certified audit agency.

(9) "Committee" means Utah Health Data Committee established under the Utah Health Data Authority Act, Title 26, Chapter 33a, Utah Code.

(10) "Covered period" means the calendar year on which the data used for calculation of HEDIS measures is based.

(11) "Submission year" means the year immediately following the covered period.

##### **[R428-13-[4]3. Submission of Performance Measures.**

(1) Each ~~[health plan]carrier~~ shall compile and submit HEDIS data to the Office according to this rule.

(2) By ~~[July]January~~ 1 of each year, ~~[all health plans]each carrier~~ shall submit to the Office ~~[audited]a plan for creating and providing~~ HEDIS data for the preceding calendar year.

(3) By ~~July~~ 1 of each year, each carrier shall submit to the ~~Office~~ HEDIS data for the preceding calendar year.

(4) Each ~~[health plan]carrier~~ shall contract with an independent audit agency certified by the NCQA to verify the HEDIS data prior to ~~[the health plan's]submitting it to the Office.~~

(4)5 Each ~~[health plan]carrier~~ may employ the rotation strategy for HEDIS measures developed and updated by NCQA.

(5)6 If a ~~[health plan]carrier~~ presents "Not Reported (NR)" for required measures, it must document why it did not report the required measure.

(6)7 The auditor shall follow the guidelines and procedures contained in ~~[2012: Volume 5:]the NCQA~~ HEDIS ~~[Compliance Audit: Standards, Policies, and Procedures published by NCQA]Specifications.~~

(7)8 Each ~~[health plan]carrier~~ shall cause its contracted audit agency to submit a copy of the audit agency's report by July 1 of the submission year to the Office.

(8)9 Each ~~[health plan]carrier~~ shall cause its contracted audit agency to submit a copy of the audit agency's final report by August 15 of the submission year to the Office. The final report shall incorporate the ~~[health plan's]carrier's~~ comments.

##### **R428-13-[5]4. Release of Performance Measures.**

(1) The Health Data Committee shall follow ~~[NCQA's-]the requirements in the NCQA HEDIS [Compliance Audit: Standards, Policies, and Procedures-]Specifications~~ to determine the HEDIS Data Set that the Office may include in reports for public release for public use.

(2) The Office shall give ~~[health plans]carriers~~ 35 days to review any report ~~using data received under this Section~~ which

identifies it by name. The identified ~~[health plan]~~carrier may submit comments and alternative interpretations to the Office.

#### **R428-13-~~6~~5. Exemptions.**

(1) ~~[A health plan]~~Notwithstanding the requirements in Subsection R428-2-11(2), a carrier that cannot ~~[meet]~~comply with the ~~[reporting]~~requirements of this rule ~~[may]~~must request an exemption by January 1 of ~~[each]~~the relevant submission year~~[by submitting to the Office a written request for an exemption, accompanied by all documentation necessary to establish the health plan's inability to report].~~

(2) A ~~[health plan]~~carrier may request an exemption ~~from this rule~~ if the ~~[HMO or health plan]~~carrier did not operate in Utah for the reporting year, if the number of covered lives is too low for HEDIS standards, or for other similarly prohibitive circumstances beyond the ~~[health plan's]~~carrier's control.

~~[(2)]~~3 The Office may request additional information from the ~~[HMO and health plan]~~carrier relevant to the exemption ~~[or extension]~~request. ~~[If the committee denies the exemption, the health plan may resubmit the request to the Office if it has additional information or analysis bearing on the request.]~~

#### **~~[R428-13-7. Penalties.~~**

~~Pursuant to Section 26-23-6, any person that violates any provision of this rule may be assessed an administrative civil money penalty not to exceed \$3,000 upon an administrative finding of a first violation and up to \$5,000 for a subsequent similar violation within two years. A person may also be subject to penalties imposed by a civil or criminal court, which may not exceed \$5,000 or a class B misdemeanor for the first violation and a class A misdemeanor for any subsequent similar violation within two years.~~

**]KEY: health, health planning, health policy**

**Date of Enactment or Last Substantive Amendment: ~~[July 2, 2012]~~2014**

**Notice of Continuation: November 14, 2012**

**Authorizing, and Implemented or Interpreted Law: 26-33a**

## Health, Center for Health Data, Health Care Statistics

### **R428-15**

## Health Data Authority Health Insurance Claims Reporting

### **NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 38568

FILED: 06/02/2014

### **RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** This amendment is in response to a review of Title R428 that identified inconsistencies in the writing of the rule.

**SUMMARY OF THE RULE OR CHANGE:** This amendment removes definitions of terms, exemption and extension procedures, and penalties contained in Rule R428-2. It also makes technical and conforming amendments.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Title 26, Chapter 33a

**ANTICIPATED COST OR SAVINGS TO:**

♦ **THE STATE BUDGET:** This amendment makes technical changes that improve consistency and clarity of Rule R428-15. The Utah Department of Health (UDOH) determines that these changes will not create any cost or savings impact to the state budget or UDOH's budget, since the changes will not increase workload and can be carried out with existing budget.

♦ **LOCAL GOVERNMENTS:** This filing does not create any direct cost or savings impact to local governments since they are not directly affected by the rule; nor are local governments indirectly impacted because the rule does not create a situation requiring services from local governments.

♦ **SMALL BUSINESSES:** None--Small businesses are not impacted by this rule change, with all potentially impacted having more than 50 employees. As a result, the rule will have no effect on small business budgets for costs or savings.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Minor technical changes in Rule R428-15 will not create any cost or savings to businesses, individuals, local governments or persons that are not small businesses.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** There are no compliance costs for persons affected by these changes to Rule R428-15. Although there are several modifications within this amendment, they will not impact affected persons.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** No effect on business because it makes no material change in current practices.

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

HEALTH  
CENTER FOR HEALTH DATA,  
HEALTH CARE STATISTICS  
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:**

♦ Mike Martin by phone at 801-538-9205, by FAX at 801-538-9916, or by Internet E-mail at mikemartin@utah.gov  
♦ Norman Thurston by phone at 801-538-7052, by FAX at 801-237-0787, or by Internet E-mail at nthurston@utah.gov

◆ Rex Olsen by phone at 801-538-9498, by FAX at 801-536-0940, or by Internet E-mail at rolsen@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/15/2014

THIS RULE MAY BECOME EFFECTIVE ON: 07/22/2014

AUTHORIZED BY: David Patton, PhD, Executive Director

**R428. Health, Center for Health Data, Health Care Statistics.  
R428-15. Health Data Authority Health Insurance Claims Reporting.**

**R428-15-1. Legal Authority.**

This rule is promulgated under authority granted in Utah Code Title 26, Chapter 33a and in accordance with the Utah Health Data Plan as adopted in Rule R428-1.

**R428-15-2. Purpose.**

This rule establishes requirements for certain entities that pay for health care to submit data to the Utah Department of Health.

**[R428-15-3. Definitions.**

These definitions apply to rule R428-15, in addition:

(1) "Committee" means the Utah Health Data Committee as defined in 26-33a-102.

(2) "Office" means the Office of Health Care Statistics within the Utah Department of Health, which serves as staff to the Utah Health Data Committee.

(3) "Carrier" means:

(a) a commercial insurance company engaged in the business of health care insurance in the state of Utah, as defined in 31A-1-301, including a business under an administrative services organization or administrative services contract arrangement;

(b) a third party administrator, as defined in 31A-1-301; licensed by the state of Utah that collects premiums or settles claims of residents of the state, for health care insurance policies or health benefit plans, as defined in 31A-1-301;

(c) a governmental plan as defined in Section 414 (d), Internal Revenue Code;

(d) a non-eclecting church plan as described in Section 410 (d), Internal Revenue Code;

(e) a licensed professional employer organization acting as an administrator of a health care insurance policy;

(f) a health benefit plan funded by a self-insurance arrangement; or

(g) a dental stand-alone company as defined in 31A-8-101.

(4) "Claim" means a request or demand on a carrier for payment of a benefit.

(5) "Health care claims data" means information consisting of, or derived directly from, member enrollment, medical claims, and pharmacy claims that this rule requires a carrier to report.

(6) "Adjudicated claim" means a claim submitted to a carrier for payment where the carrier has made a determination whether the services provided fall under the carrier's benefit.

(7) "Health Insurance" has the same meaning as found in Subsection 31A-1-301.

(8) "~~Technical specifications~~" means the ~~Technical Specifications and Data Submission Procedures for the State of Utah All Payer Database Version 1.3 for data submissions required prior to May 15, 2014 and the Utah All-Payer Claims Database Data Submission Guide Version 2 for data submissions beginning May 15, 2014. Both documents are adopted and incorporated by reference.~~

**[R428-15-4]3. Reporting Requirements.**

(1) Each carrier shall submit health care claims data described in the ~~[technical specifications]~~Data Submission Guide for Claims Data for each covered person where Utah is the covered person's primary residence, regardless of where the services are provided.

(2) Each carrier shall submit data for all fields contained in the ~~[technical specifications]~~Data Submission Guide for Claims Data if the data are available to the carrier. Each carrier shall notify the Office or its designee of any data elements that are required to be reported under this rule, but that are not available to the carrier.

(3) Each carrier shall submit the health care claims data on a monthly basis.

(4) Each monthly submission is due no later than the last day of the month following the month in which the carrier adjudicated the claim.

**[R428-15-5. Reporting Process.**

(1) Submission procedures and guidelines are described in detail in the technical specifications.

**R428-15-6. Extensions and Exemptions.**

(1) A carrier that covers fewer than 2,500 individual Utah residents is exempt from all requirements of this rule.

(2) The committee may grant exemptions when the carrier demonstrates that compliance imposes an unreasonable cost to the carrier. The committee may grant extensions when the carrier documents that technical or unforeseen difficulties prevent compliance.

(a) A carrier may request an extension for any deadline required in this rule. For each deadline for which the carrier requests an extension, the carrier must submit its request no less than 15 calendar days before the deadline in question.

(b) A carrier may request an exemption from any particular requirement or set of requirements of this rule. The carrier must submit a request for exemption no less than 30 calendar days before the date the carrier would have to comply with the requirement.

(3) The carrier requesting an extension or exemption shall include:

(a) The carrier's name, mailing address, telephone number, and contact person;

(b) the dates the exemption or extension is to start and end;

(c) a description of the relief sought, including reference to specific sections or language of the requirement;

(d) a statement of facts, reasons, or legal authority in support of the request; and

(e) a proposed alternative to the requirement or deadline.

(4) The committee may grant an extension for a maximum of 30 calendar days. A carrier wishing an additional extension must submit an additional, separate request.

~~(5) The committee may grant an exemption for a maximum of one calendar year. A carrier wishing an additional exemption must submit an additional, separate request.~~

~~**R428-15-7. Third-party Contractors.**~~

~~The Office may contract with a third party to collect and process the health care claims data and will prohibit it from using the data in any way but those specifically designated in the scope of work.~~

~~**R428-15-8]4. Carrier Registration.**~~

~~Each carrier required to submit health care claims data shall register by September 1 of each year. Each carrier newly required to submit health care claims data under this rule, either by a change to the rule or because it no longer qualifies for an exemption, shall register with the Office [by completing the registration on line at: <http://health.utah.gov/hda/apd/>] within 30 days of being required to submit.~~

~~**R428-15-9]5. Testing of Files.**~~

~~(1) Prior to February 14, 2014, each carrier required to report under this rule shall meet with the Office or its designee to establish a data submission testing plan and time line. Each carrier shall contact the Office to arrange this meeting by January 15, 2014.~~

~~(2) Each carrier shall, according to its data submission testing plan, submit to the Office or its designee a test dataset for determining compliance with the standards for data submission and participate in testing. This test dataset must be in the same format as required by the [technical specifications] Data Submission Guide for Claims Data as of May 15, 2014.~~

~~(3) Carriers that become subject to this rule after January 15, 2014 shall submit to the Office a dataset for determining compliance with the standards for data submission no later than 90 days after the first date of becoming subject to the rule.~~

~~**R428-15-10]6. Rejection of Files.**~~

~~The Office or its designee may reject and return any data submission that fails to conform to the submission requirements. A carrier whose submission is rejected shall resubmit the data in the appropriate, corrected format to the Office, or its designee within 10 state business days of notice that the data does not meet the submission requirements.~~

~~**R428-15-11]7. Replacement of Data Files.**~~

~~A carrier may replace a complete dataset submission if no more than one year has passed since the end of the month in which the file was submitted. However, the Office may allow a later submission if the carrier can establish exceptional circumstances for the replacement.~~

~~**R428-15-12]8. Limitation of Liability.**~~

~~As provided in [Utah Code] Section 26-25-1, [a carrier] any data supplier that submits data pursuant to this rule [including third-party administrators that submit employee data, is not] cannot be held liable for [providing] having provided the required information to the Department.~~

~~**R428-15-13. Penalties.**~~

~~Pursuant to Section 26-23-6, a carrier that violates any provision of this rule may be assessed an administrative civil money~~

~~penalty for each day of non-compliance. Fines may be imposed as follows:~~

- ~~(1) Not to exceed the sum of \$10,000 per violation  
(2) Each day of violation is a separate violation.~~

~~**]KEY: APCD, payers, claims, transparency**~~

~~**Date of Enactment or Last Substantive Amendment: [January 7,] 2014**~~

~~**Authorizing, and Implemented or Interpreted Law: 26-33a; 26-25**~~

**Health, Family Health and  
Preparedness, Child Care Licensing  
R430-6  
Background Screening**

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 38544

FILED: 05/19/2014

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The purpose of this change is to facilitate submission of background screening documents by giving providers a more workable time frame to do so. The current five-day time requirement is stricter than those for other agencies that run background screenings.

**SUMMARY OF THE RULE OR CHANGE:** The change increases the time frame to submit identifying information of new covered individuals from five to ten working days.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Title 26, Chapter 39

**ANTICIPATED COST OR SAVINGS TO:**

◆ **THE STATE BUDGET:** Some state agencies operate or sponsor child care programs. However, because this amendment would not change any of the requirements for child care programs, the Department does not anticipate that this rule will result in any new costs or savings to child care programs operated by state agencies.

◆ **LOCAL GOVERNMENTS:** Some local governments operate or sponsor child care programs. However, because this amendment would not change any of the requirements for child care programs, the Department does not anticipate that this rule will result in any new costs or savings to child care programs operated by state agencies.

◆ **SMALL BUSINESSES:** Almost all child care facilities are small businesses. However, because this amendment would not change any of the requirements for child care programs, the Department does not anticipate that this rule will result in any new costs or savings to child care programs operated by state agencies.

◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: Because this rule does not alter requirements for child care providers, the Department does not anticipate any new costs or savings to entities or persons that are not small businesses.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Because this rule does not impose any new requirement for child care providers, the Department does not anticipate any compliance costs for affected persons.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This should have modest benefit to business because it makes tracking background check requirements easier.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Simon Bolivar by phone at 801-803-4618, by FAX at 801-237-0786, or by Internet E-mail at sbolivar@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/15/2014

THIS RULE MAY BECOME EFFECTIVE ON: 07/22/2014

AUTHORIZED BY: David Patton, PhD, Executive Director

**R430. Health, Family Health and Preparedness, Child Care Licensing.**

**R430-6. Background Screening.**

**R430-6-1. Authority and Purpose.**

This rule is promulgated pursuant to Title 26, Chapter 39. It establishes requirements for background screenings for child care programs.

**R430-6-3. Submission of Background Screening Information.**

(1) Each applicant requesting a new or renewal child care license or residential certificate must submit to the Department the name and other required identifying information on all covered individuals.

(a) Unless an exception is granted under Subsection (4) below, the applicant shall ensure that the identifying information submitted for all individuals age 18 and older includes a fingerprint card and fee.

(b) The fingerprint card must be prepared either by a local law enforcement agency or an agency approved by local law enforcement.

(2) The applicant shall state in writing, based upon the applicant's information and belief, whether each covered individual:

(a) has been convicted of, has pleaded no contest to, or is currently subject to a plea in abeyance or diversion agreement for a felony or misdemeanor.

(b) has been adjudicated in juvenile court of committing an act which if committed by an adult would be a felony or misdemeanor;

(c) has ever had a supported finding by the Department of Human Services, or a substantiated finding from a juvenile court, of abuse or neglect of a child.

(3) Within ~~five~~ ten working days of a new covered individual beginning work at a child care facility or moving into a licensed or certified home, or a child turning 12 who resides in the facility where care is provided, the licensee or certificate holder must submit to the Department the name and other required identifying information for that individual.

(a) Unless an exception is granted under Subsection (4) below, the licensee or certificate holder shall ensure that the identifying information submitted for all individuals age 18 and older includes a fingerprint card and fee.

(b) The fingerprint card must be prepared either by a local law enforcement agency or an agency approved by local law enforcement.

(4)(a) Fingerprint cards are not required if:

(i) the covered individual has resided in Utah continuously for the past five years, or is less than 23 years of age and has resided in Utah continuously since the individual's 18th birthday; and

(ii) The covered individual will only be involved with child care in a facility that was licensed or certified prior to 1 July 2013,

(b) A covered individual who has previously submitted a fingerprint card under this section for a national criminal history record check and has resided in Utah continuously since that time is not required to submit a fingerprint card.

**KEY: child care facilities, background screening**

**Date of Enactment or Last Substantive Amendment: [~~September 1, 2013~~]2014**

**Notice of Continuation: August 3, 2012**

**Authorizing, and Implemented or Interpreted Law: 26-39**

Labor Commission, Adjudication  
**R602-2-4**  
Attorney Fees

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 38554

FILED: 05/23/2014

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The purpose of this proposed rule change is to update the maximum attorney fees awarded at the different stages of the workers' compensation legal process. The update is due to the rise of the average weekly wage of workers in Utah and the benefits calculated from that average.

**SUMMARY OF THE RULE OR CHANGE:** This rule changes raised the maximum fee for legal services rendered through final Commission action from \$17,468 to \$18,101, and for legal services rendered before the Court of Appeals from \$25,200 to \$26,114, and for legal services rendered before the Supreme Court from \$30,927 to \$32,048.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 34A-1-301 et seq. and Section 63G-4-102 et seq.

**ANTICIPATED COST OR SAVINGS TO:**

- ◆ **THE STATE BUDGET:** There should be no cost or savings to the state budget because attorney fees are paid from the benefits owed to injured workers.
- ◆ **LOCAL GOVERNMENTS:** There should be no cost or savings to local governments because attorney fees are paid from the benefits owed to injured workers.
- ◆ **SMALL BUSINESSES:** There should be no cost or savings to small businesses because attorney fees are paid from the benefits owed to injured workers.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There should be no cost or savings to persons other than small businesses, businesses, or local government entities because attorney fees are paid from the benefits owed to injured workers.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** There should be no compliance costs for affected persons as attorney fees are paid out the benefits owed to injured workers.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** There should be no fiscal impact from this rule on businesses as attorney fees are paid out of the benefits owed to injured workers.

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

LABOR COMMISSION  
ADJUDICATION  
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 Gunnarson by phone at 801-536-7928, by FAX at 801-530-6333, or by Internet E-mail at hgunnarson@utah.gov
- ◆ Jaceson Maughan by phone at 801-530-6036, by FAX at 801-530-6390, or by Internet E-mail at jacesonmaughan@utah.gov

**INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/15/2014**

**THIS RULE MAY BECOME EFFECTIVE ON: 07/22/2014**

**AUTHORIZED BY: Sherrie Hayashi, Commissioner**

**R602. Labor Commission, Adjudication.****R602-2. Adjudication of Workers' Compensation and Occupational Disease Claims.****R602-2-4. Attorney Fees.**

A. Pursuant to Section 34A-1-309, the Commission adopts the following rule to regulate and fix reasonable fees for attorneys representing applicants in workers' compensation or occupational illness claims.

1. This rule applies to all fees awarded after [January]July 1, 201[3]4.

2. Fees awarded prior to the effective date of this rule are determined according to the prior version of this rule in effect on the date of the award.

B. Upon written agreement, when an attorney's services are limited to consultation, document preparation, document review, or review of settlement proposals, the attorney may charge the applicant an hourly fee of not more than \$125 for time actually spent in providing such services, up to a maximum of four hours.

1. Commission approval is not required for attorneys fees charged under this subsection B. It is the applicant's responsibility to pay attorneys fees permitted by this subsection B.

2. In all other cases involving payment of applicants' attorneys fees which are not covered by this subsection B., the entire amount of such attorneys fees are subject to subsection C. or D. of this rule.

C. Except for legal services compensated under subsection B. of this rule, all legal services provided to applicants shall be compensated on a contingent fee basis.

1. For purposes of this subsection C., the following definitions and limitations apply:

a. The term "benefits" includes only death or disability compensation and interest accrued thereon.

b. Benefits are "generated" when paid as a result of legal services rendered after Adjudication Form 152 Appointment of Counsel form is signed by the applicant. A copy of this form must be filed with the Commission by the applicant's attorney.

c. In no case shall an attorney collect fees calculated on more than the first 312 weeks of any and all combinations of workers' compensation benefits.

2. Fees and costs authorized by this subsection shall be deducted from the applicant's benefits and paid directly to the attorney on order of the Commission. A retainer in advance of a Commission approved fee is not allowed.

3. Attorney fees for benefits generated by the attorney's services shall be computed as follows:

a. For all legal services rendered through final Commission action, the fee shall be 25% of weekly benefits generated for the first \$25,000, plus 20% of the weekly benefits generated in excess of \$25,000 but not exceeding \$50,000, plus 10% of the weekly benefits generated in excess of \$50,000, to a maximum of \$~~17,468~~18,101.

b. For legal services rendered in prosecuting or defending an appeal before the Utah Court of Appeals, an attorney's fee shall be awarded amounting to 30% of the benefits in dispute before the Court of Appeals. This amount shall be added to any attorney's fee awarded under subsection C.3.a. for benefits not in dispute before the Court of Appeals. The total amount of fees awarded under subsection C.3.a. and this subsection C.3.b. shall not exceed \$~~25,200~~26,114;

c. For legal services rendered in prosecuting or defending an appeal before the Utah Supreme Court, an attorney's fee shall be awarded amounting to 35% of the benefits in dispute before the Supreme Court. This amount shall be added to any attorney's fee awarded under subsection C.3.a. and subsection C.3.b. for benefits not in dispute before the Supreme Court. The total amount of fees awarded under subsection C.3.a, subsection C.3.b. and this subsection C.3.c shall not exceed \$~~30,927~~32,048.

D. The following expenses, fees and costs shall be presumed to be reasonable and necessary and therefore reimbursable in a workers' compensation claim:

1. Medical records and opinion costs;
2. Deposition transcription costs;
3. Vocational and Medical Expert Witness fees;
4. Hearing transcription costs;
5. Appellate filing fees; and
6. Appellate briefing expenses.

F. Other reasonable expenses, fees and costs may be awarded as reimbursable as the Commission may in its discretion decide in a particular workers compensation claim.

E. In "medical only" cases in which awards of attorneys' fees are authorized by Subsection 34A-1-309(4), the amount of such fees and costs shall be computed according to the provisions of subsection C and D.

**KEY: workers' compensation, administrative procedures, hearings, settlements**

**Date of Enactment or Last Substantive Amendment: [April 22,] 2014**

**Notice of Continuation: June 19, 2012**

**Authorizing, and Implemented or Interpreted Law: 34A-1-301 et seq.; 63G-4-102 et seq.**

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Labor Commission, Industrial Accidents  
**R612-200-8**  
 Burial Expenses

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 38553

FILED: 05/23/2014

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The purpose of this rule change is to update the maximum for burial expenses if the death results from an on-the-job injury. The language of the rule has been clarified or simplified, no substantive change in the language was made.

**SUMMARY OF THE RULE OR CHANGE:** This rule change increases the maximum for burial expenses from \$8,000 to \$9,000. The language of the rule has been clarified or simplified, no substantive change in the language was made.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 34A-1-104 and Section 34A-2-101 et seq. and Section 34A-3-101 et seq.

**ANTICIPATED COST OR SAVINGS TO:**

◆ **THE STATE BUDGET:** There would be a slight increase to the state budget for employers in those cases where an employee's death results from an on-the-job injury.

◆ **LOCAL GOVERNMENTS:** There would be a slight increase to local governments in those cases where an employee's death results from an on-the-job injury.

◆ **SMALL BUSINESSES:** There would be a slight increase to small businesses in those cases where an employee's death results from an on-the-job injury.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There would be a slight increase to persons other than small businesses, businesses, or local government entities in those cases where an employee's death results from an on-the-job injury.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** There would be a slight increase to the compliance costs for affected persons in those cases where an employee's death results from on-the-job injury.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** There should be minimal fiscal impact on businesses.

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

LABOR COMMISSION  
 INDUSTRIAL ACCIDENTS  
 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:

♦ Jaceson Maughan by phone at 801-530-6036, by FAX at 801-530-6390, or by Internet E-mail at jacesonmaughan@utah.gov

♦ Ron Dressler by phone at 801-530-6841, by FAX at 801-530-6804, or by Internet E-mail at rdressler@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/15/2014

THIS RULE MAY BECOME EFFECTIVE ON: 07/22/2014

AUTHORIZED BY: Sherrie Hayashi, Commissioner

**R612. Labor Commission, Industrial Accidents.****R612-200. Workers' Compensation Rules - Filing and Paying Claims.****R612-200-8. Burial Expenses.**

1. The Commission adopts this rule ~~[(+)-P]~~ pursuant to authority granted by Section 34A-2-418 of the Utah Workers' Compensation Act.

2. ~~I~~[i]f death results from ~~[an industrial]~~a work injury~~[-or occupational disease]~~, burial expenses ~~[in ordinary cases]~~up to \$9,000 shall be paid~~[-by the employer or insurance carrier up to \$8,000]~~. Unusual ~~[eases]~~circumstances may ~~[result in]~~require additional payment, either voluntarily ~~[by the employer or insurance carrier]~~ or through ~~[e]~~Commission order.

~~[(2)]~~3. ~~[Beginning in the year 2004 and every two years thereafter,]~~During each even-numbered year the Commission shall review this rule and ~~[shall]~~make such adjustments as are necessary so that ~~[the]~~payment of burial expense ~~[provided]~~required by this rule remains equitable when compared to the average cost of burial in this state.

**KEY:** workers' compensation, filing deadlines, time, administrative proceedings

**Date of Enactment or Last Substantive Amendment:** ~~[July 8, 2013]~~2014

**Authorizing, and Implemented or Interpreted Law:** 34A-2-101 et seq.; 34A-3-101 et seq.; 34A-1-104

Public Service Commission,  
Administration  
**R746-341**  
Lifeline/Link-up Rule

**NOTICE OF PROPOSED RULE**  
(Amendment)  
DAR FILE NO.: 38545  
FILED: 05/20/2014

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** This rule amendment is necessary to reflect changes in federal Lifeline program rules and procedures and changes to the Public Service Commission's contract with the Department of Workforce Services (DWS) for Lifeline program administration.

**SUMMARY OF THE RULE OR CHANGE:** The following is a summary of the amendments to the rule: 1) in Section R746-341-1, clarifies the applicability of the rule; 2) in Section R746-341-2, provides updated definitions to reflect changes in the telecommunications industry and federal law regarding Lifeline since the last substantive rule amendment; 3) in Section R746-341-3, provides a list of aid programs that qualify an applicant to participate in the Lifeline program. This section also provides a list of the documents a person must submit to be qualified under an income based standard. Additionally, this section outlines the duties of an applicant; 4) in Section R746-341-4, defines the duties of the program administrator reflecting current practice and anticipated improvements to procedures and capabilities; 5) in Section R746-341-5, defines the duties of the eligible telecommunications carrier (ETC) with respect to record keeping, documentation and customer interactions; 6) in Section R746-341-6, defines the Lifeline program service characteristics that must be present in a state Lifeline service offering; 7) in Section R746-341-7, clarifies that a Lifeline service offered by a federal ETC must be consistent with the federal program guidelines and relevant Public Service Commission orders and rules; 8) in Section R746-341-8, defines the required reporting requirements for state ETCs; 9) in Section R746-341-9, clarifies the funding source for the Lifeline program and allowable expenses; and 10) in Section R746-341-10; clarifies how state ETCs may be reimbursed for Lifeline benefits extended and associated expenses.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 54-4-1 and Section 54-4-4

**ANTICIPATED COST OR SAVINGS TO:**

♦ **THE STATE BUDGET:** Amending this rule will result in reduced administrative costs for the Lifeline program and a more streamlined process for removing non-qualifying participants from the Lifeline program.

♦ **LOCAL GOVERNMENTS:** The lifeline program will have no fiscal impact on local government because the program only disburses money to private companies. Local governments will not be required to collect taxes nor will they receive any payments. As such, this rule amendment will have no effect on local government.

♦ **SMALL BUSINESSES:** The lifeline program will have no fiscal impact on small businesses because the program only disburses money to eligible telecommunication carriers approved by the Public Service Commission. As a result, this rule amendment will have no effect on small businesses.



◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: This rule amendment will facilitate more accurate Lifeline program participant eligibility decisions.

COMPLIANCE COSTS FOR AFFECTED PERSONS: This rule amendment will not result in additional compliance costs for affected persons (companies) because the rule reduces the cost of participating in a program for the eligible telecommunication carriers. For customers receiving the benefit it will reduce their cost of telephone service.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule amendment will have no fiscal impact on businesses.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:  
 PUBLIC SERVICE COMMISSION  
 ADMINISTRATION  
 HEBER M WELLS BLDG  
 160 E 300 S  
 SALT LAKE CITY, UT 84111-2316  
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
 ◆ Jordan White by phone at 801-530-6712, or by Internet E-mail at jordanwhite@utah.gov  
 ◆ Sheri Bintz by phone at 801-530-6714, by FAX at 801-530-6796, or by Internet E-mail at sbintz@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/15/2014

THIS RULE MAY BECOME EFFECTIVE ON: 07/22/2014

AUTHORIZED BY: Jordan White, Legal Counsel

**R746. Public Service Commission, Administration.  
 R746-341. Lifeline/[Link-up] Rule.  
 R746-341-1. Applicability.**

~~[Telecommunications corporations]~~ This Rule applies to each telecommunications corporation that ~~[have been]~~ is designated as an eligible telecommunications ~~[carriers]~~ carrier (ETC) by the Commission, pursuant to ~~[Section]~~ 47 U.S.C. 214 ~~[of the Federal Communications Act, shall establish a lifeline telephone service pursuant to the requirements of Sections 2 through 10].~~

**R746-341-2. Definitions.**

A. "Account holder" -- means the person responsible to pay the Lifeline account bills.

B. "Applicant" -- means ~~[the eligible telecommunications]~~ an ETC's customer, residing in an ETC's service area, who ~~[owns and resides in a residential property or rents and resides in a residential property]~~ fills out an application for Lifeline service.

~~[~~ B. "Responsible Agency" -- means the state government agency that administers the certification, verification, and continued verification of Lifeline enrollment.  
 ]

C. "[—]ETC[—]" -- means ~~[the]~~an eligible telecommunications carrier.

D. "Federal ETC" -- means an ETC that qualifies for, and participates in, only the federal Lifeline program.

E. "Federal Poverty Guidelines" -- means the poverty guidelines issued each year by the Department of Health and Human Services and published in the Federal Register.

~~[E.]~~F. "Household" -- means a single person or group of individuals who meet the definition of mutual support contained in the federal Lifeline rules established pursuant to 47 U.S.C. 214.

G. "Income[—]" -- means gross income, whether earned or unearned, received by all members of the household including, but not limited to, salary before deductions. Income shall not include student financial aid, military housing and cost-of-living allowances, or irregular income from occasional small jobs.

H. "Lifeline" -- means either federal or state programs defined by 47 U.S.C. 214 and this rule.

I. "NLAD" -- means the National Lifeline Accountability Database.

J. "Participant" -- means an ETC's customer currently receiving a Lifeline benefit.

K. "Program administrator" -- means the state government agency with which the Commission contracts to administer the initial eligibility verification and continued eligibility verification, of the State Lifeline participants.

L. "State ETC" -- means an ETC that participates in both the federal and state Lifeline programs.

**R746-341-3. Eligibility Requirements.**

A. ~~Initial Program-Based Criteria [—The ETCs]—~~ An ETC shall provide ~~[lifeline]~~Lifeline telephone service to ~~[any applicant who self-certifies, under the penalty of perjury, his]~~an applicant's household ~~[is]~~which, using an approved application form, is verified by either the program administrator (for State ETCs), or by a federal ETC, to be eligible for public assistance under one of the following or its successor programs:

- ~~[~~ 1. Temporary Assistance to Needy Families (TANF);
- ~~—~~ 2. Work Toward Employment;
- ~~—~~ 3. Food Stamps;
- ~~—~~ 4. General Assistance;
- ~~—~~ 5. Home Energy Assistance Target Programs/Help Program;
- ~~—~~ 6. Medicaid;
- ~~—~~ 7. Refugee Assistance;
- ~~—~~ 8. Supplemental Security Income;
- ~~—~~ 9. Federal Public Housing Assistance, including Section 8 Housing;
- ~~—~~ 10. National School Lunch Free Lunch Program; or
- ~~—~~ 11. Head Start Program (income qualifying standard only).

1. Medicaid;
2. Supplemental Nutrition Assistance Program (SNAP or Food Stamps);
3. Supplemental Security Income (SSI);
4. Federal Public Housing Assistance (Section 8);

5. Low-Income Home Energy Assistance Program (LIHEAP);

6. Temporary Assistance to Needy Families (TANF);

7. National School Lunch Program's Free Lunch Program;  
or

8. Head Start (if income eligibility criteria are met).

B. Tribal Residents -- For an individual who could qualify for Tribal programs, but who wishes to receive (non-Tribal) Lifeline service instead of Tribal Lifeline service, the following programs may be used to determine eligibility in addition to any of the above listed programs:

1. Bureau of Indian Affairs General Assistance;

2. Tribally-Administered Temporary Assistance for Needy Families (TTANF); or

3. Food Distribution Program on Indian Reservations (FDPIR).

[B-]C. Initial Income-Based Criteria [~~--The ETCs--~~ An ETC shall provide [Lifeline]Lifeline telephone service to [any]an applicant who certifies via supporting documentation[;] (to either the ETC for federal ETC customers, or the program administrator for state ETC customers), under [the]penalty of perjury, [his]that the applicant's household income [to be]is at or below 135 percent of the then applicable Federal Poverty Guidelines.

1. Income-based eligibility is based on family size and actual income; therefore, [the Lifeline customers must]an applicant shall certify, under [the]penalty of perjury, the number of individuals residing in [their]the household.

2. [A Lifeline customer must]An applicant shall certify, under [the]penalty of perjury, that the documentation presented accurately represents the [applicant's]applicant's annual household income. The following documents, or any combination of these documents, are acceptable for Lifeline certification;

a. Prior [year's]year's state, federal, or tribal tax return;

b. Current year-to-date earnings statement from an employer or three consecutive months of paycheck stubs;

c. Social Security statement of benefits;

d. Veterans Administration statement of benefits;

e. Retirement/pension statement of benefits;

f. Unemployment/[Worker's]Workers Compensation statement of benefits;

g. Federal or tribal notice letter of participation in Bureau of Indian Affairs General Assistance; or

h. Divorce decree; or child support wage assignment statement.

[C-]D. Eligibility Certification -- The application form for participation [will]shall be supplied by the ETC or the [responsible agency]program administrator and [contain]shall be consistent with both the [following]:

1. applicant's name, program participating telephone number, if available, identification]federal requirements, then in effect, and any additional information requirements of the [ETC which the applicant anticipates will provide service, and social security number;

2. a request for lifeline service]program administrator, and [where applicable, a request for Link-up America Plan participation;]shall include:

[3-]an affirmative statement that the applicant qualifies for lifeline service.

4-]1. a statement, under[the] penalty of perjury, as to whether the person is participating in one of the programs listed in

Subsection R746-341-3-(A) or qualifies under other federal eligibility criteria; or a statement, under [the]penalty of perjury, as to whether the [person's]person's household income is at or below 135 percent of the current Federal Poverty Guidelines;

[a-]H]2. if qualified by income-based criteria, a statement, under penalty of perjury, that identifies the number of individuals residing in the household and affirms that the documentation presented to support eligibility accurately represents the [applicant's]applicant's household income[;];

[5-]3. a statement that if the applicant is later shown to have submitted [a-]false [self-certification]information in an attempt to qualify for the Lifeline program, the applicant [will]shall be responsible to re-pay the [difference between]benefits received; and

4. the signature of applicant, either physical or electronic.

E. False Certification Penalties -- A participant who does not qualify, but who has submitted false documentation or statements to qualify for the Lifeline program, is responsible to re-pay the value of the benefits received to the state Lifeline program, and is subject to whatever penalties are then current for the federal Lifeline program.

F. Tribal Land Lifeline Discounts - This rule does not govern or otherwise affect the Tribal Land Lifeline Discount program.

**R746-341-4. Duties of the Program Administrator.**

**A. Initial Eligibility**

1. The program administrator shall process all applications submitted for participation in the state Lifeline telephone service program after checking the NLAD for pre-existing participation. The program administrator shall inform the applicant and the state ETC of the results of the application process.

**B. Annual Eligibility Verification**

1. The program administrator shall verify on an annual basis the continuing eligibility status of state ETC Lifeline telephone service participants. The annual eligibility verification shall be performed on a participant list current as of December 31, and shall be conducted in the month following the deadline for submission of Federal Communication Commission Form 497.

**C. De-Enrollment Process**

1. The program administrator shall manage the de-enrollment process for state ETC Lifeline telephone service participants who are no longer eligible for the program. Upon an initial finding that a Lifeline recipient is no longer eligible to participate in the state the [H]Lifeline [service rate and the otherwise applicable service rate;]program, the program administrator shall send a notice to the participant explaining the participant's Lifeline telephone service benefit will be discontinued after 30 days unless the participant verifies continuing eligibility before that date. The notice shall include the reason(s) for the recipient being ineligible and a description of the options available to the recipient to demonstrate eligibility.

[6-]a statement whether this is a new connection or a reconnection; and

7. the applicant's signature.

2. At the end of thirty days, if the participant has not demonstrated continuing eligibility, the program administrator shall notify the relevant state ETC to discontinue the ineligible participant's Lifeline telephone service benefit. The benefit must be discontinued in the month following notification; thus the next month's benefit cannot be provided.

3. Ineligible past participants may reapply for the Lifeline program, but must do so by submitting a completed application to the program administrator for state program participation, or to a federal ETC for federal only participation.

D. Participants Switching Between ETCs -- When a current Lifeline telephone service participant desires to change to a different ETC's Lifeline telephone service, the participant and ETCs shall follow the established NLAD procedures. A participant who is not able to complete the switch due to unresolved problems may seek the assistance of the Division of Public Utilities requesting help in resolving the issue.

[~~D~~]E. Documentation Retention -- The [responsible agency with] program administrator shall retain income and program eligibility certification [for as long as agreed with the Commission] documentation, in electronic format, for as long as required by then current federal Lifeline policies. Copies of the relevant documentation shall be made available on request to auditors from either the federal Lifeline telephone service program or the state Lifeline telephone service program.

[~~-----~~E. Tribal Land Lifeline Discounts -- Customers who live on tribal lands and who qualify for the state Lifeline service rate based on the program qualifications, other federal eligibility criteria, and income qualifications set forth in R746-341-3, are eligible to receive a larger federal discount. Those federal discounts are not within the scope of, nor governed by, these rules.

#### **R746-341-4. Continuing Eligibility.**

A. Annual Verification -- The continuing eligibility of customers on the Lifeline service rate shall be verified annually

B. Verification Responsibilities -- At least annually, the responsible agency shall provide the ETCs with information identifying customers who are eligible for Lifeline service or Link-up America Plan participation:

C. Verification Methods -- The responsible agency will verify the continued eligibility of Lifeline customers under the program-based and income-based eligibility criteria:

1. The responsible agency shall identify a method by which income eligibility will be verified on an annual basis including, but not limited to, annual self-certification, random beneficiary audits, a periodic submission of income documents, or the continued eligibility of a statistically valid sample of Lifeline customers.

2. Should the ETC have a ]

#### **R746-341-5. Duties of ETCs.**

##### A. State ETCs

1. Each state ETC shall, at least monthly, send to the program administrator changes in the status of the Lifeline participants to whom the state ETC provides Lifeline telephone service, including:

- a. participants changing residence locations (addresses);
- b. participants switching carriers; or
- c. customers who no longer receive telephone service.

2. The records sent shall contain the full identifying information for each participant as required by the program administrator's policies.

3. Each state ETC shall provide information to potential applicants regarding how to receive an application from the program administrator. This information shall be provided in person, in written format at the ETC's offices, and online at the ETC's website.

4. Each state ETC shall add the Lifeline discount to a customer's account, as directed by the program administrator, within five business days.

5. Each state ETC shall remove the Lifeline discount from a participant's account as directed by the program administrator beginning with the next month's billing cycle following notification of the participant's ineligible status.

6. Each state ETC shall update the NLAD whenever it implements changes in a participants' Lifeline status.

7. If a Lifeline participant seeks to switch service to a different ETC, the program administrator shall be notified by the ETC to which the participant switches. The ETCs shall follow all applicable NLAD procedures to accomplish the participant's desired switch. The new benefit may not be applied until the following month. Each ETC shall update the NLAD to reflect the change in the participant's status.

8. Annually, each state ETC shall send the program administrator a full list of all Lifeline participants, and qualifying individuals if necessary, current as of December 31 of the preceding year. The list shall be provided to the program administrator when the ETC submits the Federal Communication Commission Form 497 for the year in question. The list shall contain the identifying information as required by the program administrator's policies.

9. If a state ETC has a reasonable basis to believe [that] a Lifeline telephone service [customer no longer qualifies for Lifeline service in accordance with this rule, the ETC shall inform the responsible agency. If a Lifeline customer does not appear as a participant in a program on the state computer system or the responsible agency otherwise has a basis to believe that the customer] participant no longer qualifies for Lifeline service, the [responsible agency will send a notice to the Lifeline customer requesting;] ETC shall promptly inform the program administrator and provide the documentation, or reason, for its belief.

[-----  
a. proof of participation in any of the programs listed in R746-341-3.A or other federal eligibility criteria; or

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b. documentation of eligibility under the income-based criteria set forth in R746-341-3.B.

E. False Certification Penalties -- A Lifeline telephone service customer who does not qualify and has falsely self-certified and participated in the Lifeline program will be responsible to pay the difference between the Lifeline service rate and the otherwise applicable service rate for the length of time the customer subscribed to Lifeline telephone service for which the customer was not eligible.

] 10. A state ETC shall cooperate with the Division of Public Utilities to resolve Lifeline service complaints the Division brings to the state ETC's attention.

##### B. Federal ETCs

Each designated federal ETC shall operate in the State of Utah subject to the conditions outlined in the commission order granting ETC status, the applicable provisions of this rule, and in accordance with the federal Lifeline program requirements.

1. Each federal ETC shall update the NLAD to reflect the ETC's initial eligibility verification decision and the participant's Lifeline status whenever the federal ETC adds or removes a Lifeline customer.

2. Each federal ETC shall update the NLAD with all changes in the ETC's participants' Lifeline status.

3. If a Lifeline participant seeks to switch service to a different ETC the program administrator shall be notified by the ETC

to which the participant switches. The ETCs shall follow all applicable NLAD procedures to accomplish the participant's desired switch. The new benefit may not be applied until the following month. Each ETC shall update the NLAD to reflect the change in the participant's status.

4. A federal ETC shall cooperate with the Division of Public Utilities to resolve Lifeline service complaints the Division of Public Utilities brings to a federal ETC's attention.

**R746-341-6. State**~~[R746-341-5.]~~ **Lifeline Telephone Service Features.**

A. Discounts -- Lifeline telephone service provided by state ETCs shall consist of dial tone line, usage charges or their equivalent, and ~~[any]~~authorized Extended Area Service (EAS) charges, less a discount of \$3.50 and ~~[any]~~all other matching funds established by the Federal Communication Commission.

B. Service Characteristics -- State Lifeline telephone service shall include all features listed in Utah Code Ann. Section 54-8b-2(2).

C. Deposits -- When customer security deposits are otherwise required; they ~~[will]~~shall be waived for Lifeline telephone service ~~[customers]~~participants if the customer voluntarily elects to receive toll blocking.

~~[C. Link-Up America Plan Participation -- Companies providing Lifeline service shall apply for the Link-Up America Plan provided by the Federal Communications Commission.~~

D. Nonrecurring Charge Waiver -- Lifeline telephone service ~~[customers will]~~participants shall receive a waiver of the nonrecurring service charge for changing the type of local exchange usage service to Lifeline service, or changing from flat rate service to message rate service, or vice versa, but only one such waiver shall be allowed during ~~[any]~~a given 12-month period.

E. Disconnection -- Lifeline telephone service shall not be disconnected for nonpayment of toll service.

F. Restrictions -- Lifeline telephone service ~~[will]~~shall be subject to the following restrictions:

1. Lifeline telephone service ~~[will]~~shall only be provided to the ~~[applicant's]~~applicant's principal residence.

2. A Lifeline telephone service ~~[customer will]~~participant shall only receive a Lifeline discount on one single residential access line.

G. Other Services -- A Lifeline telephone service ~~[customer will]~~participant may not be required to purchase other services from the state ETC, nor prohibited from purchasing other services unless the ~~[customer]~~participant has failed to comply with the ~~[ETC's]~~state ETC's terms and conditions for those services.

**R746-341-7. Federal Lifeline Telephone Service Features.**

Federal Lifeline telephone service consists of those features and conditions set forth in the applicable commission docket in which the federal ETC status was granted, as modified by subsequent orders and R746-341.E

**R746-341-8. State ETC Reporting Requirements.**

~~[A.]~~Reporting Requirements -- State ETCs shall submit, to the Division of Public Utilities, a semi-annual report, ~~[by]~~for the periods through June 30 and December 31, of each year, containing a description of the ~~[ETC's]~~state ETC's Lifeline program. The reports shall also contain monthly information on:

~~[1]A.~~ the forgone revenue resulting from the discounts provided to Lifeline ~~[customers]~~participants, if any;

~~[2]B.~~ the amounts of administrative~~[- advertising, voucher and other program]~~ expenses;

~~[3]C.~~ interest accrual amounts on Lifeline ~~[and Link-up]~~ funds~~[- and]~~, if any;

~~[4]D.~~ the number of Lifeline telephone service ~~[customers]~~participants by exchange area per month; and

~~[5]E.~~ a detailed report of outreach efforts.

**R746-341-9.**~~[R746-341-8.]~~ **Funding of Lifeline.**

~~[A.]~~Cost Recovery -- The total cost of providing the state portion of Lifeline telephone service, including ~~[the]~~commission approved administrative costs of the state ETCs and the costs incurred by the ~~[responsible agency]~~program administrator, shall be recovered and funded as provided in Utah Code Ann. Section 54-8b-15.

**R746-341-10.**~~[R746-341-9.]~~ **Collection and Disbursement of Lifeline Funds.**

~~[A.]~~State ETC Payment -- Within 30 days after the review ~~[and]~~ audit of ~~[an ETC's]~~a state ETC's semi-annual report by the Division of Public Utilities results in a favorable recommendation, the Public Service Commission shall disburse an amount equal to the ~~[ETC's]~~ETC's semi-annual Lifeline program expenses and Lifeline discounts granted. For amounts the Division of Public Utilities disallows, the state ETC may petition the Commission to open a docket to examine the reasonableness of the denied amounts.

**KEY: telephone, telecommunications, rules and procedures, lifeline rates**

**Date of Enactment or Last Substantive Amendment: [February 24,]2014**

**Notice of Continuation: October 18, 2010**

**Authorizing, and Implemented or Interpreted Law: 54-4-1; 54-4-4**

**End of the Notices of Proposed Rules Section**

# NOTICES OF 120-DAY (EMERGENCY) RULES

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An agency may file a **120-DAY (EMERGENCY) RULE** when it finds that regular rulemaking procedures would:

- (a) cause an imminent peril to the public health, safety, or welfare;
- (b) cause an imminent budget reduction because of budget restraints or federal requirements; or
- (c) place the agency in violation of federal or state law (Subsection 63G-3-304(1)).

As with a **PROPOSED RULE**, a **120-DAY RULE** is preceded by a **RULE ANALYSIS**. This analysis provides summary information about the **120-DAY RULE** including the name of a contact person, justification for filing a **120-DAY RULE**, anticipated cost impact of the rule, and legal cross-references.

Following the **RULE ANALYSIS**, the text of the **120-DAY RULE** is printed. New text is underlined (example) and text to be deleted is struck out with brackets surrounding the deleted text ([example]). An emergency rule that is new is entirely underlined. Likewise, an emergency rule that repeals an existing rule shows the text completely struck out. A row of dots in the text (. . . . .) indicates that unaffected text was removed to conserve space.

A **120-DAY RULE** is effective when filed with the Division of Administrative Rules, or on a later date designated by the agency. A **120-DAY RULE** is effective for 120 days or until it is superseded by a permanent rule. Because of its temporary nature, a **120-DAY RULE** is not codified as part of the *Utah Administrative Code*.

The law does not require a public comment period for **120-DAY RULES**. However, when an agency files a **120-DAY RULE**, it may file a **PROPOSED RULE** at the same time, to make the requirements permanent.

Emergency or **120-DAY RULES** are governed by Section 63G-3-304, and Section R15-4-8.

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**Capitol Preservation Board (State),  
Administration  
R131-4  
Capitol Preservation Board General  
Procurement Rule**

**NOTICE OF 120-DAY (EMERGENCY) RULE**  
DAR FILE NO.: 38546  
FILED: 05/21/2014

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The reason for this emergency rule is because S.B. 179 of the 2014 General Legislative Session is a considerable update to the Utah Procurement Code. The Utah Procurement Code has been renumbered, part numbers have been substantially changed and provisions related to procurement, protests, and appeals have been substantially changed. This rule is currently being updated to comply with the Utah Procurement Code, Title 63G, Chapter 6a, and Capitol Preservation Board statutes.

**SUMMARY OF THE RULE OR CHANGE:** This change replaces Section R131-4-101, and deletes Section R131-4-410. In Section R131-4-101, explains that all provisions in Section R131-4-101 shall supersede any conflicting provisions elsewhere in this Rule R131-4 and Rule R131-1. (DAR NOTE: A corresponding proposed amendment is under DAR No. 38557 in this issue, June 15, 2014, of the Bulletin.)

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Title 63G, Chapter 6a

**EMERGENCY RULE REASON AND JUSTIFICATION:**  
**REGULAR RULEMAKING PROCEDURES WOULD** place the agency in violation of federal or state law.  
**JUSTIFICATION:** The reason for this emergency rule is because S.B. 179 of the 2014 General Legislative Session is a considerable update to the Utah Procurement Code. The Utah Procurement Code has been renumbered, part numbers have been substantially changed and provisions related to procurement, protests, and appeals have been substantially changed. This rule is currently being updated to comply with the Utah Procurement Code, Title 63G, Chapter 6a, and Capitol Preservation Board statutes.

## ANTICIPATED COST OR SAVINGS TO:

♦ **THE STATE BUDGET:** The state's budget will not be affected, because the rule is simply being amended to comply with recent legislation to the Utah Procurement Code. The change explains that the amended provisions in Section R131-4-101 shall supersede any conflicting provisions elsewhere in this Rule R131-4, and Rule R131-1. If there is any impact, it is created by the statute.

♦ **LOCAL GOVERNMENTS:** Local governments' budgets will not be affected, because the rule is simply being amended to comply with recent legislation to the Utah Procurement Code. The change explains that the amended provisions in Section R131-4-101 shall supersede any conflicting provisions elsewhere in this Rule R131-4, and Rule R131-1. If there is any impact, it is created by the statute.

♦ **SMALL BUSINESSES:** Small businesses' budgets will not be affected, because the rule is simply being amended to comply with recent legislation to the Utah Procurement Code. The change explains that the amended provisions in Section R131-4-101 shall supersede any conflicting provisions elsewhere in this Rule R131-4, and Rule R131-1. If there is any impact, it is created by the statute.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** No other person's budget will be affected, because the rule is simply being amended to comply with recent legislation to the Utah Procurement Code. The change explains that the amended provisions in Section R131-4-101 shall supersede any conflicting provisions elsewhere in this Rule R131-4, and Rule R131-1. If there is any impact, it is created by the statute.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** There are no compliance costs for any person, because the rule is simply being amended to comply with recent legislation to the Utah Procurement Code. The change explains that the amended provisions in Section R131-4-101 shall supersede any conflicting provisions elsewhere in this Rule R131-4, and Rule R131-1. If there is any impact, it is created by the statute.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** There is no fiscal impact on businesses. If there is any impact, it is created by the statute.

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

CAPITOL PRESERVATION BOARD (STATE)  
ADMINISTRATION  
ROOM E110 EAST BUILDING  
420 N STATE ST  
SALT LAKE CITY, UT 84114-2110  
or at the Division of Administrative Rules.

## DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Alan Bachman by phone at 801-538-3105, by FAX at 801-538-3313, or by Internet E-mail at abachman@utah.gov

♦ Allyson Gamble by phone at 801-537-9156, by FAX at 801-538-3221, or by Internet E-mail at agamble@utah.gov  
♦ Chiarina Bautista by phone at 801-538-3240, by FAX at 801-538-3313, or by Internet E-mail at cglead@utah.gov

EFFECTIVE: 05/21/2014

AUTHORIZED BY: Allyson Gamble, Executive Director

**R131. Capitol Preservation Board (State), Administration.  
R131-4. Capitol Preservation Board General Procurement Rule.  
R131-4-101. [Purpose.] Compliance With Utah Procurement Code, as Amended by Senate Bill 179 of the 2014 Utah Legislative Session.**

[~~\_\_\_\_\_ The underlying purposes and policies of R131-4 are:~~

~~\_\_\_\_\_ (1) to comply with the Capitol Preservation Board statute which requires the board to adopt rules that are substantially similar to the requirements of the Utah Procurement Code, Title 63G-6;~~

~~\_\_\_\_\_ (2) to ensure the fair and equitable treatment of all persons who deal with the Capitol Preservation Board;~~

~~\_\_\_\_\_ (3) to provide increased economy in Capitol Preservation Board procurement activities; and~~

~~\_\_\_\_\_ (4) to foster effective broad-based competition within the free enterprise system.~~

\_\_\_\_\_ (1) All provisions of this Rule R131-4-101 shall supersede any conflicting provisions or any provisions related to protests or appeals of this Rule R131-4, Capitol Preservation Board General Procurement Rule, as well as any conflicting provisions or any provisions related to protests or appeals of Rule R131-1, Procurement of Architectural and Engineering Services.

\_\_\_\_\_ (2) The purpose of the Utah Procurement Code in Section 63G-6a-102 is incorporated as part of this Rule R131-4 and Rule R131-1.

\_\_\_\_\_ (3) The definitions of the Utah Procurement Code in Sections 63G-6a-103 and 63G-6a-104 shall apply to Rules R131-4 and R131-1 and in the case of conflict, shall supersede any other definitions in Rules R131-4 and R131-1.

\_\_\_\_\_ (4) Procurements performed by the Division of Facilities Construction and Management or the Division of Purchasing, on behalf of the Capitol Preservation Board, shall be performed in accordance with the applicable Utah Procurement Code, Title 63G, Chapter 6a, provisions as well as the applicable administrative rules of the agency that is managing the procurement for the Capitol Preservation Board.

\_\_\_\_\_ (5) Any exemption allowed under Section 63G-6a-107 shall be allowed notwithstanding any other provision in Rules R131-4 or R131-1.

\_\_\_\_\_ (6) Notwithstanding any other provision in Rules R131-4 or R131-1, there shall be compliance with the federal contract prohibition provisions of the Sudan Accountability and Divestment Act of 2007 (Pub. L. No. 110-174) that prohibit contracting with a person doing business in Sudan.

\_\_\_\_\_ (7) The prequalification process of Section 63G-6a-403 may be used and there is no cost amount threshold under Section 63G-6a-404 for use of any approved vendor list.

\_\_\_\_\_ (8) Notwithstanding any other provision in Rules R131-4 or R131-1, public notice shall comply with Section 63G-6a-406.

(9) There shall be compliance with 63G-6a-408, Small Purchases, and Rule R131-4-409 sets the thresholds for purchases for the Capitol Preservation Board.

(10) A Request for Information under Part 5 of the Utah Procurement Code, Sections 63G-6a-5-1 through 63G-6a-505 may be used.

(11) Part 6 of the Utah Procurement Code, Bidding, Sections 63G-6a-601 through 63G-6a 612 shall apply to the Capital Preservation Board and supersede any conflicting provision in Rule R131-4.

(12) Part 7 of the Utah Procurement Code, Requests for Proposals, Sections 63G-6a-701 through 63G-6a-711 shall apply and supersede any conflicting provision in Rule 131-4.

(13) Section 63G-6a-802, regarding sole sources, shall apply to the Capitol Preservation Board and replace Rule R131-4-410. There shall be a publication of notice for a sole source procurement in accordance with Section 63G-6a-406, if the cost of the procurement exceeds \$50,000 except that no publication of notice is required or if any of the following apply:

(a) the procurement of public utility services pursuant to a sole source contract; or

(b) any other procurement in which the specifications, in the reasonable discretion of the Executive Director, can only be met by one source.

(14) Section 63G-6a-803, Emergency Procurement, shall apply to the Capitol Preservation Board, and to the extent allowed by law, Rule R131-4-411 shall also apply.

(15) Part 9 of the Utah Procurement Code, Cancellations, Rejections, and Debarment, Sections 63G-6a-901 through 63G-6a-905, shall apply to the Capitol Preservation Board and supersede any conflicting provisions in Rules R131-4 or R131-1.

(16) Part 10 of the Utah Procurement Code, Preferences, Sections 63G-6a-1001 through 1004, shall apply to the Capitol Preservation Board and supersede any conflicting provisions in Rules R131-4 or R131-1.

(17) Part 11 of the Utah Procurement Code, Bonds, Sections 63G-6a-1101 through 63G-6a-1105, shall apply to the Capitol Preservation Board and supersede and conflicting provisions in Rules R131-4 or R131-1.

(18) Part 12 of the Utah Procurement Code, Contracts and Change Orders, Sections 63G-6a-1201 through 63G-6a-1210, shall apply to the Capitol Preservation Board and supersede any conflicting provisions in Rules R131-4 and R131-1.

(19) Part 13 of the Utah Procurement Code, General Construction Provisions, Sections 63G-6a-1301 through 63G-6a-1303, shall apply to the Capitol Preservation Board and supersede any conflicting provisions in Rules R131-4 or R131-1.

(20) Part 15 of the Utah Procurement Code, Architect-Engineer Services, Sections 63G-6a-1501 through 63G-61-1506, shall apply to the Capitol Preservation Board and supersede any conflicting provisions in Rules R131-4 or Rule R131-1. An evaluation committee shall consist of at least three people who meet the same ethical requirements as an evaluation committee in a Request for Proposals process.

(21) The following statutes in the Utah Procurement Code shall apply to the Capitol Preservation Board and supersede any conflicting provisions in Rules R131-4-801 through R131-4-1001 as well as Rule 131-1:

(a) Part 16 of the Utah Procurement Code, Controversies and Protests, Sections 63G-6a-1601 through 63G-6a-1604. Intervention shall be allowed under identical procedures as specified in administrative rules enacted by the Procurement Policy Board in Title R33, Utah Administrative Code, of the State of Utah;

(b) Part 17 of the Utah Procurement Code, Procurement Appeals Board, Sections 63G-6a-1701 through 63G-6a-1706;

(c) Part 18 of the Utah Procurement Code, Appeals to Court and Court Proceedings, Sections 63G-6a-1801 through 63G-6a-1802;

(d) Part 19 of the Utah Procurement Code, General Provisions Related to Protest or Appeal, Sections 63G-6a-1901 through 63G-6a-1911;

(e) Part 20 of the Utah Procurement Code, Records, Sections 63G-6a-2001 through 63G-6a-2004;

(f) Part 21 of the Utah Procurement Code, Interaction Between Procurement Units, Sections 63G-6a-2101 through 63G-6a-2105; and

(g) Part 24 of the Utah Procurement Code, Unlawful Conduct and Penalties, Sections 63G-6a-2401 through 63G-6a-2407.

**[R131-4-410. Sole Source Procurement.**

(1) Conditions for Use of Sole Source Procurement:

The procedures concerning sole source procurement in this rule may be used if, in the discretion of the executive director, a requirement is reasonably available only from a single source. Examples of circumstances which could also necessitate sole source procurement are:

(a) there is only one qualified source for the required craftsmanship, supply, service, or construction item; or

(b) the level of craftsmanship and quality to replicate restore is critical to the best interests of the state;

(c) the award to a specific supplier, service provider, or contractor is a condition of a donation that will fund the full cost of the supply, service, or construction item;

(d) where the compatibility of product design, equipment, accessories, or replacement parts is the paramount consideration;

(e) where a sole supplier's item is needed for trial use or testing;

(f) procurement of public utility services; or

(g) when it is a condition of a donation that will fund the full cost of the supply, material, equipment, service, or construction item.

(2) Written Determination. The determination as to whether a procurement shall be made as a sole source shall be made by the executive director in writing and may cover more than one procurement.

(3) Negotiation in Sole Source Procurement. The executive director shall negotiate with the sole source vendor for considerations of price, delivery, and other terms.]

**KEY: contracts, public buildings, procurement**

**Date of Enactment or Last Substantive Amendment: May 21, 2014**

**Notice of Continuation: April 11, 2011**

**Authorizing, and Implemented or Interpreted Law: 63C-9-301**





# FIVE-YEAR NOTICES OF REVIEW AND STATEMENTS OF CONTINUATION

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Within five years of an administrative rule's original enactment or last five-year review, the agency is required to review the rule. This review is intended to help the agency determine, and to notify the public, that the administrative rule in force is still authorized by statute and necessary. Upon reviewing a rule, an agency may: repeal the rule by filing a **PROPOSED RULE**; continue the rule as it is by filing a **FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION (REVIEW)**; or amend the rule by filing a **PROPOSED RULE** and by filing a **REVIEW**. By filing a **REVIEW**, the agency indicates that the rule is still necessary.

A **REVIEW** is not followed by the rule text. The rule text that is being continued may be found in the online edition of the *Utah Administrative Code* available at <http://www.rules.utah.gov/publicat/code.htm>. The rule text may also be inspected at the agency or the Division of Administrative Rules. **REVIEWS** are effective upon filing.

**REVIEWS** are governed by Section 63G-3-305.

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## Administrative Services, Administration **R13-2** Access to Records

### FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 38570  
FILED: 06/02/2014

### 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 63A-12-104(2) permits the department to make a rule that specifies at what level the requirements of Title 63A, Chapter 12, will be undertaken. Subsection 63G-2-204(2)(d) permits the department to make a rule to indicate where and to whom requests for access to records shall be directed. Finally, Subsection 63A-12-104(1) allows the executive director of the department, with the recommendation of the state archivist, to implement provisions of Title 63G, Chapter 2, Government Records Access and Management Act, dealing with procedures for access to records.

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 comment has been received during or since the last five-year review.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule makes the department's processes associated with management of and access to records more

transparent. It is in the best interest of the public to inform them in advance where to direct requests for records, and at what level the department manages its records. The rule also provides for access to permanent and historical records in custody of the Division of Archives and Records Service. Therefore, this rule should be continued.

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

ADMINISTRATIVE SERVICES  
ADMINISTRATION  
ROOM 3120 STATE OFFICE BLDG  
450 N STATE ST  
SALT LAKE CITY, UT 84114-1201  
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ Kenneth Hansen by phone at 801-538-3777, by FAX at 801-538-3844, or by Internet E-mail at [khansen@utah.gov](mailto:khansen@utah.gov)
- ◆ Marilee Richins by phone at 801-538-3215, by FAX at 801-538-3844, or by Internet E-mail at [mprichins@utah.gov](mailto:mprichins@utah.gov)

AUTHORIZED BY: Kimberly Hood, Executive Director

EFFECTIVE: 06/02/2014

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## Administrative Services, Child Welfare Parental Defense (Office Of)

### **R19-1**

## Parental Defense Counsel Training

### FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 38547  
FILED: 05/21/2014

**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 63A-11-202(3) requires training standards for parental defenders who are under contract with either the counties or the Office of Child Welfare Parental Defense.

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 THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The statute requiring the creations of trainings for parental defenders continues to be in effect. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:  
 ADMINISTRATIVE SERVICES  
 CHILD WELFARE PARENTAL DEFENSE (OFFICE OF)  
 ROOM 3120 STATE OFFICE BLDG  
 450 N STATE ST  
 SALT LAKE CITY, UT 84114  
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
 ♦ Marilee Richins by phone at 801-538-3215, by FAX at 801-538-3844, or by Internet E-mail at mprichins@utah.gov

AUTHORIZED BY: Kimberly Hood, Executive Director

EFFECTIVE: 05/21/2014

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**Health, Health Care Financing,  
 Coverage and Reimbursement Policy  
 R414-7A  
 Medicaid Certification of New Nursing  
 Facilities**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**  
 DAR FILE NO.: 38560  
 FILED: 05/30/2014

**NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 26-18-504 requires the Department to make rules to administer Medicaid certification of nursing care facilities. In addition, Section 26-1-5 grants the Department the authority to adopt, amend, or rescind rules as necessary to implement the Medicaid program, and Section 26-18-3 requires the Department to implement the Medicaid program through administrative rules.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: The Department has not received any written or oral comments regarding this rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The Department will continue this rule because it implements the adjudicative process to administer Medicaid certification of new nursing care facilities.

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

AUTHORIZED BY: David Patton, PhD, Executive Director

EFFECTIVE: 05/30/2014

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**Health, Health Care Financing,  
 Coverage and Reimbursement Policy  
 R414-14  
 Home Health Services**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**  
 DAR FILE NO.: 38561  
 FILED: 05/30/2014

**NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 26-1-5 grants the Department the authority to adopt, amend, or rescind rules as necessary to implement the Medicaid program. In addition, Section 26-18-3 requires the Department to implement the Medicaid program through administrative rules.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: The Department has not received any written or oral comments regarding this rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The Department will continue this rule because it implements home health care services for Medicaid recipients as described in the Home Health Agencies Utah Medicaid Provider Manual and in the Medicaid State Plan.

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

AUTHORIZED BY: David Patton, PhD, Executive Director

EFFECTIVE: 05/30/2014

Health, Family Health and  
Preparedness, Child Care Licensing  
**R430-70**  
Out of School Time Child Care  
Programs

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**  
DAR FILE NO.: 38543  
FILED: 05/19/2014

**NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Subsection 26-39-104(1)(a) allows the Department of Health to "make and enforce rules to implement this chapter and, as necessary to protect children's common needs for a safe and healthy environment..."

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 written comments received.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The continuation of this rule is necessary in order for the Department of Health to continue to fulfill its statutory responsibility to regulate child care programs in order to protect the health and safety of the children in these programs.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:  
♦ Simon Bolivar by phone at 801-803-4618, by FAX at 801-237-0786, or by Internet E-mail at sbolivar@utah.gov

AUTHORIZED BY: David Patton, PhD, Executive Director

EFFECTIVE: 05/19/2014

Human Services, Recovery Services  
**R527-332**  
Unreimbursed Assistance Calculation

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**  
DAR FILE NO.: 38550  
FILED: 05/22/2014

**NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 62A-11-107 authorizes the Office of Recovery Services (ORS) to adopt, amend, and enforce rules as necessary. Federal regulations, 45 CFR 302.32 and 45 CFR 302.51, require the office to refund collections in excess of the unreimbursed assistance amount (URA) to the family within two calendar days of the end of the months that assistance was received. Also, this rule defines URA and the process for making a URA calculation pursuant to 45 CFR 302.32.

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 THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule should be continued because the federal regulations under which this rule is enacted are still in effect. In addition, the rule provides the necessary information for ORS to calculate unreimbursed assistance (URA).

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

DIRECT QUESTIONS REGARDING THIS RULE TO:  
 ♦ Shancie Nance by phone at 801-536-8191, by FAX at 801-536-8509, or by Internet E-mail at snance@utah.gov

AUTHORIZED BY: Liesa Stockdale, Director

EFFECTIVE: 05/22/2014

**Human Services, Recovery Services  
 R527-394**

**Posting Bond or Security**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**  
 DAR FILE NO.: 38551  
 FILED: 05/22/2014

**NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 62A-11-107 authorizes the Office of Recovery Services (ORS) to adopt, amend, and enforce rules as necessary. Also, federal regulation 45 CFR 303.104(c) requires each state to develop guidelines available to the public for determining when it is not appropriate to require a non-custodial parent to post security, bond, or some other guarantee of payment for overdue support. Subsection 62A-11-321(1) requires ORS to establish rules for determining when it is appropriate to seek a court order requiring a non-custodial parent to post a bond or provide other security for the payment of a support debt; Rule R527-394 satisfies this requirement.

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 THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule should be continued because the federal regulation and state statutes under which this rule is enacted are still in effect. Also, the rule ensures that ORS only takes legal action against a non-custodial parent to post a bond or other security when the appropriate circumstances warrant it.

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

DIRECT QUESTIONS REGARDING THIS RULE TO:  
 ♦ Shancie Nance by phone at 801-536-8191, by FAX at 801-536-8509, or by Internet E-mail at snance@utah.gov

AUTHORIZED BY: Liesa Stockdale, Director

EFFECTIVE: 05/22/2014

**Insurance, Administration  
 R590-171  
 Surplus Lines Procedures Rule**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT  
OF CONTINUATION**

DAR FILE NO.: 38555  
FILED: 05/27/2014

**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 31A-2-201 gives the commissioner the authority to promulgate rules to implement the provisions of Title 31A. Subsection 31A-15-103(3) prescribes how a surplus lines producer may make or seek remuneration for insurance placed by a surplus lines producer and advertise surplus lines services. This is done in Section R590-171-7 of the rule. Subsection 31A-15-103(11) gives the commissioner the right to establish an organization to examine surplus lines policies to be sure they comply with the requirements of the law and the payment of taxes. This is done in Section R590-171-4. Section 31A-15-111 authorizes the commissioner to require that surplus lines brokers be members of an advisory organization under this section of the law. This is done in Subsection R590-171-4(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: In 2012, changes were made to this rule to comply with federal Non-Admitted and Reinsurance Reform Act (NRA) of 07/21/2010. One comment was received during the comment period suggesting that a date in Subsection R590-171-3(b) be corrected, which was done. No additional comments were received during the comment period and at any other time during the past five-years.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule defines the authority of the Surplus Lines Association, outlines the conditions for placing insurance with surplus lines insurers, and provides examination requirements for the Surplus Lines Association. The rule is also necessary to provide a measure of accountability for the Surplus Lines Association and how this line of insurance is sold in Utah. Therefore, this rule should be continued.

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

INSURANCE  
ADMINISTRATION  
ROOM 3110 STATE OFFICE BLDG  
450 N MAIN ST  
SALT LAKE CITY, UT 84114-1201  
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Jilene Whitby by phone at 801-538-3803, by FAX at 801-538-3829, or by Internet E-mail at [jwhitby@utah.gov](mailto:jwhitby@utah.gov)

AUTHORIZED BY: Todd Kiser, Commissioner

EFFECTIVE: 05/27/2014

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**Insurance, Administration**  
**R590-230**  
**Suitability in Annuity Transactions**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT  
OF CONTINUATION**

DAR FILE NO.: 38559  
FILED: 05/30/2014

**NOTICE OF REVIEW AND STATEMENT OF  
CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Subsection 31A-2-201(3)(a) gives the commissioner the authority to write rules to implement the provisions of Title 31A. Section 31A-22-425 authorizes the commissioner to write rules dealing with definitions, disclosures, exclusions, or limitations in regards to annuity contracts. The rule includes a definitions section, a section setting forth duties of the producers and insurer in an annuity contract transaction, and a section setting forth the commissioner's authority to order corrective actions and penalties when there is a violation of this law and rule.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No comments were received by the department regarding this rule in the past five years.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: It is important that this rule continue in force so producers and insurers may have standards and procedures to follow in setting forth financial recommendations to consumers considering the purchase of an annuity product. These recommendations are to take into account the insurance needs and financial objectives of the consumer at the time of the transaction.

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

INSURANCE  
ADMINISTRATION

ROOM 3110 STATE OFFICE BLDG  
450 N MAIN ST  
SALT LAKE CITY, UT 84114-1201  
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
♦ Jilene Whitby by phone at 801-538-3803, by FAX at 801-538-3829, or by Internet E-mail at [jwhitby@utah.gov](mailto:jwhitby@utah.gov)

AUTHORIZED BY: Todd Kiser, Commissioner

EFFECTIVE: 05/30/2014

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**Natural Resources, Wildlife Resources**  
**R657-46**  
**The Use of Game Birds in Dog Field Trials and Training**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**  
DAR FILE NO.: 38558  
FILED: 05/29/2014

**NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Under Sections 23-14-18, 23-14-19, and 23-17-9, the Wildlife Board is authorized and required to regulate and prescribe the means for the use of protected or privately-owned wildlife for the training of dogs.

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 R657-46 have been received since 06/09/2009, when the rule was last reviewed.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Rule R657-46 provides the requirements, standards, and application procedures for the use of game birds in dog field trials and training. The procedures adopted in this rule have provided an effective and efficient process. Continuation of this rule is necessary for continued success for the use of game birds in dog field trials and training.

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 by phone at 801-538-4718, by FAX at 801-538-4709, or by Internet E-mail at [stacicoons@utah.gov](mailto:stacicoons@utah.gov)

AUTHORIZED BY: Gregory Sheehan, Director

EFFECTIVE: 05/29/2014

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

## NOTICES OF RULE EFFECTIVE DATES

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State law provides for agencies to make their administrative rules effective and enforceable after publication in the *Utah State Bulletin*. In the case of **PROPOSED RULES** or **CHANGES IN PROPOSED RULES** with a designated comment period, the law permits an agency to make a rule effective no fewer than seven calendar days after the close of the public comment period, nor more than 120 days after the publication date. In the case of **CHANGES IN PROPOSED RULES** with no designated comment period, the law permits an agency to make a rule effective on any date including or after the thirtieth day after the rule's publication date, but not more than 120 days after the publication date. If an agency fails to file a **NOTICE OF EFFECTIVE DATE** within 120 days from the publication of a **PROPOSED RULE** or a related **CHANGE IN PROPOSED RULE** the rule lapses.

Agencies have notified the Division of Administrative Rules that the rules listed below have been made effective.

**NOTICES OF EFFECTIVE DATE** are governed by Subsection 63G-3-301(12), Section 63G-3-303, and Sections R15-4-5a and R15-4-5b.

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### Abbreviations

AMD = Amendment

CPR = Change in Proposed Rule

NEW = New Rule

R&R = Repeal & Reenact

REP = Repeal

### Commerce

Occupational and Professional Licensing

No. 38390 (AMD): R156-60-102. Definitions

Published: 04/15/2014

Effective: 05/22/2014

No. 38375 (AMD): R156-77. Direct-Entry Midwife Act Rule

Published: 04/15/2014

Effective: 05/22/2014

### Real Estate

No. 38389 (AMD): R162-2g. Real Estate Appraiser

Licensing and Certification Administrative Rules

Published: 04/15/2014

Effective: 05/22/2014

### Environmental Quality

Air Quality

No. 37829 (AMD): R307-335. Degreasing and Solvent

Cleaning Operations

Published: 08/01/2013

Effective: 06/02/2014

No. 37829 (First CPR): R307-335. Degreasing and Solvent

Cleaning Operations

Published: 12/01/2013

Effective: 06/02/2014

No. 37829 (Second CPR): R307-335. Degreasing and Solvent Cleaning Operations

Published: 04/01/2014

Effective: 06/02/2014

No. 37829 (Third CPR): R307-335. Degreasing and Solvent Cleaning Operations

Published: 05/01/2014

Effective: 06/02/2014

### Health

Children's Health Insurance Program

No. 38400 (AMD): R382-10. Eligibility

Published: 04/15/2014

Effective: 06/01/2014

Health Care Financing, Coverage and Reimbursement Policy

No. 38401 (AMD): R414-303. Coverage Groups

Published: 04/15/2014

Effective: 06/01/2014

Family Health and Preparedness, Licensing

No. 38341 (AMD): R432-270. Assisted Living Facilities

Published: 04/01/2014

Effective: 05/20/2014

### Insurance

Administration

No. 38342 (AMD): R590-229-9. Enforcement Date

Published: 04/01/2014

Effective: 05/27/2014

No. 38376 (AMD): R590-269-4. Open and Special Enrollment Periods

Published: 04/15/2014

Effective: 06/02/2014

NOTICES OF RULE EFFECTIVE DATES

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Labor Commission

Boiler and Elevator Safety

No. 38378 (AMD): R616-3-3.Safety Codes for Elevators

Published: 04/15/2014

Effective: 05/22/2014

Public Service Commission

Administration

No. 38363 (AMD): R746-340.Service Quality for

Telecommunications Corporations

Published: 04/15/2014

Effective: 05/27/2014

**End of the Notices of Rule Effective Dates Section**



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

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The Rules Index is a cumulative index that reflects all effective changes to Utah's administrative rules. The current Index lists changes made effective from January 2, 2014 through June 02, 2014. The Rules Index is published in the Utah State Bulletin and in the annual Utah Administrative Rules 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).

Questions regarding the index and the information it contains should be addressed to the Division of Administrative Rules (801-538-3764).

A copy of the **RULES INDEX** is available for public inspection at the Division of Administrative Rules (5110 State Office Building, Salt Lake City, UT), or may be viewed online at the Division's web site (<http://www.rules.utah.gov/>).

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**RULES INDEX - BY AGENCY (CODE NUMBER)**

**ABBREVIATIONS**

AMD = Amendment (Proposed Rule)	LNR = Legislative Nonreauthorization
CPR = Change in Proposed Rule	NEW = New Rule (Proposed Rule)
EMR = 120-Day (Emergency) Rule	NSC = Nonsubstantive Rule Change
EXD = Expired Rule	R&R = Repeal and Reenact (Proposed Rule)
EXP = Expedited Rule	REP = Repeal (Proposed Rule)
EXT = Five-Year Review Extension	5YR = Five-Year Notice of Review and Statement of Continuation
GEX = Governor's Extension	

CODE REFERENCE	TITLE	FILE NUMBER	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
<b>ADMINISTRATIVE SERVICES</b>					
<u>Administration</u>					
R13-2	Access to Records	38570	5YR	06/02/2014	Not Printed
<u>Child Welfare Parental Defense (Office of)</u>					
R19-1	Parental Defense Counsel Training	38547	5YR	05/21/2014	Not Printed
<u>Debt Collection</u>					
R21-2	Office of State Debt Collection Administrative Procedures	38497	NSC	05/29/2014	Not Printed
R21-3	Debt Collection Through Administrative Offset	38496	NSC	05/29/2014	Not Printed
<u>Facilities Construction and Management</u>					
R23-3	Planning and Programming for Capital Projects	38405	5YR	04/03/2014	2014-9/49
R23-29	Across the Board Delegation	38404	5YR	04/03/2014	2014-9/49
R23-33	Rules for the Prioritization and Scoring of Capital Improvements by the Utah State Building Board	38247	NEW	03/10/2014	2014-3/2
<u>Finance</u>					
R25-7	Travel-Related Reimbursements for State Employees	38175	AMD	02/07/2014	2014-1/4
<u>Fleet Operations</u>					
R27-4-13	Disposal of State Vehicles	38312	AMD	04/22/2014	2014-6/4
R27-7-3	Driver Eligibility to Operate a State Vehicle	38073	AMD	03/11/2014	2013-22/14
<u>Purchasing and General Services</u>					
R33-6	Modification and Termination of Contracts for Supplies, Services, Construction, and Technology	38218	EXT	01/02/2014	2014-3/57
R33-6	Modification and Termination of Contracts for Supplies, Services, Construction, and Technology	38446	5YR	04/17/2014	2014-10/111
R33-7	Cost Principles	38219	EXT	01/02/2014	2014-3/57
R33-7	Cost Principles	38447	5YR	04/17/2014	2014-10/111
R33-9	Insurance Procurement	38220	EXT	01/02/2014	2014-3/57
R33-9	Insurance Procurement	38448	5YR	04/17/2014	2014-10/112
<u>Risk Management</u>					
R37-4	Adjusted Utah Governmental Immunity Act Limitations on Judgments	38250	AMD	04/30/2014	2014-4/4

AGRICULTURE AND FOOD

Animal Industry

R58-3	Brucellosis Vaccination Requirements	38294	AMD	04/16/2014	2014-5/4
R58-20	Domesticated Elk Hunting Parks	38251	5YR	01/17/2014	2014-4/67

Conservation Commission

R64-3	Utah Environmental Stewardship Certification Program (UESCP), a.k.a. Agriculture Certificate of Environmental Stewardship (ACES)	38071	NEW	05/08/2014	2013-22/15
R64-3	Utah Environmental Stewardship Certification Program (UESCP), a.k.a. Agriculture Certificate of Environmental Stewardship (ACES)	38071	CPR	05/08/2014	2014-7/82

Marketing and Development

R65-12	Utah Small Grains and Oilseeds Marketing Order	38287	NEW	04/16/2014	2014-5/5
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Regulatory Services

R70-310	Grade A Pasteurized Milk	38467	NSC	05/16/2014	Not Printed
R70-410	Grading and Inspection of Shell Eggs with Standard Grade and Weight Classes	38315	AMD	05/08/2014	2014-6/5
R70-530	Food Protection	38262	R&R	03/27/2014	2014-4/5

ALCOHOLIC BEVERAGE CONTROL

Administration

R81-1-16	Disqualification Based Upon Conviction of Crime	38274	AMD	03/25/2014	2014-4/10
R81-1-32	Further Application	38323	AMD	04/29/2014	2014-6/7
R81-7	Single Event Permits	38275	AMD	03/25/2014	2014-4/11
R81-10b	Temporary Beer Event Permits	38276	AMD	03/25/2014	2014-4/14

ATTORNEY GENERAL

Administration

R105-2	Records Access and Management	38245	NSC	01/30/2014	Not Printed
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CAPITOL PRESERVATION BOARD (STATE)

Administration

R131-4	Capitol Preservation Board General Procurement Rule	38546	EMR	05/21/2014	Not Printed
R131-13	Health Reform - Health Insurance Coverage in State Contracts - Implementation	38476	5YR	05/01/2014	2014-10/113

COMMERCE

Consumer Protection

R152-21	Credit Services Organizations Act Rules	38266	5YR	01/29/2014	2014-4/67
R152-26	Telephone Fraud Prevention Act	38125	AMD	01/07/2014	2013-23/4

Corporations and Commercial Code

R154-2	Utah Uniform Commercial Code, Revised Article 9 Rules	38320	R&R	04/21/2014	2014-6/9
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Occupational and Professional Licensing

R156-1-501	Unprofessional Conduct	38157	AMD	01/21/2014	2013-24/6
R156-1-501	Unprofessional Conduct	38253	NSC	01/31/2014	Not Printed
R156-15	Health Facility Administrator Act Rule	38337	AMD	05/08/2014	2014-7/5
R156-22	Professional Engineers and Professional Land Surveyors Licensing Act Rule	38279	AMD	04/08/2014	2014-5/7
R156-38a-401	Requirements for a Letter of Credit and/or Evidence of a Cash Deposit as Alternate Security for Mechanics' Lien	38533	NSC	05/29/2014	Not Printed
R156-42a	Occupational Therapy Practice Act Rule	38254	5YR	01/21/2014	2014-4/68
R156-42a	Occupational Therapy Practice Act Rule	38313	AMD	04/21/2014	2014-6/24

RULES INDEX

R156-44a	Nurse Midwife Practice Act Rule	38249	5YR	01/16/2014	2014-4/69
R156-46a	Hearing Instrument Specialist Licensing Act Rule	38155	AMD	01/21/2014	2013-24/7
R156-46a	Hearing Instrument Specialist Licensing Act Rule	38257	5YR	01/27/2014	2014-4/69
R156-55a	Utah Construction Trades Licensing Act Rule	38151	AMD	01/21/2014	2013-24/10
R156-55a-301	License Classifications - Scope of Practice	38380	NSC	04/14/2014	Not Printed
R156-60	Mental Health Professional Practice Act Rule	38421	5YR	04/08/2014	2014-9/50
R156-60-102	Definitions	38390	AMD	05/22/2014	2014-8/6
R156-61	Psychologist Licensing Act Rule	38233	5YR	01/13/2014	2014-3/49
R156-67	Utah Medical Practice Act Rule	38106	AMD	01/07/2014	2013-23/5
R156-68	Utah Osteopathic Medical Practice Act Rule	38107	AMD	01/07/2014	2013-23/6
R156-69	Dentist and Dental Hygienist Practice Act Rule	38149	AMD	01/21/2014	2013-24/20
R156-72	Acupuncture Licensing Act Rule	38165	AMD	02/10/2014	2014-1/8
R156-77	Direct-Entry Midwife Act Rule	38375	AMD	05/22/2014	2014-8/7
R156-80a	Medical Language Interpreter Act Rule	38388	5YR	03/31/2014	2014-8/37
R156-81	Retired Volunteer Health Care Practitioner Act Rule	38382	5YR	03/25/2014	2014-8/37

Real Estate

R162-2f	Real Estate Licensing and Practices Rules	38213	AMD	02/25/2014	2014-2/4
R162-2g	Real Estate Appraiser Licensing and Certification Administrative Rules	38270	AMD	03/31/2014	2014-4/16
R162-2g	Real Estate Appraiser Licensing and Certification Administrative Rules	38389	AMD	05/22/2014	2014-8/8

CORRECTIONS

Administration

R251-111	Government Records Access and Management	38255	NEW	03/26/2014	2014-4/25
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CRIME VICTIM REPARATIONS

Administration

R270-1-13	Awards	38221	EMR	01/04/2014	2014-3/47
R270-3	ADA Complaint Procedure	38258	EXT	01/27/2014	2014-4/75
R270-3	ADA Complaint Procedure	38498	5YR	05/12/2014	2014-11/171
R270-4	Government Records Access and Management Act	38259	EXT	01/27/2014	2014-4/75
R270-4	Government Records Access and Management Act	38499	5YR	05/12/2014	2014-11/171

EDUCATION

Administration

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R708-31	Ignition Interlock Systems	38374	5YR	03/18/2014	2014-8/49

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**ABBREVIATIONS**

AMD = Amendment (Proposed Rule)	LNR = Legislative Nonreauthorization
CPR = Change in Proposed Rule	NEW = New Rule (Proposed Rule)
EMR = 120-Day (Emergency) Rule	NSC = Nonsubstantive Rule Change
EXD = Expired Rule	R&R = Repeal and Reenact (Proposed Rule)
EXP = Expedited Rule	REP = Repeal (Proposed Rule)
EXT = Five-Year Review Extension	5YR = Five-Year Notice of Review and Statement of Continuation
GEX = Governor's Extension	

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	38498	R270-3	5YR	05/12/2014	2014-11/171	
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<u>adjudicative process</u>						
Administrative Services, Debt Collection	38497	R21-2	NSC	05/29/2014	Not Printed	
<u>administrative law judges</u>						
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	38193	R602-2-5	AMD	02/21/2014	2014-2/7	
	38327	R602-7	5YR	03/05/2014	2014-7/94	
	38328	R602-8	5YR	03/05/2014	2014-7/94	
Public Safety, Driver License	38487	R708-7	NSC	05/29/2014	Not Printed	
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	38485	R708-22	NSC	05/29/2014	Not Printed	
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	38217	R512-43	AMD	03/10/2014	2014-3/15	
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Environmental Quality, Air Quality	38494	R307-101	5YR	05/08/2014	2014-11/172	
	38252	R307-103-1	NSC	01/31/2014	Not Printed	
	38061	R307-110-17	AMD	01/09/2014	2013-21/8	
	38261	R307-150	5YR	01/28/2014	2014-4/70	
	38104	R307-210-2	AMD	03/06/2014	2013-23/17	
	38105	R307-214-3	AMD	03/06/2014	2013-23/18	
	38166	R307-302	AMD	03/06/2014	2014-1/20	
	37829	R307-335	AMD	06/02/2014	2013-15/23	
	37829	R307-335	CPR	06/02/2014	2013-23/54	
	37829	R307-335	CPR	06/02/2014	2014-7/85	
	37829	R307-335	CPR	06/02/2014	2014-9/46	
	38332	R307-357-4	AMD	05/08/2014	2014-7/16	
	38495	R307-357-4	NSC	05/29/2014	Not Printed	
	37833	R307-401-19	AMD	01/06/2014	2013-15/29	
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	38260	R307-405	5YR	01/28/2014	2014-4/70	

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	38323	R81-1-32	AMD	04/29/2014	2014-6/7	
	38275	R81-7	AMD	03/25/2014	2014-4/11	
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	38232	R657-43	AMD	03/11/2014	2014-3/30	
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38187 R277-481 AMD 02/07/2014 2014-1/15

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	38495	R307-357-4	NSC	05/29/2014	Not Printed	
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