

# UTAH STATE BULLETIN

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

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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: Office of Administrative Rules, PO Box 141007, Salt Lake City, Utah 84114-1007, telephone 801-538-3003. 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.

Office of Administrative Rules, Salt Lake City 84114

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## 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 October 01, 2016, 12:00 a.m., and October 14, 2016, 11:59 p.m. are included in this, the November 01, 2016, 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 Rules being repealed are completely struck out.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 Office 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 Office 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 December 1, 2016. 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 March 1, 2017, the agency may notify the Office 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 Office 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**

**Commerce, Occupational and  
Professional Licensing  
R156-17b  
Pharmacy Practice Act Rule**

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 40863

FILED: 10/11/2016

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The Utah State Board of Pharmacy and Physicians Licensing Board reviewed the proposed rule amendments in their September 2016 meetings. The Boards agreed to the same language with one exception. The only difference was that the Utah State Board of Pharmacy preferred no requirement for pharmacists to report to the Division at the same time they make their annual report to the physicians. After considering comments from both Boards, the Division determined to require the same report that is sent to the physician to be sent to the Division and increased the reporting time from 10 to 15 days to ease the impact of compliance. Since the report to the Division is no different than the report to the physician, which both Boards agreed is satisfactory, and since the proposed amendments now provides 15 days for reporting, the Division considered the impact of reporting to the Division to be minimal. H.B. 240, passed by the legislature during the 2016 General Session, made changes to the newly defined Opiate Overdose Response Act, Title 26, Chapter 55, and to the Pharmacy Practice Act, Title 58, Chapter 17b. These changes permit physicians to issue a standing order for the dispensing of an opiate antagonist by pharmacists and require the Division to promulgate rules to address the standing order and the requirements for dispensing. The Division is filing this rule to accomplish that mandate.

**SUMMARY OF THE RULE OR CHANGE:** Section R156-17b-502 establishes that failing to report as required in Section R156-17b-625 is unprofessional conduct. The new Section R156-17b-625 defines the requirements for dispensing an opiate antagonist, which include information that must be maintained and reported to the Division and physicians.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 58-17b-101 and Section 58-37-1 and Subsection 58-1-106(1)(a) and Subsection 58-1-202(1)(a) and Subsection 58-17b-601(1)

**ANTICIPATED COST OR SAVINGS TO:**

◆ **THE STATE BUDGET:** This filing should have no impact to the state budget beyond a minimal cost of \$75 to reprint and

distribute the rule once proposed amendments may become effective. The Division also anticipates no additional costs should be incurred by the Division to receive the required reports.

◆ **LOCAL GOVERNMENTS:** Local governments are unlikely to be impacted by this rule unless a local health department chooses to participate in issuing a standing order for an opiate antagonist through its medical director. Even then, the decision is optional by the local government.

◆ **SMALL BUSINESSES:** Physicians and pharmacists are not required to participate in the issuing of a standing order or the dispensing of an opiate antagonist. This rule creates no fiscal impact beyond those identified in the passage of H.B. 240 (2016). Those who benefit from the lifesaving, overdose-reversing efforts of someone who previously could not obtain an opiate antagonist will receive the benefits of prolonged life. These costs or benefits are impossible to quantify. Pharmacies are not required to collect any information that they do not already collect.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Physicians and pharmacists are not required to participate in the issuing of a standing order or the dispensing of an opiate antagonist. This rule creates no fiscal impact beyond those identified in the passage of H.B. 240 (2016). Those who benefit from the lifesaving, overdose-reversing efforts of someone who previously could not obtain an opiate antagonist will receive the benefits of prolonged life. These costs or benefits are impossible to quantify.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** Physicians and pharmacists are not required to participate in the issuing of a standing order or the dispensing of an opiate antagonist. This rule creates no fiscal impact beyond those identified in the passage of H.B. 240 (2016). Those who benefit from the lifesaving, overdose-reversing efforts of someone who previously could not obtain an opiate antagonist will receive the benefits of prolonged life. These costs or benefits are impossible to quantify. Pharmacies are not required to collect any information that they do not already collect.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** Pharmacies are required by the newly adopted H.B. 240 (2016) to provide a report to any physician who issues a standing prescription drug order of an opiate antagonist and to the Division of Occupational and Professional Licensing. This rule implements the statutory provision. Pharmacies are not required to collect any information that they do not already collect. They merely need to format information regarding dispensed opiate antagonists into the required report. The report to the Division and to the physician contain the same information. The rule creates no fiscal impact beyond those identified in H.B. 240 (2016) as being the consequence of the statute itself.

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 Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Dane Ishihara by phone at 801-530-7632, by FAX at 801-530-6511, or by Internet E-mail at dishihara@utah.gov, or mail at PO Box 146741, Salt Lake City, UT 84114-6741

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 12/01/2016

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:

◆ 11/17/2016 11:00 AM, Heber Wells Bldg, 160 E 300 S, Hearing Room 403 (fourth floor), Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 12/08/2016

AUTHORIZED BY: Mark Steinagel, Director

**R156. Commerce, Occupational and Professional Licensing.**

**R156-17b. Pharmacy Practice Act Rule.**

**R156-17b-502. Unprofessional Conduct.**

"Unprofessional conduct" includes:

(1) violating any provision of the American Pharmaceutical Association (APhA) Code of Ethics for Pharmacists, October 27, 1994, which is hereby incorporated by reference;

(2) failing to comply with the USP-NF Chapters 795 and 797 if such chapters are applicable to activities performed in the pharmacy;

(3) failing to comply with the continuing education requirements set forth in these rules;

(4) failing to provide the Division with a current mailing address within a 10 business day period of time following any change of address;

(5) defaulting on a student loan;

(6) failing to abide by all applicable federal and state law regarding the practice of pharmacy;

(7) failing to comply with administrative inspections;

(8) failing to return according to the deadline established by the Division, or providing false information on a self-inspection report;

(9) violating the laws and rules regulating operating standards in a pharmacy discovered upon inspection by the Division;

(10) abandoning a pharmacy or leaving prescription drugs accessible to the public;

(11) failing to identify licensure classification when communicating by any means;

(12) practicing pharmacy with an inappropriate pharmacist to pharmacy intern ratio established by Subsection R156-17b-606(1)(d) or pharmacist to pharmacy technician ratio as established by Subsection R156-17b-601(3);

(13) allowing any unauthorized persons in the pharmacy;

(14) failing to offer to counsel any person receiving a prescription medication;

(15) failing to pay an administrative fine that has been assessed in the time designated by the Division;

(16) failing to comply with the PIC or DMPIC standards as established in Section R156-17b-603;

(17) failing to adhere to institutional policies and procedures related to technician checking of medications when technician checking is utilized;

(18) failing to take appropriate steps to avoid or resolve identified drug therapy management problems as referenced in Subsection R156-17b-611(3);

(19) dispensing medication that has been discontinued by the FDA;

(20) failing to keep or report accurate records of training hours;

(21) failing to provide PIC or DMPIC information to the Division within 30 days of a change in PIC or DMPIC;

(22) requiring a pharmacy, pharmacist, or DMP to operate the pharmacy or allow operation of the pharmacy with a ratio of supervising pharmacist or DMP to other pharmacy personnel in circumstances that result in, or reasonably would be expected to result in, an unreasonable risk of harm to public health, safety, and welfare;

(23) failing to update the Division within seven calendar days of any change in the email address designated for use in self-audits or pharmacy alerts; ~~and~~

(24) failing to ensure, as a DMP or DMP clinic pharmacy, that a DMP designee has completed a formal or on-the-job dispensing training program that meets standards established in Section R156-17b-622; and

(25) failing to make a timely report regarding dispensing of an opiate antagonist to the division and to the physician who issued the standing order as required in Section R156-17b-625.

**R156-17b-625. Standards - Reporting and Maintaining Records on the Dispensing of an Opiate Antagonist.**

(1) In accordance with Subsections 26-55-105(2)(c) and (d), the pharmacist-in-charge or a responsible corporate officer of each pharmacy licensee that dispenses an opiate antagonist pursuant to a valid standing prescription drug order issued by a physician, shall affirm that the pharmacy licensee has complied with the protocol for dispensing an opiate antagonist as set forth in Section 26-55-105, and shall report, on an annual basis, to the division and to the physician who issued the opiate antagonist standing drug order, the following information:

(a) the total number of single doses of opiate antagonists dispensed during the reporting period; and

(b) the name of each opiate antagonist dispensed, along with the total number of single doses of that particular named opiate antagonist.

(2) Corporations or organizations with multiple component pharmacy licenses may submit one cumulative report for all its component pharmacy licensees. However, that report

must contain the information described above for each of the component pharmacy licensees.

(3) Null reporting is not required. If a pharmacy licensee does not dispense an opiate antagonist during any year, that pharmacy licensee is not required to make an affirmation or report to the division.

(4) The annual affirmation and report described above is due to the division and to the physician who issued the standing drug order no later than 15 days following December 31 of each calendar year.

(5) In accordance with Subsection 26-55-105(2)(d), a pharmacy licensee who dispenses an opiate antagonist pursuant to a valid standing prescription order issued by a physician, shall maintain, subject to audit, the following information:

(a) the name of the individual to whom the opiate antagonist is dispensed;

(b) the name of the opiate antagonist dispensed;

(c) the quantity of the opiate antagonist dispensed;

(d) the strength of the opiate antagonist dispensed;

(e) the dosage quantity of the opiate antagonist dispensed;

(f) the full name of the drug outlet which dispensed the opiate antagonist;

(g) the date the opiate antagonist was dispensed; and

(h) the name of physician issuing the standing order to dispense the opiate antagonist.

(6) The division approves the protocol for the issuance of a standing prescription drug order for opiate antagonists, which is set forth in Subsection 26-55-105(2)(a) through (d) along with the requirements set forth in the foregoing provisions, and the reporting requirements set forth in Sections R156-67-604 and R156-68-604.

**KEY: pharmacists, licensing, pharmacies**

**Date of Enactment or Last Substantive Amendment: [July 11,] 2016**

**Notice of Continuation: January 5, 2015**

**Authorizing, and Implemented or Interpreted Law: 58-17b-101; 58-17b-601(1); 58-37-1; 58-1-106(1)(a); 58-1-202(1)(a)**

**Commerce, Occupational and  
Professional Licensing  
R156-67  
Utah Medical Practice Act Rule**

**NOTICE OF PROPOSED RULE  
(Amendment)**

DAR FILE NO.: 40864  
FILED: 10/11/2016

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: H.B. 240, passed by the legislature during the 2016 General Session, made changes to the newly defined Opiate Overdose Response Act, Title 26, Chapter 55, and to the Utah Medical Practice Act, Title 58, Chapter 67. These changes permit physicians to issue a standing order for the

dispensing of an opiate antagonist by pharmacists and require the Division to promulgate rules to address the standing order and the requirements for dispensing. The Division is filing this rule to accomplish that mandate.

SUMMARY OF THE RULE OR CHANGE: Subsection R156-67-502(16) is added to establish that failing to submit an annual report as required in Section R156-67-604 is unprofessional conduct. New Section R156-67-604 is enacted because newly enacted Subsection 26-55-105(2)(c) requires physicians to review at least annually the dispensing practices of those the physician has authorized to dispense an opiate antagonist pursuant to a standing order. This new section requires the physician to submit an annual written report to the Division to indicate that the physician has done so.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 58-67-101 and Subsection 58-1-106(1) and Subsection 58-1-202(1)

ANTICIPATED COST OR SAVINGS TO:

♦ THE STATE BUDGET: The Division will incur minimal costs of approximately \$75 to print and distribute the rule once the proposed amendments are made effective.

♦ LOCAL GOVERNMENTS: The proposed amendments only apply to licensed physicians and surgeons who choose to issue a standing order for dispensing an opiate antagonist. If a local government employs a physician or surgeon who issues a standing order for dispensing an opiate antagonist, then these reporting requirements may translate into a loss of employee services and loss of income relative to the time required for the physician or surgeon to review and report the required information. However, whether or not a physician or surgeon is employed by a local government, a standing order may result in saving the life of one or more residents within the local government's jurisdiction, which may translate into cost savings and enhanced health services to the community impacted by the opioid overdose crisis. The Division is not able to determine any exact amount of costs or savings due to varying circumstances.

♦ SMALL BUSINESSES: Physicians and surgeons who own or operate a small business, and who choose to issue a standing order for dispensing an opiate antagonist, will be impacted by using some of their time to comply with these reporting requirements. This may translate into a loss of income relative to the time required for reviewing and reporting. The Division is not able to determine any exact amount of costs due to varying circumstances.

♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: Physicians and surgeons who issue standing orders for dispensing opiate antagonists will be impacted by using some of their time to comply with these review and reporting requirements. This may translate into a loss of income relative to the time required for reviewing and reporting. One or more persons may have their lives saved due to the overdose-reversing effects of prescriptions issued pursuant to these standing orders. This may translate into a cost savings



for those persons as well as for their friends and family. The Division is not able to determine any exact amount of costs or savings due to varying circumstances.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** Physicians or surgeons who choose to issue a standing order for dispensing an opiate antagonist will be impacted by using some of their time to comply with these review and reporting requirements. This may translate into a loss of income relative to the time required for reviewing and reporting. The Division is not able to determine any exact amount of costs or savings due to varying circumstances.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** Physicians who own or operate a small business and who choose to issue a standing order for dispensing an opiate antagonist will be impacted by using some of their time to comply with these report requirements. This may translate into a loss of income relative to the time required for reviewing and reporting. These costs may vary depending on the number of persons the physician has authorized to dispense the opiate antagonist. Because the report is only made annually, the anticipated cost is negligible.

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 Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Larry Marx by phone at 801-530-6254, by FAX at 801-530-6511, or by Internet E-mail at lmarx@utah.gov, or mail at PO Box 146741, Salt Lake City, UT 84114-6741

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THIS RULE MAY BECOME EFFECTIVE ON: 12/08/2016

AUTHORIZED BY: Mark Steinagel, Director

**R156. Commerce, Occupational and Professional Licensing.**  
**R156-67. Utah Medical Practice Act Rule.**  
**R156-67-502. Unprofessional Conduct.**

"Unprofessional conduct" includes:

(1) 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(s) 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 physicians licensed under the 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 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 Board of Radiology. However, nothing in this subsection shall be interpreted to prevent a licensed physician and surgeon 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 and surgeon qualified under this subsection and a timely written report is prepared by the interpreting physician and surgeon in accordance with the standards and ethics of the profession;

(10) failing of a licensee under Title 58, Chapter 67, 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 a medical doctor;

(11) failing of a licensee under Title 58, Chapter 67, without just cause to comply with the terms of any written agreement in which the licensee's education or training as a medical doctor 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) failing to keep the division informed of a current address and telephone number;

(14) engaging in alternate medical practice except as provided in Section R156-67-603;[~~and~~]

(15) violation of any provision of the American Medical Association (AMA) "Code of Medical Ethics", 2012-2013 edition, which is hereby incorporated by reference; and

(16) failing to timely submit an annual written report to the division indicating that the physician has reviewed at least annually the dispensing practices of those authorized by the physician to dispense an opiate antagonist pursuant to Section R156-67-604.

**R156-67-604. Required Reporting of Annual Review of Physician of Dispensing Practices of Those Authorized to Dispense an Opiate Antagonist.**

(1) In accordance with Subsection 26-55-105(2)(c), a physician who issues a standing prescription drug order authorizing the dispensing of an opiate antagonist shall annually submit a written report to the division indicating that he has reviewed at least annually the dispensing practices of those authorized by the physician to dispense the opiate antagonist.

(2) The report described above shall be submitted no later than January 31 of each calendar year and shall continue as long as the standing order remains in effect. Null reporting is not required.

(3) A physician shall be considered to have satisfactorily reviewed the dispensing practices of those authorized by the physician to dispense the opiate antagonist by reviewing the report of the licensee dispensing the opiate antagonist specified in Subsection R156-17b-625(1).

**KEY: physicians, licensing**

**Date of Enactment or Last Substantive Amendment: [~~August 21, 2014~~2016]**

**Notice of Continuation: February 8, 2016**

**Authorizing, and Implemented or Interpreted Law: 58-67-101; 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.: 40865

FILED: 10/11/2016

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: H.B. 240, passed by the legislature during the 2016 General Session, made changes to the newly defined Opiate Overdose Response Act, Title 26, Chapter 55, and to the Utah Osteopathic Medical Practice Act, Title 58, Chapter 68. These changes permit osteopathic physicians and surgeons to issue a standing order for the dispensing of an opiate antagonist by pharmacists and require the Division to promulgate rules to address the standing order and the requirements for dispensing. The Division is filing this rule to accomplish that mandate.

SUMMARY OF THE RULE OR CHANGE: Subsection R156-68-502(16) is added to establish that failing to submit an annual report as required in Section R156-68-604 is unprofessional conduct. The new Section R156-68-604 is added because newly enacted Subsection 26-55-105(2)(c) requires physicians to review at least annually the dispensing practices of those the physician has authorized to dispense an opiate antagonist pursuant to a standing order. This new section requires the osteopathic physician and surgeon to submit an annual written report to the Division to indicate that the osteopathic physician and surgeon has done so.

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)

ANTICIPATED COST OR SAVINGS TO:

◆ THE STATE BUDGET: The Division will incur minimal costs of approximately \$75 to print and distribute the rule once the proposed amendments are made effective.

◆ LOCAL GOVERNMENTS: The proposed amendments only apply to licensed osteopathic physicians and surgeons who choose to issue a standing order for dispensing an opiate antagonist. If a local government employs an osteopathic physician and surgeon who issues a standing order for dispensing an opiate antagonist, then these reporting requirements may translate into a loss of employee services and loss of income relative to the time required for the osteopathic physician and surgeon to review and report the

required information. However, whether or not an osteopathic physician and surgeon is employed by a local government, a standing order may result in saving the life of one or more residents within the local government's jurisdiction, which may translate into cost savings and enhanced health services to the community impacted by the opioid overdose crisis. The Division is not able to determine any exact amount of costs or savings due to varying circumstances.

◆ **SMALL BUSINESSES:** Osteopathic physicians and surgeons who own or operate a small business and who choose to issue a standing order for dispensing an opiate antagonist will be impacted by using some of their time to comply with these reporting requirements. This may translate into a loss of income relative to the time required for reviewing and reporting. The Division is not able to determine any exact amount of costs due to varying circumstances.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Osteopathic physicians and surgeons who issue standing orders for dispensing opiate antagonists will be impacted by using some of their time to comply with these review and reporting requirements. This may translate into a loss of income relative to the time required for reviewing and reporting. One or more persons may have their lives saved due to the overdose-reversing effects of prescriptions issued pursuant to these standing orders. This may translate into a cost savings for those persons as well as for their friends and family. The Division is not able to determine any exact amount of costs or savings due to varying circumstances.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** Osteopathic physicians and surgeons who choose to issue a standing order for dispensing an opiate antagonist will be impacted by using some of their time to comply with these review and reporting requirements. This may translate into a loss of income relative to the time required for reviewing and reporting. The Division is not able to determine any exact amount of costs or savings due to varying circumstances.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** Osteopathic physicians and surgeons who own or operate a small business and who choose to issue a standing order for dispensing an opiate antagonist will be impacted by using some of their time to comply with these report requirements. This may translate into a loss of income relative to the time required for reviewing and reporting. These costs may vary depending on the number of persons the osteopathic physician and surgeon has authorized to dispense the opiate antagonist. Because the report is only made annually, the anticipated cost is negligible.

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 Office of Administrative Rules.

**DIRECT QUESTIONS REGARDING THIS RULE TO:**  
 ◆ Larry Marx by phone at 801-530-6254, by FAX at 801-530-6511, or by Internet E-mail at lmarx@utah.gov, or mail at PO Box 146741, Salt Lake City, UT 84114-6741

**INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 12/01/2016**

**INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:**  
 ◆ 11/17/2016 11:00 AM, Heber Wells Bldg, 160 E 300 S, Hearing Room 403 (fourth floor), Salt Lake City, UT

**THIS RULE MAY BECOME EFFECTIVE ON: 12/08/2016**

**AUTHORIZED BY: Mark Steinagel, Director**

**R156. Commerce, Occupational and Professional Licensing.  
 R156-68. Utah Osteopathic Medical Practice Act Rule.  
 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", 2012-2013 edition, which is hereby incorporated by reference; and

(15) failing to timely submit an annual written report to the division indicating that the osteopathic physician has reviewed at least annually the dispensing practices of those authorized by the osteopathic physician to dispense an opiate antagonist, pursuant to Section R156-68-604.

**R156-68-604. Required Reporting of Annual Review by Osteopathic Physicians of Dispensing Practices of Those Authorized to Dispense an Opiate Antagonist.**

(1) In accordance with Subsection 26-55-105(2)(c), an osteopathic physician who issues a standing prescription drug order

authorizing the dispensing of an opiate antagonist shall annually submit a written report to the division indicating that he has reviewed at least annually the dispensing practices of those authorized by the osteopathic physician to dispense the opiate antagonist.

(2) The report described above shall be submitted no later than January 31 of each calendar year and shall continue as long as the standing order remains in effect. Null reporting is not required.

(3) An osteopathic physician shall be considered to have satisfactorily reviewed the dispensing practices of those authorized by the osteopathic physician to dispense the opiate antagonist by reviewing the report of the licensee dispensing the opiate antagonist specified in Subsection R156-17b-625(1).

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

**Date of Enactment or Last Substantive Amendment: ~~July 28, 2014~~ 2016**

**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**

**Commerce, Real Estate  
R162-2f  
Real Estate Licensing and Practices  
Rules**

**NOTICE OF PROPOSED RULE  
(Amendment)**

DAR FILE NO.: 40856

FILED: 10/06/2016

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** In Section R162-2f-206c, the filing changes fair housing from a continuing education elective topic to a core topic. In Section R162-2f-501 in Appendix 2, the filing changes the experience point values relative to property management agreements.

**SUMMARY OF THE RULE OR CHANGE:** In Section R162-2f-206c, the continuing education topic of fair housing is changed from an elective topic to a core topic. In Section R162-2f-501 in Appendix 2, the property management experience table is amended to clarify the experience value for representation of a client under a property management agreement and by providing experience points for residential and commercial properties with fewer than five units.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 61-2f-103 and Section 61-2f-203 and Section 61-2f-204 and Section 61-2f-206

**ANTICIPATED COST OR SAVINGS TO:**

♦ **THE STATE BUDGET:** The division has the staff and budget in place to administer this proposed amendment. It is

not expected that the proposed amendment will affect those resources or result in any cost or savings to the state budget.

◆ LOCAL GOVERNMENTS: Local governments are not required to comply with or enforce the real estate licensing and practices rules. No fiscal impact to local government is expected from the proposed amendment.

◆ SMALL BUSINESSES: The proposed amendment does not create new obligations for small business nor does it increase the cost associated with any existing obligation. No fiscal impact to small business is expected from the proposed amendment.

◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: The proposed amendment does not create new obligations for persons other than small businesses, businesses, or local government entities nor does it increase the cost associated with any existing obligation. No fiscal impact to persons other than small businesses, businesses, or local government entities is expected from the proposed amendment.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The proposed amendment does not create new obligations for affected persons. No fiscal impact to affected persons is expected from the proposed amendment.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The amendment to Section R162-2f-206c merely changes fair housing from a continuing education elective topic to a core topic. No fiscal impact to business is anticipated. The amendment to Section R162-2f-501 permits the accumulation of experience points for additional real estate activities not previously recognized. No fiscal impact to business is anticipated.

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

COMMERCE  
 REAL ESTATE  
 HEBER M WELLS BLDG  
 160 E 300 S  
 SALT LAKE CITY, UT 84111-2316  
 or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Justin Barney by phone at 801-530-6603, or by Internet E-mail at justinbarney@utah.gov, or mail at PO Box 146711, Salt Lake City, UT 84114-6711

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 12/15/2016

THIS RULE MAY BECOME EFFECTIVE ON: 12/22/2016

AUTHORIZED BY: Jonathan Stewart, Director

**R162. Commerce, Real Estate.**

**R162-2f. Real Estate Licensing and Practices Rules.**

**R162-2f-206c. Certification of Continuing Education Course.**

(1)(a) The division may not award continuing education credit for a course that is advertised in Utah to real estate licensees unless the course is certified prior to its being taught.

(b) A licensee who completes a course that is not required to be certified pursuant to this Subsection (1)(a), and who believes that the course satisfies the objectives of continuing education pursuant to this Subsection (2)(f), may apply to the division for an award of continuing education credit after successfully completing the course.

(2) To certify a continuing education course for traditional education, a person shall, no later than 30 days prior to the date on which the course is proposed to begin, provide the following to the division:

- (a) name and contact information of the course provider;
- (b) name and contact information of the entity through which the course will be provided;
- (c) description of the physical facility where the course will be taught;
- (d) course title;
- (e) number of credit hours;
- (f) statement defining how the course will meet the objectives of continuing education by increasing the participant's:
  - (i) knowledge;
  - (ii) professionalism; and
  - (iii) ability to protect and serve the public;
- (g) course outline including a description of the subject matter covered in each 15-minute segment;
- (h) a minimum of three learning objectives for every three hours of class time;
  - (i) name and certification number of each certified instructor who will teach the course;
  - (j) copies of all materials to be distributed to participants;
  - (k) signed statement in which the course provider and instructor(s):
    - (i) agree not to market personal sales products;
    - (ii) allow the division or its representative to audit the course on an unannounced basis; and
    - (iii) agree to upload, within ten business days after the end of a course offering, to the database specified by the division, the following:
      - (A) course name;
      - (B) course certificate number assigned by the division;
      - (C) date(s) the course was taught;
      - (D) number of credit hours; and
      - (E) names and license numbers of all students receiving continuing education credit;
      - (l) procedure for pre-registration;
      - (m) tuition or registration fee;
      - (n) cancellation and refund policy;
      - (o) procedure for taking and maintaining control of attendance during class time;
      - (p) sample of the completion certificate;
      - (q) nonrefundable fee for certification as required by the division; and
      - (r) any other information the division requires.

(3) To certify a continuing education course for distance education, a person shall:

- (a) comply with this Subsection (2);
- (b) submit to the division a complete description of all course delivery methods and all media to be used;
- (c) provide course access for the division using the same delivery methods and media that will be provided to the students;
- (d) describe specific frequent and periodic interactive events included in the course and appropriate to the delivery method that will contribute to the students' achievement of the stated learning objectives and encourage student participation;
- (e) describe how and when certified instructors will be available to answer student questions; and
- (f) provide an attestation from the sponsor of the availability and adequacy of the equipment, software, and other technologies needed to achieve the course's instructional claims.

(4) Minimum standards.

(a) Except for distance education courses, all courses shall be taught in an appropriate classroom facility and not in a private residence.

(b) The minimum length of a course shall be one credit hour.

(c) Except for online courses, the procedure for taking attendance shall be more extensive than having the student sign a class roll.

(d) The completion certificate shall allow for entry of the following information:

- (i) licensee's name;
- (ii) type of license;
- (iii) license number;
- (iv) date of course;
- (v) name of the course provider;
- (vi) course title;
- (vii) number of credit hours awarded;
- (viii) course certification number;
- (ix) course certification expiration date;
- (x) signature of the course sponsor; and
- (xi) signature of the licensee.

(5) Certification procedures.

(a) Upon receipt of a complete application for certification of a continuing education course, the division shall, at its own discretion, determine whether a course qualifies for certification.

(b) Upon determining that a course qualifies for certification, the division shall determine whether the content satisfies core or elective requirements.

(c) Core topics include the following:

- (i) state approved forms and contracts;
- (ii) other industry used forms or contracts;
- (iii) ethics;
- (iv) agency;
- (v) short sales or sales of bank-owned property;
- (vi) environmental hazards;
- (vii) property management;
- (viii) prevention of real estate and mortgage fraud;
- (ix) federal and state real estate laws;
- (x) fair housing;

(xi) ~~(\*)~~ division administrative rules;

- (xii) ~~(\*)~~ broker trust accounts; and
- (xiii) ~~(\*)~~ water law, rights and transfer.

(d) If a course regarding an industry used form or contract is approved by the division as a core course, the provider of the course shall:

- (i) obtain authorization to use the form(s) or contract(s) taught in the course;
- (ii) obtain permission for licensees to subsequently use the form(s) or contract(s) taught in the course; and
- (iii) if applicable, arrange for the owner of each form or contract to make it available to licensees for a reasonable fee.

(e) Elective topics include the following:

- (i) real estate financing, including mortgages and other financing techniques;
- (ii) real estate investments;
- (iii) real estate market measures and evaluation;
- (iv) real estate appraising;
- (v) market analysis;
- (vi) measurement of homes or buildings;
- (vii) accounting and taxation as applied to real property;
- (viii) estate building and portfolio management for clients;

- (ix) settlement statements;
- (x) real estate mathematics;
- (xi) real estate law;
- (xii) contract law;
- (xiii) agency and subagency;
- (xiv) real estate securities and syndications;
- (xv) regulation and management of timeshares, condominiums, and cooperatives;
- (xvi) resort and recreational properties;
- (xvii) farm and ranch properties;
- (xviii) real property exchanging;
- (xix) legislative issues that influence real estate practice;
- (xx) real estate license law;
- (xxi) division administrative rules;
- (xxii) land development;
- (xxiii) land use;
- (xxiv) planning and zoning;
- (xxv) construction;
- (xxvi) energy conservation in buildings;
- (xxvii) water rights;
- (xxviii) landlord/tenant relationships;
- (xxix) property disclosure forms;
- (xxx) Americans with Disabilities Act;

~~(xxx) fair housing;~~

- (xxxi) ~~(xxxii)~~ affirmative marketing;
- (xxxii) ~~(xxxiii)~~ commercial real estate;
- (xxxiii) ~~(xxxiv)~~ tenancy in common;
- (xxxiv) ~~(xxxv)~~ professional development;
- (xxxv) ~~(xxxvi)~~ business success;
- (xxxvi) ~~(xxxvii)~~ customer relation skills;
- (xxxvii) ~~(xxxviii)~~ sales promotion, including:

- (A) salesmanship;
- (B) negotiation;
- (C) sales psychology;
- (D) marketing techniques related to real estate knowledge;

- (E) servicing clients; and
- (F) communication skills;
- (xxxviii)(~~xxxix~~) personal and property protection for licensees and their clients;
- (~~xxxix~~)(~~xli~~) any topic that focuses on real estate concepts, principles, or industry practices or procedures, if the topic enhances licensee professional skills and thereby advances public protection and safety;
- (~~xli~~)(~~xlii~~) any other topic that directly relates to the real estate brokerage practice and directly contributes to the objective of continuing education; and
- (~~xli~~)(~~xliii~~) technology courses that utilize the majority of the time instructing students how the technology:
  - (A) directly benefits the consumer; or
  - (B) enables the licensee to be more proficient in performing the licensee's agency responsibilities.
- (f) Unacceptable topics include the following:
  - (i) offerings in mechanical office and business skills, including:
    - (A) typing;
    - (B) speed reading;
    - (C) memory improvement;
    - (D) language report writing;
    - (E) advertising; and
    - (F) technology courses with a principal focus on technology operation, software design, or software use;
  - (ii) physical well-being, including:
    - (A) personal motivation;
    - (B) stress management; and
    - (C) dress-for-success;
  - (iii) meetings held in conjunction with the general business of the licensee and the licensee's broker, employer, or trade organization, including:
    - (A) sales meetings;
    - (B) in-house staff meetings or training meetings; and
    - (C) member orientations for professional organizations;
  - (iv) courses in wealth creation or retirement planning for licensees; and
  - (v) courses that are specifically designed for exam preparation.
- (g) If an application for certification of a continuing education course is denied by the division, the person making application may appeal to the commission.
- (6)(a) A continuing education course certification expires 24 months from the date of issuance and must be renewed before the expiration date in order to remain active.
- (b) To renew a continuing education course certification, an applicant shall:
  - (i) complete a renewal application as provided by the division; and
  - (ii) pay a nonrefundable renewal fee.
- (c) To reinstate an expired continuing education course certification within 30 days following the expiration date, a person shall:
  - (i) comply with all requirements for a timely renewal; and
  - (ii) pay a nonrefundable late fee.

- (d) To reinstate an expired continuing education course certification after 30 days and within six months following the expiration date, a person shall:
  - (i) comply with all requirements for a timely renewal; and
  - (ii) pay a non-refundable reinstatement fee.
- (e) A certification that is expired for more than six months may not be reinstated. To obtain a certification, a person must apply as a new applicant.
- (f) If a deadline specified in this Subsection (6) falls on a day when the division is closed for business, the deadline shall be extended to the next business day.

**R162-2f-501. Appendices.**

When calculating experience points from Tables 1 and 2, experience points are limited to points for those activities which require a real estate license and comply with R162-2f-401a. A minimum of one-half of the points in Tables 1 and 2 must derive from transactions of properties located in the state of Utah.

TABLE 1  
APPENDIX 1 - REAL ESTATE SALES TRANSACTIONS  
EXPERIENCE TABLE

RESIDENTIAL - points can be accumulated from either the selling or the listing side of a real estate closing:	
(a) One unit dwelling	2.5 points
(b) Two- to four-unit dwellings	5 points
(c) Apartments, 5 units or over	10 points
(d) Improved lot	2 points
(e) Vacant land/subdivision	10 points
COMMERCIAL	
(f) Hotel or motel	10 points
(g) Industrial or warehouse	10 points
(h) Office building	10 points
(i) Retail building	10 points

TABLE 2  
APPENDIX 2 - LEASING TRANSACTIONS AND PROPERTY MANAGEMENT  
EXPERIENCE TABLE

RESIDENTIAL	
(a) Each <del>property management agreement of 5 units</del>	1 point per unit
<del>[or more] agreement</del>	unit up to 5 points
(b) Each unit leased	1.25 points per unit
* (c) All other property management	0.25 pt/month
COMMERCIAL - hotel/motel, industrial/warehouse, office, or retail building	
(a) Each <del>property management [master agreement of 5 units or more]</del>	1 point per [5 points]
<del>agreement</del>	unit up to 5 points
(b) Each unit leased	1.25 points per unit
* (c) All other property management	1 pt/month

\*When calculating experience points from Table 2, the total combined monthly experience credit claimed for "All other property management" combined, both residential and commercial, may not exceed 25 points in any application to practice as a real estate broker.

TABLE 3  
APPENDIX 3 - OPTIONAL EXPERIENCE TABLE

Real Estate Attorney	1 pt/month
CPA-Certified Public Accountant	1 pt/month
Mortgage Loan Officer	1 pt/month
Licensed Escrow Officer	1 pt/month
Licensed Title Agent	1 pt/month
Designated Appraiser	1 pt/month
Licensed General Contractor	1 pt/month
Bank Officer in Real Estate Loans	1 pt/month
Certified Real Estate Prelicensing Instructor	.5 pt/month

**KEY: real estate business, operational requirements, trust account records, notification requirements**

**Date of Enactment or Last Substantive Amendment: [~~May 31~~], 2016**

**Notice of Continuation: August 12, 2015**

**Authorizing, and Implemented or Interpreted Law: 61-2f-103(1); 61-2f-105; 61-2f-203(1)(e); 61-2f-206(3); 61-2f-206(4)(a); 61-2f-306; 61-2f-307**

**Education, Administration**  
**R277-409**  
**Public School Membership in**  
**Associations**

**NOTICE OF PROPOSED RULE**  
(New Rule)

DAR FILE NO.: 40884  
FILED: 10/14/2016

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The purpose of this new rule is to place limitations on public school membership in associations with rules or policies that conflict with Utah State Board of Education rules or policies.

**SUMMARY OF THE RULE OR CHANGE:** This new rule provides definitions and membership restrictions for Utah public schools if an association adopts rules or policies that are inconsistent with this rule.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Art X, Sec 3 and Section 53A-1-401

**ANTICIPATED COST OR SAVINGS TO:**

- ◆ **THE STATE BUDGET:** This new Rule R277-409 provides membership restrictions affecting Utah public schools, which likely will not result in a cost or savings to the state budget.
- ◆ **LOCAL GOVERNMENTS:** This new Rule R277-409 provides restrictions that may affect Utah public schools from becoming members of an association, but will likely not result in a cost or savings to local government.
- ◆ **SMALL BUSINESSES:** There may be some costs for implementation of an association's rules, policies, or bylaws

as a result of this rule. Costs are speculative and would likely be absorbed within an association's budget.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** This new Rule R277-409 provides restrictions that may affect Utah public school students from participating in activities associated with membership in an association but will likely not result in a cost or savings to persons other than small businesses, businesses, or local government entities.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** There may be some compliance costs for implementation of an association's rules, policies, or bylaws as a result of this rule. Compliance costs are speculative and would likely be absorbed within an association's budget.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** To the best of my knowledge, there should be minimal fiscal impact on businesses resulting from enactment of this new rule.

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

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

**DIRECT QUESTIONS REGARDING THIS RULE TO:**

◆ Angela Stallings by phone at 801-538-7656, by FAX at 801-538-7768, or by Internet E-mail at [angie.stallings@schools.utah.gov](mailto:angie.stallings@schools.utah.gov), or mail at PO Box 144200, Salt Lake city, UT 84114-4200

**INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 12/01/2016**

**THIS RULE MAY BECOME EFFECTIVE ON: 12/08/2016**

**AUTHORIZED BY:** Angela Stallings, Deputy Superintendent, Policy and Communication

**R277. Education, Administration.**  
**R277-409. Public School Membership in Associations.**  
**R277-409-1. Authority and Purpose.**

- (1) This rule is authorized by:
  - (a) Utah Constitution Article X, Section 3, which vests general control and supervision over public education in the Board; and
  - (b) Section 53A-1-401, which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law.
- (2) The purpose of this rule is to place limitations on public school membership in certain associations with rules or policies that conflict with Board policies.



**R277-409-2. Definitions.**

(1) "Association" means an organization that governs or regulates a student's participation in an interscholastic activity.

(2) "Interscholastic activity" means an activity within the state in which the students that participate represent a school in the activity.

(3) "Recruiting" means a solicitation or conversation:

(a) initiated by:

(i) an employee of a school or school district;

(ii) a coach or advisor of an interscholastic activity; or

(iii) a member of a booster, alumni, or other organization that performs a substantially similar role as a booster organization, affiliated with a school or school district; and

(b) to influence a student, or the student's relative or legal guardian, to transfer to a school for the purpose of participating in an interscholastic activity at the school.

**R277-409-3. Membership Restrictions.**

(1) Beginning with the 2017-2018 school year, a public school may not be a member of, or pay dues to an association that adopts rules or policies that are inconsistent with this R277-409-3.

(2) An association shall permit the Board to audit the association's:

(a) financial statements; and

(b) compliance with Utah Code, Board rule, and the association's bylaws, policies, rules, and best practices.

(3) An association may not treat similarly situated schools differently in the association's designation of division classifications, or in applying other association policies, based solely on the school's status as a charter school or district public school.

(4) An association may sanction a school, coach, or individual who oversees or works with students as part of an interscholastic activity of a public school if the association finds that the coach or individual:

(a) engaged in recruiting activities; or

(b) violated any other rule or policy of the association.

(5) An association shall establish a policy or rule to govern the association's use of student data that complies with the student data privacy requirements of:

(a) FERPA;

(b) Title 53A, Chapter 1, Part 14, Student Data Protection Act;

(c) Title 53A, Chapter 13, Part 3, Utah Family Educational Rights and Privacy Act; and

(d) R277-484.

(6) An association shall establish policies or rules that require:

(a) coaches and individuals who oversee interscholastic activities or work with students as part of an interscholastic activity to meet a set of professional standards that are consistent with the Utah Educator Professional Standards described in Rule R277-515; and

(b) the association or public school to annually train each coach or other individual who oversees or works with students as part of an interscholastic activity of a public school on the following:

(i) child sexual abuse prevention as described in Section 53A-13-112;

(ii) the prevention of bullying, cyber-bullying, hazing, harassment, and retaliation as described in:

(A) Title 53A, Chapter 11a, Bullying and Hazing; and

(B) R277-613; and

(iii) the professional standards described in Subsection (6)(a).

(7) An association shall establish procedures and mechanisms to:

(a) monitor LEA compliance with the association's training requirements described in Subsection (6);

(b) sanction individuals who violate the association's professional standards described in Subsection (6)(a);

(c) track individuals who violate the association's standards described in Subsection (6)(a); and

(d) prohibit individuals who have violated the association's standards described in Subsection (6)(a) from coaching, overseeing, or working with students as part of an interscholastic activity.

(8) An association shall establish a policy or rule that requires the association to follow requirements similar to the requirements of:

(a) Title 52, Chapter 4, Open and Public Meetings Act; and

(b) Title 63G, Chapter 2, Government Records Access and Management Act.

**KEY: schools, memberships, associations**

**Date of Enactment of Last Substantive Amendment: 2016**

**Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53A-1-401**

## Education, Administration

### R277-438

#### Dual Enrollment

#### NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 40885

FILED: 10/14/2016

#### RULE ANALYSIS

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** This rule is amended in response to feedback from stakeholders that certain aspects of Rule R277-438 were causing confusion regarding the requirements for home school students to participate in dual enrollment.

**SUMMARY OF THE RULE OR CHANGE:** The proposed amendments provide language to clarify the definition of curricular programs, as well as to clarify participation requirements for dual enrollment students.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Art X, Sec 3 and Section 53A-1-401 and Section 53A-11-102.5

## ANTICIPATED COST OR SAVINGS TO:

- ◆ THE STATE BUDGET: The amendments to Rule R277-438 provide language for clarification purposes, which likely will not result in a cost or savings to the state budget.
- ◆ LOCAL GOVERNMENTS: The amendments to Rule R277-438 provide language for clarification purposes, which likely will not result in a cost or savings to local government.
- ◆ SMALL BUSINESSES: The amendments to Rule R277-438 provide language for clarification purposes, which likely will not result in a cost or savings to small businesses.
- ◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: The amendments to Rule R277-438 provide language for clarification purposes, which likely will not result in a cost or savings to persons other than small businesses, businesses, or local government entities.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The amendments to Rule R277-438 provide language for clarification purposes, which likely will not result in any compliance costs for affected persons.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: To the best of my knowledge, there should be no fiscal impact on businesses resulting from the amendments to this rule.

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

## DIRECT QUESTIONS REGARDING THIS RULE TO:

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INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 12/01/2016

THIS RULE MAY BECOME EFFECTIVE ON: 12/08/2016

AUTHORIZED BY: Angela Stallings, Deputy Superintendent, Policy and Communication

**R277. Education, Administration.****R277-438. Dual Enrollment.****R277-438-1. Authority and Purpose.**

- (1) This rule is authorized by:
  - (a) Utah Constitution Article X, Section 3, which vests general control and supervision [of the] over public [school system under] education in the Board;

(b) Subsection 53A-1-402(1)(b), which directs the Board to establish rules and minimum standards for access to programs;

(c) ~~S[ub]section 53A-1-401[3]~~, which allows the Board to [adopt rules in accordance with its responsibilities] make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law; and

(d) Section 53A-11-102.5, which governs dual enrollment.

(2) The purpose of this rule is to provide consistent statewide procedures and criteria for a home school and private school student's participation in a public school course, co-curricular activity, or program.

**R277-438-2. Definitions.**

(1) "Co-curricular activity" means a school district or school activity, course, or experience, outside of school hours, that also includes a required regular school day component [~~and an after-school component, including a special program or activity such as a program for a gifted and talented student, a summer program, and a science or history fair~~].

(2) "Dual enrollment student" means a student who is enrolled simultaneously in:

- (a) a private school or home school; and
- (b) a public school.

(3) "Eligibility" means a student's fitness and availability to participate in a school course, activity, or program governed by this rule that is determined by a number of factors, including:

- (a) residency;
- (b) scholarship;
- (c) age; and
- (d) the number of semesters of participation in a particular course, activity, or program.

(4) "Full-time student" means a student earning the school district designated number and type of credits required for participation in a course, activity, or program in the school district in which the student's parent resides.

(5) "Home school" means a school in the state comprised of one or more students officially excused from compulsory public school attendance under Section 53A-11-102.

(6) "Private school" means a school in the state that:

- (a) is maintained by a private individual or corporation;
- (b) is maintained and operated not at public expense;
- (c) is generally supported, in part at least, by tuition fees or charges;

(d) operates as a substitute for, and gives the equivalent of, instruction required in a public school;

(e) employs a teacher able to provide the same quality of education as a public school teacher;

(f) is established to operate indefinitely and independently, not dependent upon age of the students available or upon individual family situations; and

(g) is licensed as a business by the Department of Commerce.

(7)(a) "Resident school" means a public school:

(i) that is under the control of a local school board elected under Title 20A, Chapter 14, Nomination and Election of State and Local School Boards; and

(ii) within whose boundaries a student's custodial parent resides.

(b) "Resident school" does not mean a charter school or online school.

(8) "Student participation fee" means a fee charged to all participating students by the resident school for enrollment in a course, program, or co-curricular school activity consistent with Rule R277-407.

**R277-438-3. Private and Home School Student Participation in a Public School Course, Co-curricular Activity, or Program.**

(1) A student who is exempt from compulsory public school education by a local school board for instruction in a private or home school may enroll in the student's resident school as a dual enrollment student and participate in a course, co-curricular activity, or program at the student's resident school if the student:

(a) takes courses comparable to resident school courses or earns credit under options outlined in Section R277-700-6 in at least as many of the designated courses as required by the local school board of a student for participation in the course, co-curricular activity, or program[;]; or

(b) demonstrates competency to the satisfaction of the LEA in the subject matter taught in the courses required by the local school board of a student for participation in the course, co-curricular activity or program.

(2) A public school that is not the student's resident school may allow a private or home school student to enroll in the public school, including in a single course or program, as a dual enrollment student, at the discretion of the public school, and in accordance with Subsection 53A-11-102.6(2)(d).

(3)(a) A private school dual enrollment student is eligible to participate in a course, co-curricular activity, or program[;]

(a) consistent with the eligibility standards for a full-time student, including providing a report card[and citizenship information] to the resident school or other school described in Subsection (2) upon request[;].

(b) A home school dual enrollment student is eligible to participate in a course, co-curricular activity, or program if eligibility standards are met consistent with Subsections 53A-11-102.6(5) through 53A-11-102.6(13).

[ (b) in accordance with Section 53A-11-102.5; and

(c) in accordance with the provisions of Subsection 53A-11-102.6(2)(d).]

**R277-438-4. Fees for Private and Home School Students.**

A school or school district shall waive a student participation fee for a dual enrollment private or home school student if:

(1) the student is eligible; and

(2) the parent provides required documentation under Section 53A-12-103 and Rule R277-407, School Fees.

**R277-438-5. Miscellaneous Issues.**

(1) A dual enrollment student attending an activity or a portion of a school day under Section 53A-11-102.5 is subject to the same behavior and discipline rights and requirements of a full-time student.

(2) A dual enrollment student who attends an activity or a portion of the school day is subject to the administrative scheduling and teacher discretion of the public school.

(3)(a) A dual enrollment student with a disability may participate as a dual enrollment student consistent with law, this rule and 34 CFR 300.450 through 300.455.

(b) A public school that enrolls a dual enrollment student shall prepare an IEP for a student described in Subsection (3)(a) prior to the student's participation in dual enrollment using comparable procedures to those required for identifying and evaluating public school students.

(c) A student with a disability seeking dual enrollment is entitled to services for the time, or for the number of courses, the student is enrolled in the public school, based on the decision of the student's IEP team.

(d) Decisions about the scheduling and manner of services provided is the responsibility of the enrolling public school and school district personnel.

(e) A school or a school district is not prohibited from providing a service to a student who is not enrolled full time in excess of those required by this section.

**KEY: public education, dual enrollment**

**Date of Enactment or Last Substantive Amendment:**

**[December 8, 2015]2016**

**Notice of Continuation: March 14, 2014**

**Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53A-1-402(1)(b); 53A-1-401; 53A-11-102.5**

Education, Administration  
**R277-511**  
Academic Pathway to Teaching (APT)  
Level 1 License

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 40886

FILED: 10/14/2016

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** Rule R277-511 is amended in response a Utah State Board of Education directive to provide additional requirements that had not been included in the rule when it was made effective on 08/12/2016.

**SUMMARY OF THE RULE OR CHANGE:** The amendments require an APT level 1 license holder to complete all the required mentoring years with the same local education agency (LEA) before the LEA may recommend the license holder qualify for a level 2 license, change the definition of "master teacher", and require an LEA that hires an APT level 1 educator to prepare a comprehensive mentoring plan for each APT level 1 educator.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Art X, Sec 3 and Section 53A-1-401 and Section 53A-6-104

**ANTICIPATED COST OR SAVINGS TO:**

- ◆ **THE STATE BUDGET:** The amendments to Rule R277-511 provide language that clarifies LEA requirements when employing a level 1 license holder, which likely will not result in a cost or savings to the state budget.
- ◆ **LOCAL GOVERNMENTS:** The amendments to Rule R277-511 provide language that clarifies LEA requirements when employing a level 1 license holder, which likely will not result in a cost or savings to local government.
- ◆ **SMALL BUSINESSES:** The amendments to Rule R277-511 provide language that clarifies LEA requirements when employing a level 1 license holder, which likely will not result in a cost or savings to small businesses.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** The amendments to Rule R277-511 provide language that clarifies LEA requirements when employing a level 1 license holder, which likely will not result in a cost or savings to persons other than small businesses, businesses, or local government entities.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** The amendments to Rule R277-511 provide language that clarifies LEA requirements when employing a level 1 license holder, which likely will not result in any compliance costs for affected persons.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** To the best of my knowledge, there should be no fiscal impact on businesses resulting from the amendments to this rule.

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

EDUCATION  
ADMINISTRATION  
250 E 500 S  
SALT LAKE CITY, UT 84111-3272  
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**DIRECT QUESTIONS REGARDING THIS RULE TO:**

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**THIS RULE MAY BECOME EFFECTIVE ON: 12/08/2016**

**AUTHORIZED BY:** Angela Stallings, Deputy Superintendent, Policy and Communication

**R277. Education, Administration.****R277-511. Academic Pathway to Teaching (APT) Level 1 License.****R277-511-1. Authority and Purpose.**

- (1) This rule is authorized by:
  - (a) Utah Constitution Article X, Section 3, which vests general control and supervision over public education in the Board;
  - (b) Section 53A-6-104, which allows the board by rule, to rank, endorse, or otherwise to:
    - (i) classify licenses; and
    - (ii) establish the criteria for an educator to obtain or retain a license; and
    - (c) Section 53A-1-401, which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law.
- (2) The purpose of this rule is to provide standards and procedures:
  - (a) for an applicant to obtain an Academic Pathway to Teaching (APT) level 1 license; and
  - (b) for an APT level 1 license holder to obtain a level 2 license.

**R277-511-2. Definitions.**

- (1)(a) "APT level 1 license" means a license obtained through the academic path to teaching process as described in this rule.
- (b) "APT level 1 license" includes:
  - (i) an APT level 1 license with an Elementary (K-6) Concentration; and
  - (ii) an APT Level 1 License with a Secondary (6-12) Concentration and an Endorsement.
- (2) "LEA administrator" means a school building principal or LEA administrator who:
  - (i) supervises an APT level 1 licensee; and
  - (ii) may recommend the APT level 1 licensee for Level 2 licensure to the Superintendent as described in Section R277-511-[6].
- ~~(3) "Master teacher" means a level 2 or level 3 licensed teacher designated as a master teacher by an LEA through the demonstration of consistent leadership, focused collaboration, distinguished teaching, and continued professional growth.~~
- (3) "Teacher leader" means a teacher designated as a teacher leader as described in R277-513.

**R277-511-3. Superintendent Responsibilities.**

- (1) The Superintendent shall create an application for an APT level 1 license and publish the application on the Board's website.
- (2) The Superintendent shall approve an application for an APT level 1 license if the applicant meets all of the requirements of Section R277-511-4 or Section R277-511-5.

**R277-511-4. Requirements for an APT Level 1 License with an Elementary (K-6) Concentration.**

- (1) To qualify for an APT level 1 license with an Elementary (K-6) Concentration, an applicant shall:

- (a) complete the application described in Subsection R277-511-3(1);
- (b) have completed a bachelor's degree or higher;
- (c) submit postsecondary transcripts to the Superintendent;
- (d) receive a passing score on the Elementary Education: Multiple Subjects Praxis Assessment;
- (e) complete the educator ethics review on the Board's website;
- (f) successfully pass a background check as described in R277-516; and
- (g) pay the applicable licensing fee.

(2) An APT level 1 license with an Elementary (K-6) Concentration is:

- (a) equivalent to the Level 1 license as described in R277-500 and R277-502 as to length and professional development expectations; and
- (b) subject to the same renewal procedures.

**R277-511-5. Requirements for an APT Level 1 License with a Secondary (6-12) Concentration and an Endorsement.**

(1) To qualify for an APT Level 1 License with a Secondary (6-12) Concentration and an Endorsement, an applicant shall:

- (a) complete the application described in Subsection R277-511-3(1);
  - (b) have completed a bachelor's degree or higher;
  - (c) submit postsecondary transcripts to the Superintendent;
  - (d) receive a passing score on one of the following that is related to the subject, field, or area to which they are seeking an APT Level 1 License with a Secondary (6-12) Concentration and an Endorsement:
    - (i) a Praxis II Subject Assessment; or
    - (ii) another Board-approved content knowledge assessment;
  - (e) complete the educator ethics review on the Board's website;
  - (f) successfully pass a background check as described in R277-516; and
  - (g) pay the applicable licensing fee.
- (2) Except as provided in Subsection (3), an APT Level 1 License with a Secondary (6-12) Concentration and an Endorsement is:

- (a) equivalent to the Level 1 license as described in R277-500 and R277-502 as to length and professional development expectations; and
  - (b) subject to the same renewal procedures.
- (3) An APT Level 1 License with a Secondary (6-12) Concentration and an Endorsement holder may only seek an additional endorsement after the APT Level 1 License with a Secondary (6-12) Concentration holder obtains a level 2 license.

**R277-511-6. Requirements for an LEA that Employs an APT Level 1 License Holder.**

If an LEA employs an APT level 1 license holder, the LEA shall:

- (1) assign a ~~master~~ teacher leader to serve as a mentor to the APT level 1 license holder; ~~and~~

- (2) prepare the APT level 1 license holder to meet the Utah Effective Educator Standards described in R277-530-5[-];

~~(3) prepare a mentoring plan for each APT Level 1 license holder; and~~

~~(4) provide an APT Level 1 license holder's mentoring plan to the Superintendent upon request.~~

**R277-511-7. Requirements for an APT Level 1 License Holder to Gain a Level 2 License.**

(1) To receive a Level 2 license, an APT level 1 license holder shall:

(a)(i) complete three years of teaching full-time in one LEA under supervision of the ~~master~~ teacher leader mentor and LEA administrator; or

(ii) complete four years of at least 0.4 FTE teaching in one LEA under the supervision of a ~~master~~ teacher leader mentor and the LEA administrator;

(b) satisfy all Entry Years Enhancement for Quality Teaching requirements designated in R277-522;

~~(c) complete the requirements of the APT Level 1 license holder's mentoring plan;~~

~~(d)~~ complete any additional requirements of the recommending LEA, including coursework and professional learning that the recommending LEA requires;

~~(e)~~ complete the educator ethics review on the Board's website;

~~(f)~~ renew the educator's background check as required in R277-516; and

~~(g)~~ obtain a recommendation from[-]

~~(i) the master teacher mentor; and~~

~~(ii) the LEA administrator; and~~

~~(h)~~ pay applicable licensing fees.

(2)(a) An APT level 1 license holder seeking a level 2 license may request a one year extension of the APT level 1 license at the recommendation of the ~~master teacher mentor and the~~ LEA Administrator up to a maximum of two one-year extensions.

(b) Unless required by the recommending LEA, the years of teaching in Subsection (1)(a) do not need to be consecutive.

**KEY: Academic Pathway to Teaching, educator licensure**  
**Date of Enactment or Last Substantive Amendment: [August 12, 2016**  
**Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53A-6-104; 53A-1-401**

Education, Administration  
**R277-604**  
 Private School, Home School,  
 Electronic High School (EHS), and  
 Bureau of Indian Affairs (BIA) Student  
 Participation in Public School  
 Achievement Tests

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 40887

FILED: 10/14/2016

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Rule R277-604 is amended to provide technical and conforming changes.

SUMMARY OF THE RULE OR CHANGE: The amendments to Rule R277-604 provide technical and conforming changes necessary, so the rule is in compliance with the Rulewriting Manual for Utah. The amendments also remove unnecessary or outdated language and terms.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Art X, Sec 3 and Section 53A-1-401 and Section 53A-1-603

ANTICIPATED COST OR SAVINGS TO:

- ◆ THE STATE BUDGET: The amendments to Rule R277-604 provide technical and conforming changes, which likely will not result in a cost or savings to the state budget.
- ◆ LOCAL GOVERNMENTS: The amendments to Rule R277-604 provide technical and conforming changes, which likely will not result in a cost or savings to local government.
- ◆ SMALL BUSINESSES: The amendments to Rule R277-604 provide technical and conforming changes, which likely will not result in a cost or savings to small businesses.
- ◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: The amendments to Rule R277-604 provide technical and conforming changes, which likely will not result in a cost or savings to persons other than small businesses, businesses, or local government entities.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The amendments to Rule R277-604 provide technical and conforming changes, which likely will not result in any compliance costs for affected persons.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: To the best of my knowledge, there should be no fiscal impact on businesses resulting from the amendments to this rule.

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

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INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 12/01/2016

THIS RULE MAY BECOME EFFECTIVE ON: 12/08/2016

AUTHORIZED BY: Angela Stallings, Deputy Superintendent, Policy and Communication

**R277. Education, Administration.**

**R277-604. Private School, Home School, ~~Electronic High School (EHS),~~ and Bureau of Indian Affairs (BIA) Student Participation in Public School Achievement Tests.**

**R277-604-~~2~~1. Authority and Purpose.**

~~A.~~(1) This rule is authorized by:

~~(a)~~ Utah Constitution Article X, Section 3, which vests general control and supervision ~~of~~ over public education in the Board~~;~~;

~~(b)~~ Section 53A-1-401~~(3)~~, which allows the Board to ~~adopt~~ make rules ~~[in accordance with its responsibilities]~~ to execute the Board's duties and responsibilities under the Utah Constitution and state law~~;~~; and

~~(c)~~ Section 53A-1-603~~(1)(a)~~, which directs the Board to require school districts ~~[to implement the Utah Performance Assessment System for Students]~~ and charter schools to administer the U-PASS assessment system to uniformly measure statewide student performance.

~~B.~~(2) The purpose of this rule is:

~~(1)~~a to provide opportunities for Utah private school students and home school students who are Utah residents, and Utah students attending ~~[BIA]~~ Bureau of Indian Affairs schools to participate in U-PASS;

~~(2)~~b to maintain the integrity and security of U-PASS;

~~(3)~~c to provide an orderly and manageable administrative process for public schools to include Utah private school students and home school students who are Utah residents, and Utah students attending BIA schools to participate in U-PASS if they so desire; and

~~(4)~~d to protect the public investment in U-PASS by making assessments available to students who are not funded by the public education system through fair, reasonable, and consistent practices.

**R277-604-~~1~~2. Definitions.**

~~A.~~ Utah Basic Skills Competency Test (UBSCT) means the test required under Section 53A-1-611 for Utah students seeking a high school diploma (suspended through at least the 2011-2012 school year);

~~C.~~(1) "Home school student" means a student who has been excused from compulsory education and for whom documentation has been completed under Section 53A-11-102.

~~D.~~ "Public school achievement test" means a standardized test which measures or attempts to measure the level of performance which a student has attained in one or more courses of

study. Achievement tests shall mean criterion-referenced tests consistent with 53A-1-602(3)(b)(c) and (d).]

[B:](2) "Private school" means a school that is not a public school but:

[\_\_\_\_\_(1) has a location or space in Utah where teachers have regularly scheduled face-to-face classes with students;]

(2)a has a current business license through the Utah Department of Commerce;

(3)b is accredited [through the Northwest Accreditation Commission or another regional accrediting agency] as described in R277-410; and

(4)c has and makes available a written policy for maintaining and securing student records[;].

[\_\_\_\_\_(5) charges tuition generally consistent with other private schools in Utah; and

\_\_\_\_\_(6) employs teachers with licenses, credentials or demonstrable skills and expertise for instructing students in Core Curriculum courses or areas.]

(3) "Utah Performance Assessment System for Students" or "U-PASS" means:

(a) the summative adaptive assessment of a student in grades 3 through 12 in basic skills courses;

(b) the online writing assessment in grades 3 through 11;

(c) the college readiness assessment; and

(d) the summative assessment of a student in grade 3 to measure reading grade level using the end of year benchmark reading assessment.

### R277-604-3. Private Schools.

[A:](1) Private school students who are Utah residents, as defined under 53A-2-201, may[~~be allowed to~~] participate in U-PASS.

[B:](2) Private school students who are not Utah residents may participate in U-PASS only by payment in advance of the full cost of individual assessments as determined by local school board policy.

[C:](3)(a) Private schools that are interested in participating in U-PASS may, at the public school district's discretion, do so only in the public school district in which the private school is located.

(1)b School districts shall determine at which public schools within the district private school students may take achievement tests.

(2)c A private school may request the following from the school district in which the private school is located:

(i) an annual schedule of U-PASS dates[;];

(ii) the locations at which private schools may be tested; and

(iii) written policies for private school student participation. [An annual U-PASS schedule may be available online on school district websites.]

[D:](4) A [S]school district [policies] shall develop a policy regarding private school student participation in U-PASS, which shall include:

(1)a reasonable costs for the participation of Utah private school students in U-PASS to be paid in advance by either the student or the student's private school;

(2)b an explanation of reasonable costs including costs for administration materials, scoring, and reporting of assessment

results[, and any state-related costs as determined by the state, to be passed on to the state. School district administration costs, determined by local boards, shall remain in the district.];

(3)c notice to private school administrators of any required private school administrator participation in monitoring or proctoring of tests; and

(4)d reasonable time lines for private school requests for participation and school district[~~]~~ or school response[;].

[\_\_\_\_\_(5) limits, if any, of numbers of non-public students that can be accommodated by the public school for all tests; and

\_\_\_\_\_(6) written notice to private schools of testing rules, including required identification for staff and students of implements or materials that private schools or private school students may or may not bring or use for each test.]

### R277-604-4. Home School Students.

[A:](1) A [H]home school student[s] who[~~are~~]is a Utah resident[s], as defined under Section 53A-2-201, [shall be allowed to]may participate in U-PASS as provided in this rule.

[B:](2) A [H]home school student[s] shall be allowed to] may participate in U-PASS only if [they have]the student has satisfied the home schooling requirements of Section 53A-11-102.

[\_\_\_\_\_(C. Home school student participation:]

(1)3 [Elementary-age]A home school student[s] who desires to participate in U-PASS may [do so]participate [only] in[~~the~~];

(a) the public school district in which the home school student's parent[~~]~~ or legal guardian resides[;]; or

(b) a charter school.

[\_\_\_\_\_(2) Secondary home school students who desire to participate in U-PASS may do so only in the public school district in which the home school student's parent/legal guardian resides only if the student is enrolled in one or more Core program(s) or course(s) at the resident public school.

\_\_\_\_\_(3) School districts shall determine at which public school(s) within the district qualifying home school students may take achievement tests.]

(4) A home school student[~~]~~ or parent may request the following from the school district in which the home school student[~~]~~ or parent resides or a charter school:

(a) an annual schedule of U-PASS dates[;];

(b) the locations at which home school students may be tested; and

(c) written policies for home school student participation.

[D:](5) A [S]school district or charter school shall develop a polic[ies]y regarding home school student participation in U-PASS, which[ ~~shall include~~]:

(1)a [any costs required from traditional students]may not require a home school student to pay a fee that is not charged to traditional students[;].

(2)b shall include notice to home school students[~~]~~ or parents of any required parent[~~]~~ or adult participation in monitoring or proctoring of tests; and

(3)c shall include reasonable time lines for home school requests for participation and school district[~~]~~ or school response[;].

[\_\_\_\_\_(4) limits, if any, of numbers of non-public students that can be accommodated by the public school for all tests; and

~~(5) written notice to home school students/parents of testing rules, including required identification and proof of residency for adults and students and implements or materials that home school students may or may not bring or use for each test.~~

~~E. The USOE shall absorb the costs for testing qualifying (enrolled in one or more Core program(s) or course(s) at the public school) home school students unless or until the number of home school students requesting testing in all districts exceeds two percent of the public education students enrolled in the state.~~

**R277-604-5. Utah Electronic High School (EHS) Students.**

~~A. EHS students may participate in testing in the school district and school of residence, consistent with Section 53A-2-201, if:~~

~~(1) the student has been enrolled in EHS by the school counselor consistent with the student's SEOP; and~~

~~(2) the student has met all requirements and standards for Utah home school students.~~

~~B. The USOE shall absorb the costs for testing of Utah EHS students until and unless the number of EHS students exceeds two percent of the number of traditionally enrolled Utah public school students.]~~

**R277-604-6[5]. Bureau of Indian Affairs (BIA) Students.**

~~[A.](1) BIA schools [administrators shall be responsible to meet] may participate in all U-PASS requirements for all Utah students.~~

~~[B.](2) Materials and training shall be provided to BIA schools from the public school district in which the school is located on the schedule that applies to Utah school districts.~~

~~[C. BIA school administrators shall be notified of all information and training by the public school district in which the school is located.]~~

**R277-604-6. LEA Responsibilities.**

An LEA shall comply with the following when administering U-PASS to a private, home school, or Bureau of Indian Affairs' student:

(1) Board Rule R277-404; and

(2) the Standard Test Administration and Testing Ethics Policy described in R277-404-3.

**KEY:** home school, private school, ~~[electronic high school,] participation, achievement tests~~

**Date of Enactment or Last Substantive Amendment:** ~~[August 9, 2010]~~ 2016

**Notice of Continuation:** October 27, 2011

**Authorizing, and Implemented or Interpreted Law:** Art X Sec 3; 53A-1-401(3); 53A-1-603(1)(a)

Education, Administration  
**R277-605**  
 Coaching Standards and Athletic  
 Clinics

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 40888

FILED: 10/14/2016

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** Rule R277-605 is amended to eliminate certain provisions regarding public schools and coaches and to provide technical and conforming changes.

**SUMMARY OF THE RULE OR CHANGE:** Provisions that require public schools and coaches to comply with certain interscholastic association bylaws, rules, and policies are removed from Rule R277-605; technical and conforming changes are made within the rule, consistent with the Rulewriting Manual for Utah; and unnecessary language is eliminated.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Art X, Sec 3 and Section 53A-1-401 and Subsection 53A-1-402(1)(b)

**ANTICIPATED COST OR SAVINGS TO:**

◆ **THE STATE BUDGET:** The amendments to Rule R277-605 eliminate certain provisions and provide technical and conforming changes, which likely will not result in a cost or savings to the state budget.

◆ **LOCAL GOVERNMENTS:** The amendments to Rule R277-605 eliminate certain provisions and provide technical and conforming changes, which likely will not result in a cost or savings to local government.

◆ **SMALL BUSINESSES:** The amendments to Rule R277-605 eliminate certain provisions and provide technical and conforming changes, which likely will not result in a cost or savings to small businesses.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** The amendments to Rule R277-605 eliminate certain provisions and provide technical and conforming changes, which likely will not result in a cost or savings to persons other than small businesses, businesses, or local government entities.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** The amendments to Rule R277-605 eliminate certain provisions and provide technical and conforming changes, which likely will not result in any compliance costs for affected persons.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** To the best of my knowledge, there should be no fiscal impact on businesses resulting from the amendments to this rule.

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

EDUCATION  
 ADMINISTRATION



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

DIRECT QUESTIONS REGARDING THIS RULE TO:  
 ♦ Angela Stallings by phone at 801-538-7656, by FAX at 801-538-7768, or by Internet E-mail at [angie.stallings@schools.utah.gov](mailto:angie.stallings@schools.utah.gov), or mail at PO Box 144200, Salt Lake city, UT 84114-4200

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 12/01/2016

THIS RULE MAY BECOME EFFECTIVE ON: 12/08/2016

AUTHORIZED BY: Angela Stallings, Deputy Superintendent, Policy and Communication

**R277. Education, Administration.**  
**R277-605. Coaching Standards and Athletic Clinics.**  
**[R277-605-1. Definitions.**

~~\_\_\_\_\_ A. "Board" means the Utah State Board of Education.~~  
~~\_\_\_\_\_ B. "Utah High School Activities Association (UHSAA)" is an organization whose purpose is to administer and supervise interscholastic activities among its member schools according to the Association constitution and by-laws.~~  
 ]

**R277-605-[2]1. Authority and Purpose.**  
~~[A-](1) This rule is authorized by:~~  
~~\_\_\_\_\_ (a) Utah Constitution[;] Article X, Section 3, which vests general control and supervision [of]over public education in the Board[;];~~  
~~\_\_\_\_\_ (b) Section 53A-1-401[(3)], which allows the Board to [adopt rules in accordance with its responsibilities]make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law[;]; and~~  
~~\_\_\_\_\_ (c) Subsection 53A-1-402(1)(b), which directs the Board to adopt rules regarding access to programs.~~

~~[B-](2) The purpose of this rule is to specify standards for school athletic and activity coaches and standards for athletic clinics and workshops.~~

**R277-605-[3]2. Athletics and the Core Curriculum.**  
~~[\_\_\_\_\_ A. Schools and coaches shall strictly adhere to both the letter and the spirit of the UHSAA by-laws, policies, regulations, and interpretations for high school sports programs.~~  
~~\_\_\_\_\_ B. Schools are prohibited from scheduling full-year physical education or athletic fitness and movement classes for specific school teams. In schools where in-season fitness and movement classes are scheduled, the classes shall not be used to violate the starting and stopping dates for practice and competitive play as prescribed by the UHSAA.]~~

~~[C-]High school competitive sports programs shall be supplementary to the high school curriculum.~~

**R277-605-[4]3. Coaches and School Activity Leaders as Supervisors and Role Models.**

~~[A-](1) Coaches and other designated school leaders shall diligently supervise [their players]student athletes at all times while on school-sponsored activities[.-----This], includ[es]ing supervisi[on]ng students:~~

- ~~\_\_\_\_\_ (a) on the field, court, or other competition or performance sites[;];~~
- ~~\_\_\_\_\_ (b) in locker rooms, in seating areas, in eating establishments, and in lodging facilities[;]; and~~
- ~~\_\_\_\_\_ (c) while traveling.~~

~~[B-](2) A coach or other designated school leader shall be an exemplary role model and [shall]may not use alcoholic beverages, tobacco, controlled substances, or participate in promiscuous sexual relationships while on school-sponsored activities.~~

~~[C-](3) Coaches, assistants and advisors shall act in a manner consistent with Section 53A-11-908 and [shall]may not:~~

~~\_\_\_\_\_ (a) use foul, abusive, or profane language while engaged in school related activities; [n]or~~

~~\_\_\_\_\_ (b) permit hazing, demeaning, or assaultive behavior, whether consensual or not, including behavior involving physical violence, restraint, improper touching, or inappropriate exposure of body parts not normally exposed in public settings, forced ingestion of any substance, or any act which would constitute a crime against a person or public order under Utah law.~~

~~[-----D. All coaches shall be appropriately certified as provided in R277-517.]~~

**R277-605-[5]4. Athletic and Activity Clinics.**

~~[A-](1) School personnel, activity leaders, coaches, advisors, and other personnel [shall]may not require students to attend out-of-school camps, clinics, or workshops for which the personnel, activity leaders, coaches, or advisors receive remuneration from a source other than the school or district in which they are employed.~~

~~[B-](2) Required or voluntary participation in summer or other off-season clinics, workshops, and leagues [shall]may not be used as eligibility criteria for team membership, participation in extracurricular activities, or for the opportunity to try out for school-sponsored programs.~~

~~[-----C. A summer workshop or clinic conducted by a school for any sport or activity shall be scheduled and held consistent with UHSAA bylaws and policies. These bylaws are available in every secondary school principal's office, at school district offices, at the Utah State Office of Education, and from the UHSAA for a minimal cost.]~~

**KEY: extracurricular activities**  
**Date of Enactment or Last Substantive Amendment: [March 5, 2002]2016**  
**Notice of Continuation: March 12, 2013**  
**Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53A-1-401[(3)]; 53A-1-402(1)(b)**

**Education, Administration**  
**R277-609**  
**Standards for LEA Discipline Plans and**  
**Emergency Safety Interventions**

**NOTICE OF PROPOSED RULE**

(Amendment)  
 DAR FILE NO.: 40889  
 FILED: 10/14/2016

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The amendments to Rule R277-609 are in response to H.B. 460, School Resource Officers and School Administrators Training and Agreement, from the 2016 General Session, and to incorporate additional language into the rule that is included in the Least Restrictive Behavioral Interventions (LRBI) Technical Assistance Manual as directed by the Utah State Board of Education Law and Licensing Committee. Technical and conforming changes are also proposed.

**SUMMARY OF THE RULE OR CHANGE:** The amended rule provides language for a training plan for administrators and resource officers who provide services to a public school; incorporates additional language into the rule relating to physical restraint and seclusionary time out; and provides technical and conforming changes as necessary.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Art X, Sec 3 and Section 53A-1-401 and Section 53A-11-1603 and Section 53A-11-901 and Subsection 53A-1-402(1)(b)

**MATERIALS INCORPORATED BY REFERENCE:**  
 ♦ Adds LRBI Technical Assistance Manual, September 2015

**ANTICIPATED COST OR SAVINGS TO:**

♦ **THE STATE BUDGET:** The amendments to Rule R277-609 provide for additional provisions within a local education agency's discipline plan and technical and conforming changes, which likely will not result in a cost or savings to the state budget.

♦ **LOCAL GOVERNMENTS:** The amendments to Rule R277-609 provide for additional provisions within a local education agency's discipline plan and technical and conforming changes, which likely will not result in a cost or savings to local government.

♦ **SMALL BUSINESSES:** The amendments to Rule R277-609 provide for additional provisions within a local education agency's discipline plan and technical and conforming changes, which likely will not result in a cost or savings to small businesses.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** The amendments to Rule R277-609 provide for additional provisions within a local education agency's discipline plan and technical and conforming changes, which likely will not result in a cost or savings to persons other than small businesses, businesses, or local government entities.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** The amendments to Rule R277-609 provide for additional provisions within a local education agency's discipline plan and technical and conforming changes, which likely will not result in any compliance costs for affected persons.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** To the best of my knowledge, there should be no fiscal impact on businesses resulting from the amendments to this rule.

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

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

**DIRECT QUESTIONS REGARDING THIS RULE TO:**

♦ Angela Stallings by phone at 801-538-7656, by FAX at 801-538-7768, or by Internet E-mail at angie.stallings@schools.utah.gov, or mail at PO Box 144200, Salt Lake city, UT 84114-4200

**INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 12/01/2016**

**THIS RULE MAY BECOME EFFECTIVE ON: 12/08/2016**

**AUTHORIZED BY:** Angela Stallings, Deputy Superintendent, Policy and Communication

**R277. Education, Administration.**

**R277-609. Standards for LEA Discipline Plans and Emergency Safety Interventions.**

**R277-609-[2]1. Authority and Purpose.**

[A-](1) This rule is authorized by:

(a) Utah Constitution Article X, Section 3, which vests general control and supervision ~~of~~ over public education in the Board[;];

(b) S[ubs]ection 53A-1-401[~~(3)~~], which allows the Board to ~~adopt~~ make rules ~~[in accordance with its responsibilities]~~ to execute the Board's duties and responsibilities under the Utah Constitution and state law[;];

(c) Subsection 53A-1-402(1)(b), which requires the Board to establish rules concerning discipline and control[;];

~~\_\_\_\_\_~~ (d) Section 53A-15-603, which requires the Board to adopt rules that require a local school board or governing board of a charter school to enact gang prevention and intervention policies for all schools within the board's jurisdiction~~[-and];~~

~~\_\_\_\_\_~~ (e) Section 53A-11-1603, which requires the Board to adopt rules regarding training programs for school principals and school resource officers; and

~~\_\_\_\_\_~~ (f) Section 53A-11-901, which directs local school boards and charter school governing boards to adopt conduct and discipline policies and directs the Board to develop model policies to assist local school boards and charter school governing boards.

~~[B-](2)(a)~~ The purpose of this rule is to outline requirements for school discipline plans and policies.

~~\_\_\_\_\_~~ (b) ~~[The]~~An LEA's written policies shall include ~~[direction to LEAs]~~provisions to develop, implement, and monitor the policies for the use of emergency safety interventions in all schools and for all students within each LEA's jurisdiction.

**R277-609-~~[1]~~2. Definitions.**

~~[\_\_\_\_\_ A. "Board" means the Utah State Board of Education.]~~

~~[B-](1)~~ "Discipline" includes:

~~([+])a)~~ imposed discipline; and

~~([2])b)~~ self-discipline.

~~[C-](2)~~ "Disruptive student behavior" includes:

~~([+])a)~~ the grounds for suspension or expulsion described in Section 53A-11-904; and

~~([2])b)~~ the conduct described in Subsection 53A-11-908(2)(b).

~~[D-](3)(a)~~ "Emergency safety intervention" means the use of seclusionary time out or physical restraint when a student presents an immediate danger to self or others~~[-and the].~~

~~\_\_\_\_\_~~ (b) An "emergency safety intervention" is not for disciplinary purposes.

~~[E-](4)~~ "Functional Behavior Assessment" ~~or~~ ~~[("FBA")]~~ means a systematic process of identifying problem behaviors and the events that reliably predict occurrence and non-occurrence of those behaviors and maintain the behaviors across time.

~~[F-](5)~~ "Immediate danger" means the imminent danger of physical violence~~[f]~~ ~~or~~ aggression towards self or others, which is likely to cause serious physical harm.

~~[G-](6)~~ "Imposed discipline" means a code of conduct prescribed for the highest welfare of the individual and of the society in which the individual lives.

~~[H-](7)~~ "LEA" ~~[or "local education agency" means a school district, charter school or]~~ includes, for purposes of this rule, the Utah Schools for the Deaf and the Blind.

~~[I-](8)~~ "Physical restraint" means personal restriction that immobilizes or reduces the ability of an individual to move the individual's arms, legs, body, or head freely.

~~[J-](9)~~ "Plan" means an ~~[school district-wide]~~ LEA and school-wide written model for prevention and intervention ~~[for]~~ addressing student behavior management and discipline procedures for students.

~~[K-](10)~~ "Program" means an instructional or behavioral program~~[s]~~, including a program:

~~\_\_\_\_\_~~ (a) ~~[those]~~ provided by contract private providers under the direct supervision of public school staff~~[-];~~

~~\_\_\_\_\_~~ (b) that receives public funding; or

~~\_\_\_\_\_~~ (c) for which the ~~[USOE]~~ Board has regulatory authority.

~~[L-](11)~~ "Policy" means standards and procedures that include:

~~\_\_\_\_\_~~ (a) the provisions of Section 53A-11-901 and additional standards, procedures, and training adopted in an open meeting by a local board of education or charter school board that:

~~\_\_\_\_\_~~ (i) defines hazing, bullying, cyber-bullying, and harassment~~[-];~~

~~\_\_\_\_\_~~ (ii) prohibits hazing and bullying~~[-];~~

~~\_\_\_\_\_~~ (iii) requires annual discussion and training designed to prevent hazing, bullying, cyber-bullying, discipline, emergency safety interventions, and harassment among school employees and students~~[-];~~ and

~~\_\_\_\_\_~~ (iv) provides for enforcement through employment action or student discipline.

~~[M-](12)~~ "Qualifying minor" means a school-age minor who:

~~([+])a)~~ is at least nine years old; or

~~([2])b)~~ turns nine years old at any time during the school

year.

~~[N-](13)~~ "School" means any public elementary or secondary school or charter school.

~~[O-](14)~~ "School board" means:

~~([+])a)~~ a local school board; or

~~([2])b)~~ a local charter board.

~~[P-](15)~~ "School employee" means:

~~([+])a)~~ a school teacher;

~~([2])b)~~ a school staff member;

~~([3])c)~~ a school administrator~~[s];~~ or

~~([4])d)~~ any other person employed, directly or indirectly, by an LEA.

~~[Q-](16)~~ "Seclusionary time out" means that a student is:

~~([+])a)~~ placed in a safe enclosed area~~[-;~~

~~\_\_\_\_\_~~ ~~(a-)]~~ by school personnel~~[-and~~

~~\_\_\_\_\_~~ ~~(b-)]~~ in accordance with the requirements of Rules R392-200 and R710-4~~[-3];~~

~~([2])b)~~ purposefully isolated from adults and peers; and

~~([3])c)~~ prevented from leaving, or reasonably believes that the student will be prevented from leaving, the enclosed area.

~~[R-](17)~~ "Section 504 accommodation plan," required by Section 504 of the Rehabilitation Act of 1973, means a plan designed to accommodate an individual who has been determined, as a result of an evaluation, to have a physical or mental impairment that substantially limits one or more major life activities.

~~[S-](18)~~ "Self-Discipline" means a personal system of organized behavior designed to promote self-interest while contributing to the welfare of others.

~~[\_\_\_\_\_ T. "Superintendent" means the State Superintendent of Public Instruction or the Superintendent's designee.]~~

**R277-609-3. Incorporation of Least Restricted Behavioral Interventions (LRBI) Technical Assistance Manual by Reference.**

(1) This rule incorporates by reference the LRBI Technical Assistance Manual, dated September 2015, provides guidance and information in creating successful behavioral systems and supports within Utah's public schools that:

(a) promote positive behaviors while preventing negative or risky behaviors; and

~~(b) create a safe learning environment that enhances all student outcomes.~~

~~(2) A copy of the manual is located at:~~

~~(a) <http://www.schools.utah.gov/sars/Behavior.aspx>; and~~

~~(b) the Utah State Board of Education.~~

**R277-609-[3]4. LEA Responsibility to Develop Plans.**

~~[A. Each](1) An LEA or school shall develop and implement a board approved comprehensive LEA plan or policy for student and classroom management, and school discipline.~~

~~(2) An LEA shall include administration, instruction and support staff, students, parents, community council, and other community members in policy development, training, and prevention implementation so as to create a community sense of participation, ownership, support, and responsibility.~~

~~[B. The](3) A plan described in [R277-609-3A]Subsection (1) shall include:~~

~~(1)a) the definitions of Section 53A-11-910;~~

~~(2)b) written standards for student behavior expectations, including school and classroom management;~~

~~(3)c) effective instructional practices for teaching student expectations, including:~~

~~(i) self-discipline[;];~~

~~(ii) citizenship[;];~~

~~(iii) civic skills[;]; and~~

~~(iv) social skills;~~

~~(4)d) systematic methods for reinforcement of expected behaviors[and];~~

~~(e) uniform methods for correction of student behavior;~~

~~(5)f) uniform methods for at least annual school level data-based evaluations of efficiency and effectiveness;~~

~~(6)g) an ongoing staff development program related to development of:~~

~~(a)i) student behavior expectations;~~

~~(b)ii) effective instructional practices for teaching and reinforcing behavior expectations;~~

~~(e)iii) effective intervention strategies; and~~

~~(d)iv) effective strategies for evaluation of the efficiency and effectiveness of interventions;~~

~~(7)h) procedures for ongoing training of appropriate school personnel in:~~

~~(a)i) crisis intervention training;~~

~~(b)ii) emergency safety intervention professional development; and~~

~~(e)iii) LEA policies related to emergency safety interventions consistent with evidence-based practice;~~

~~(8)i) policies and procedures relating to the use and abuse of alcohol and controlled substances by students;~~

~~(9)j) policies and procedures[related to bullying, cyber-bullying, harassment, hazing, and retaliation], consistent with requirements of Rule R277-613[;and], related to:~~

~~(i) bullying;~~

~~(ii) cyber-bullying;~~

~~(iii) harassment;~~

~~(iv) hazing; and~~

~~(v) retaliation;~~

~~(10)k) policies and procedures for the use of emergency safety interventions for all students consistent with evidence-based practices including prohibition of:~~

~~(a)i) physical restraint, subject to the requirements of Section R277-609[6]-5, [physical restraint] except when a student:~~

~~(i)A) presents a danger of serious physical harm to self or others; or~~

~~(i)B) is destroying property;~~

~~(i)ii) prone, or face-down, physical restraint;~~

~~(i)iii) supine, or face-up, physical restraint;~~

~~(e)iv) physical restraint that obstructs the airway of a student[;] or [any physical restraint that] adversely affects a student's primary mode of communication;~~

~~(e)v) mechanical restraint, except[those];~~

~~(A) protective[;]or stabilizing[or] restraints;~~

~~(B) restraints required by law, [any device used by a law enforcement officer in carrying out law enforcement duties,] including seatbelts or any other safety equipment when used to secure students during transportation; and~~

~~(C) any device used by a law enforcement officer in carrying out law enforcement duties;~~

~~(e)vi) chemical restraint, except as:~~

~~(i)A) prescribed by a licensed physician, or other qualified health professional acting under the scope of the professional's authority under State law, for the standard treatment of a student's medical or psychiatric condition; and~~

~~(i)B) administered as prescribed by the licensed physician or other qualified health professional acting under the scope of the professional's authority under state law;~~

~~(f)vii) seclusionary time out, subject to the requirements of Section R277-6 09-5, [seclusionary time out,]except when a student presents an immediate danger of serious physical harm to self or others[;]; and~~

~~(g)viii) for a student with a disability, emergency safety interventions written into a student's [individualized education program (IEP)], as a planned intervention, unless:~~

~~(A) school personnel, the family, and the IEP team agree less restrictive means which meet circumstances described in Section R277-608-[4]5 have been attempted[;];~~

~~(B) a FBA has been conducted[;]; and~~

~~(C) a positive behavior intervention plan based on data analysis has been written into the plan and implemented[;and].~~

~~(1) the policies and procedures explicitly include all the requirements in this rule.~~

~~C(1) All physical restraint must be immediately terminated when student is no longer an immediate danger to self or others, or if student is in severe distress.~~

~~(2) The use of physical restraint shall be for the minimum time necessary to ensure safety and a release criteria (as outlined in LEA policies) must be implemented.~~

~~(3) If a public education employee physically restrains a student:~~

~~(a) the school or the public education employee shall immediately notify the student's parent or guardian and school administration; and~~

~~(b) the public education employee may not use physical restraint on a student for more than 30 minutes.~~

~~(4) In addition to the notice described in R277-609-3C(3), if a public education employee physically restrains a student for more than fifteen minutes, the school or the public education employee shall immediately notify:~~

~~(a) the student's parent or guardian; and~~

~~(b) school administration.~~

~~(5) An LEA may not use physical restraint as a means of discipline or punishment.~~

~~D(1) If a public education employee uses seclusionary time out, the public education employee shall:~~

~~(a) use the minimum time necessary to ensure safety;~~

~~(b) use a release criteria (as outlined in LEA policies);~~

~~(c) ensure that any door remains unlocked; and~~

~~(d) maintain the student within line of sight of the public education employee.~~

~~(2) If a student is placed in seclusionary time out:~~

~~(a) the school or the public education employee shall immediately notify:~~

~~(i) the student's parent or guardian; and~~

~~(ii) school administration; and~~

~~(b) the public education employee may not place a student in a seclusionary timeout for more than 30 minutes.~~

~~(3) In addition to the notice described in R277-609-3D(2), if a public education employee places a student in seclusionary time out for more than fifteen minutes, the school or the public education employee shall immediately notify:~~

~~(a) the student's parent or guardian; and~~

~~(b) school administration.~~

~~(4) Seclusionary time may only be used for maintaining safety and a public education employee may not use seclusionary time out as a means of discipline or punishment.~~

~~E. A plan described in R277-609-3A shall also:]~~

~~(1) [provide] direction for dealing with bullying and disruptive students;~~

~~(2) [m] direction for schools to determine the range of behaviors and establish the continuum of administrative procedures that may be used by school personnel to address the behavior of habitually disruptive students;~~

~~(3) [n] [provide for] identification, by position, of an individual designated to issue notices of disruptive and bullying student behavior;~~

~~(4) [o] [designate to whom] identification of individuals who shall receive notices of disruptive and bullying student behavior [shall be provided];~~

~~(5) [p] a requirement to provide for documentation of disruptive student behavior prior to referral of disruptive students to juvenile court;~~

~~(6) [q] [include] strategies to provide for necessary adult supervision;~~

~~(7) [r] a requirement that policies be clearly written and consistently enforced;~~

~~(8) include administration, instruction and support staff, students, parents, community council and other community members in policy development, training and prevention implementation so as to create a community sense of participation, ownership, support and responsibility; and]~~

~~(9) [s] [provide] notice to employees that violation of this rule may result in employee discipline or action[-];~~

~~F. A plan required under this R277-609-3:]~~

~~(1) [t] [shall include] gang prevention and intervention policies in accordance with Subsection 53A-15-603(1); and~~

~~(2) [u] [shall] provisions that account for an individual LEA's or school's unique needs or circumstances, including:~~

~~(i) the role of law enforcement; and~~

~~(ii) emergency medical services[-(EMS)]; and~~

~~[ (3) may include the provisions of Subsection 53A-15-603(2); and]~~

~~(4) [iii] [shall provide] a provision for publication of notice to parents and school employees of policies by reasonable means.~~

~~(4) A plan described in Subsection (1) may include:~~

~~(a) the provisions of Subsection 53A-15-603(2); and~~

~~(b) a plan for training administrators and school resource officers in accordance with Section 53A-11-1603.~~

**R277-609-4[5]. Physical Restraint and Seclusionary Time Out.**

~~(1) When used consistently with an LEA plan under Subsection R277-609-3[4](1):~~

~~(a) a physical restraint must be immediately terminated when:~~

~~(i) a student is no longer an immediate danger to self or others; or~~

~~(ii) a student is in severe distress; and~~

~~(b) the use of physical restraint shall be for the minimum time necessary to ensure safety and a release criteria, as outlined in LEA policies, must be implemented.~~

~~(2) If a public education employee physically restrains a student, the school or the public education employee shall immediately notify:~~

~~(a) the student's parent or guardian; and~~

~~(b) school administration.~~

~~(3) A public education employee may not use physical restraint on a student for more than 30 minutes.~~

~~(4) In addition to the notice described in Subsection (2), if a public education employee physically restrains a student for more than fifteen minutes, the school or the public education employee shall immediately notify:~~

~~(a) the student's parent or guardian; and~~

~~(b) school administration.~~

~~(5) An LEA may not use physical restraint as a means of discipline or punishment.~~

~~(6) If a public education employee uses seclusionary time out, the public education employee shall:~~

~~(a) use the minimum time necessary to ensure safety;~~

~~(b) use release criteria as outlined in LEA policies;~~

~~(c) ensure that any door remains unlocked;~~

~~(d) maintain the student within line of sight of the public education employee;~~

~~(e) use the seclusionary time out consistent with the LEA's plan described in Section R277-609-4; and~~

~~(f) ensure that the enclosed area meets the fire and public safety requirements described in R392-200 and R710-4.~~

~~(7) If a student is placed in seclusionary time out, the school or the public education employee shall immediately notify:~~

~~(a) the student's parent or guardian; and~~

~~(b) school administration.~~

~~(8) A public education employee may not place a student in a seclusionary time out for more than 30 minutes.~~

~~(9) In addition to the notice described in Subsection (7), if a public education employee places a student in seclusionary time out for more than fifteen minutes, the school or the public education employee shall immediately notify:~~

~~(a) the student's parent or guardian; and~~

~~(b) school administration.~~

~~(10) Seclusionary time out may only be used for maintaining safety.~~

~~(11) A public education employee may not use seclusionary time out as a means of discipline or punishment.~~

**R277-609-[4]6. Implementation.**

~~[A-](1)~~ An LEA shall implement strategies and policies consistent with the LEA's plan required in Section R277-609-[3A]4.

~~[B-](2)~~ An LEA shall develop, use and monitor a continuum of intervention strategies to assist students, including students whose behavior in school falls repeatedly short of reasonable expectations, by teaching student behavior expectations, reinforcing student behavior expectations, re-teaching behavior expectations, followed by effective, evidence-based interventions matched to student needs prior to administrative referral.

~~[C-](3)~~ An LEA shall implement positive behavior interventions and supports as part of the LEA's continuum of behavior interventions strategies. ~~[(Least Restricted Behavioral Interventions Technical Assistance Manual).]~~

~~[D](+4)(a)~~ An LEA shall provide a formal written assessment of a habitually disruptive student as part of a student's suspension or expulsion process that results in court involvement, once an LEA receives information from the court that disruptive student behavior will result in court action.

~~(2)b~~ An LEA shall use assessment information to connect parents and students with supportive school and community resources.

~~[E-](5)~~ Nothing in state law or this rule restricts an LEA from implementing policies to allow for suspension of students of any age consistent with due process requirements and consistent with all requirements of the Individuals with Disabilities Education Act 2004.

~~[F-](6)~~ An LEA shall establish an Emergency Safety Intervention (ESI) Committee before September 1, 2015.

~~[G-](7)~~ The LEA ESI Committee:

~~(+a)~~ shall include:

~~(a)i~~ at least two administrators;

~~(b)ii~~ at least one parent or guardian of a student enrolled in the LEA, appointed by the LEA; and

~~(e)iii~~ at least two certified educational professionals with behavior training and knowledge in both state rules and LEA discipline policies;

~~(2)b~~ shall meet often enough to monitor the use of emergency safety intervention in the LEA;

~~(3)c~~ shall determine and recommend professional development needs; and

~~(4)d~~ shall develop policies for local dispute resolution processes to address concerns regarding disciplinary actions.

~~[H-](8)~~ An LEA shall have procedures for the collection, maintenance, and periodic review of documentation or records of the use of emergency safety interventions at schools within the LEA.

~~[I-](9)~~ The Superintendent shall define the procedures for the collection, maintenance, and review of records described in [R277-609-4H]Subsection (8).

~~[J-](10)~~ An LEA shall provide documentation of any school, program or LEA's use of emergency safety interventions to the Superintendent annually.

**R277-609-[5]7. Special Education Exception(s) to this Rule.**

~~[A-](1)~~ An LEA shall have in place, as part of its LEA special education policies, procedures, or practices, criteria and steps for using emergency safety interventions consistent with state and federal law.

~~[B-](2)~~ The Superintendent shall periodically review:

~~(+a)~~ all LEA special education behavior intervention plans, procedures, or manuals; and

~~(2)b~~ emergency safety intervention data as related to IDEA eligible students in accordance with Utah's Program Improvement and Planning System ~~[(UPPS)]~~.

**R277-609-[6]8. Parent/Guardian Notification and Court Referral.**

~~[A-](1)~~ Through school administrative and juvenile court referral consequences, LEA policies shall provide procedures for qualifying minors and their parents to participate in decisions regarding consequences for disruptive student behavior.

~~[B-](2)~~ An LEA shall establish policies that:

~~(+a)~~ provide notice to parents and information about resources available to assist a parent in resolving the parent's school-age minors' disruptive behavior;

~~(2)b~~ provide for notices of disruptive behavior to be issued by schools to qualifying minor ~~[(s)]~~ and parent ~~[(s)]~~ consistent with:

~~(a)i~~ numbers of disruptions and timelines in accordance with Section 53A-11-910;

~~(b)ii~~ school resources available;

~~(e)iii~~ cooperation from the appropriate juvenile court in accessing student school records, including:

~~(A)~~ attendance ~~[-]~~;

~~(B)~~ grades ~~[-]~~;

~~(C)~~ behavioral reports; and

~~(D)~~ other available student school data; and

~~(d)iv~~ provide due process procedures for minors and parents to contest allegations and citations of disruptive student behavior.

~~[C](+3)(a)~~ When a crisis situation occurs that requires the use of an emergency safety intervention to protect the student or others from harm, a school shall notify the LEA and the student's parent or guardian as soon as possible and no later than the end of the school day.

~~(2) If a crisis situation occurs and an emergency safety intervention is used, a school shall immediately notify:~~

~~(a) a student's parent or guardian; and~~

~~(b) school administration.]~~

~~(3)b~~ In addition to the notice described in [R277-609-6C(2)]Subsection (3)(a), if a crisis situation occurs for more than fifteen minutes, the school shall immediately notify:

~~(a)i~~ the student's parent or guardian; and

~~(b)ii~~ school administration.

~~(4)d~~ A notice described in Subsection [R277-609-6C2] (3)(a) shall be documented within student information systems (SIS) records.

~~[D](+4)(a)~~ A school shall provide a parent or guardian with a copy of any notes or additional documentation taken during a crisis situation upon request of the parent or guardian.

([2]b) Within 24 hours of a crisis situation, a school shall notify a parent or guardian that the parent or guardian may request a copy of any notes or additional documentation taken during a crisis situation.

([3]c) A parent or guardian may request a time to meet with school staff and administration to discuss [the]a crisis situation.

**R277-609-[7]9. Model Policies.**

[A-](1) The Superintendent shall develop, review regularly, and provide to LEA boards model policies to address disruptive student behavior and appropriate consequences.

~~[B. The Superintendent shall develop model policies required under R277-609-3A(10) to assist LEAs.]~~

[C-](2) The Superintendent shall provide technical assistance to LEAs in developing and implementing policies and training employees in the appropriate use of physical force and emergency safety interventions to the extent of resources available.

**R277-609-[8]10. LEA Compliance.**

If an LEA fails to comply with this rule, the Superintendent may ~~[disrupt state aid]~~withhold funds in accordance with Rule R277-114 or impose any other sanction authorized by law.

**KEY: disciplinary actions, disruptive students, emergency safety interventions**

**Date of Enactment or Last Substantive Amendment: [September 3, 2015]2016**

**Notice of Continuation: August 2, 2013**

**Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53A-1-401(3); 53A-1-402(1)(b); 53A-15-603; 53A-11-901**

**Education, Administration**

**R277-726**

**Statewide Online Education Program**

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 40890

FILED: 10/14/2016

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Rule R277-726 is amended to revise the definition of "eligible student" and to correct a citation.

SUMMARY OF THE RULE OR CHANGE: The amendments to this rule enable any student who is enrolled in grades 6 through 12 to enroll in the Statewide Online Education Program to earn high school credit. The Americans with Disabilities Act citation is changed to Section 504 of the Rehabilitation Act of 1973.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Art X, Sec 3 and Section 53A-1-401 and Section 53A-15-1210 and Section 53A-15-1213

ANTICIPATED COST OR SAVINGS TO:

◆ THE STATE BUDGET: The amendments to this rule provide Statewide Online Education Program opportunities to additional public school students and correct a citation, which likely will not result in a cost or savings to the state budget.

◆ LOCAL GOVERNMENTS: The amendments to this rule provide Statewide Online Education Program opportunities to additional public school students and correct a citation, which likely will not result in a cost or savings to local government.

◆ SMALL BUSINESSES: The amendments to this rule provide Statewide Online Education Program opportunities to additional public school students and correct a citation, which likely will not result in a cost or savings to small businesses.

◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: The amendments to this rule provide Statewide Online Education Program opportunities to additional public school students and correct a citation, which likely will not result in a cost or savings to persons other than small businesses, businesses, or local government entities.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The amendments to this rule provide Statewide Online Education Program opportunities to additional public school students and correct a citation, which likely will not result in any compliance costs for affected persons.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: To the best of my knowledge, there should be no fiscal impact on businesses resulting from the amendments to this rule.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Angela Stallings by phone at 801-538-7656, by FAX at 801-538-7768, or by Internet E-mail at [angie.stallings@schools.utah.gov](mailto:angie.stallings@schools.utah.gov), or mail at PO Box 144200, Salt Lake city, UT 84114-4200

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 12/01/2016

THIS RULE MAY BECOME EFFECTIVE ON: 12/08/2016

AUTHORIZED BY: Angela Stallings, Deputy Superintendent, Policy and Communication

**R277. Education, Administration.****R277-726. Statewide Online Education Program.****R277-726-1. Authority and Purpose.**

- (1) This rule is authorized by:
- (a) Utah Constitution Article X, Section 3, which vests general control and supervision of public education in the Board;
- (b) Section 53A-15-1210, which requires the Board to make rules providing for the administration of statewide assessments to students enrolled in online courses;
- (c) Section 53A-15-1213, which requires the Board to make rules that establish a course credit acknowledgment form and procedures for completing and submitting the form to the Board; and
- (d) Section 53A-1-401, which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law.
- (2) The purpose of this rule is to:
- (a) define necessary terms;
- (b) provide and describe a program registration agreement; and
- (c) provide other requirements for an LEA, the Superintendent, a parent and a student, and a provider for program implementation and accountability.

**R277-726-2. Definitions.**

- (1) "Actively participates" means the student actively participates as defined by the provider.
- (2) "Course completion" means that a student has completed a course with a passing grade and the provider has transmitted the grade and credit to the primary LEA of enrollment.
- (3)(a) "Course Credit Acknowledgment" or "CCA" means an agreement and registration record using the Superintendent provided Statewide Online Education Program form.
- (b) Except as provided in Subsection 53A-15-1208(3)(h), the CCA shall be signed by the designee of the primary school of enrollment, and the qualified provider.
- (4)(a) "Eligible student" means a student enrolled in grades ~~9-12 in a public school, but~~ 6-12 in a course that:
- (i) is offered by a public school; and
- (ii) provides the student the opportunity to earn high school graduation credit.
- (b) "Eligible student" does not include a student enrolled in an adult education program.
- (5) "Enrollment confirmation" means the student initially registered and actively participated, as defined under Subsection(1).
- (6)(a) "Executed CCA" means a CCA that has been signed by all parties and received by Superintendent.
- (b) Following enrollment confirmation and participation, Superintendent directs funds to the provider, consistent with Sections 53A-15-1206, 53A-15-1206.5, and 53A-15-1207.
- (7) "LEA" or "local education agency" for purposes of this rule includes the Utah Schools for the Deaf and the Blind.
- (8) "Online course" means a course of instruction offered through the Statewide Online Education Program.
- (9) "Online course payment" means the amount withheld from a student's primary LEA and disbursed to the designated provider following satisfaction of the requirements of the law, and as directed in Section 53A-15-1207.

- (10) "Online course provider" or "provider" means:
- (a) a school district school;
- (b) a charter school;
- (c) an LEA program created for the purpose of serving Utah students in grades 9-12 online; or
- (d) a program of an institution of higher education described in Subsection 53A-15-1205(3).
- (11) "Primary LEA of enrollment" means the LEA in which an eligible student is enrolled for courses other than online courses offered through the Statewide Online Education Program.
- (12) "Primary school of enrollment" means:
- (a) a student's school of record; and
- (b) the school that maintains the student's cumulative file, enrollment information, and transcript for purposes of high school graduation.
- (13) "Resident school" means the district school within whose attendance boundaries the student's custodial parent or legal guardian resides.
- (14) "Statewide assessment" means a test or assessment required under Rule R277-404.
- (15) "Statewide Online Education Program" or "program" means courses offered to students under Title 53A, Chapter 15, Part 12, Statewide Online Education Program Act.
- (16) "USB E course code" means a code for a designated subject matter course assigned by the Superintendent.
- (17) "Withdrawal from online course" means that a student withdraws or ceases participation in an online course as follows:
- (a) within 20 calendar days of the start date of the course, if the student enrolls on or before the start date;
- (b) within 20 calendar days of enrolling in a course, if the student enrolls after the start date; or
- (c) within 20 calendar days after the start date of the second .5 credit of a 1.0 credit course; or
- (d) as the result of a student suspension from an online course following adequate documented due process by the provider.

**R277-726-3. Course Credit Acknowledgment (CCA) Process.**

- (1) A student, a student's parent, or a provider may initiate a CCA.
- (2)(a) A counselor designated by a student's primary school of enrollment shall review the student's CCA to ensure consistency with:
- (i) graduation requirements;
- (ii) the student's SEOP;
- (iii) the student's IEP;
- (iv) the student's Section 504 plan; or
- (v) the student's international baccalaureate program.
- (b) The primary school of enrollment shall return the CCA to the Superintendent within 72 business hours.
- (3)(a) A provider-initiated CCA may be sent directly to the Superintendent if the course is consistent with the student's SEOP.
- (b) The primary school of enrollment is not required to meet with the student or parent.
- (c) The Superintendent shall notify a primary school of enrollment of a student's enrollment in the program.
- (4) If a student enrolling in the program has an IEP or a Section 504 plan, the primary LEA or school of enrollment shall



forward the IEP or description of 504 accommodations to the provider within 72 business hours of receiving notice from the Superintendent that the provider has accepted the enrollment request.

(5) The Superintendent shall develop and administer procedures for facilitation of a CCA that informs all appropriate parties.

**R277-726-4. Eligible Student and Parent Rights and Responsibilities.**

(1)(a) An eligible student may register for program credits consistent with Section 53A-15-1204.

(b) Notwithstanding Subsection (1)(a), a student's primary LEA of enrollment or the Board may allow an eligible student to enroll in additional online courses consistent with Section 53A-15-1204 with documentation from the LEA.

(2) A student enrolled in a program course may earn no more credits in a year than the number of credits a student may earn by taking a full course load during the regular school day in the student's primary school of enrollment.

(3) An eligible student may register for more than the maximum number of credits described in Subsection 53A-15-1204(2) if:

(a) the student's SEOP indicates that the student intends to complete high school graduation requirements and exit high school before the rest of the student's high school cohort; and

(b) the student's schedule demonstrates progress toward early graduation.

(4)(a) An eligible student is expected to complete courses in which the student enrolls in a timely manner consistent with Section 53A-15-1206.

(b) If a student changes the student's enrollment for any reason, it is the student's or student's parent's responsibility to notify the provider immediately.

(5) A student should enroll in online courses, or declare an intention to enroll, during the high school course registration period designated by the primary LEA of enrollment for regular course registration.

(6) A student may alter a course schedule by dropping a traditional course and adding an online course in accordance with the primary school of enrollment's same established deadline for dropping and adding traditional courses.

(7)(a) Notwithstanding Subsection (6), an underenrolled student may enroll in an online course at any time during a calendar year.

(b) If an underenrolled student enrolls in an online course as described in Subsection (7)(a), the primary school of enrollment may immediately claim the student for the adjusted portion of enrollment.

**R277-726-5. LEA Requirements and Responsibilities.**

(1) A primary school of enrollment shall facilitate student enrollment with any and all eligible providers selected by an eligible student consistent with course credit limits.

(2) A primary school of enrollment or a provider LEA shall use the CCA form, records, and processes provided by the Superintendent for the program.

(3) A primary school or LEA of enrollment shall provide information about available online courses and programs:

(a) in registration materials;

(b) on the LEA's website; and

(c) on the school's website.

(4) A primary school of enrollment shall include a student's online courses in the student's enrollment records and, upon course completion, include online course grades and credits on the student's transcripts.

**R277-726-6. Superintendent Requirements and Responsibilities.**

(1) The Superintendent shall develop and provide a website for the program that provides information required under Section 53A-15-1212 and other information as determined by the Board.

(2) The Superintendent shall direct a provider to administer statewide assessments consistent with Rule R277-404 for identified courses using LEA-adopted and state-approved assessments.

(3)(a) The Board may determine space availability standards and appropriate course load standards for online courses consistent with Subsections 53A-15-1006(2) and 53A-15-1208(3) (d).

(b) Course load standards may differ based on subject matter and differing accreditation standards.

(4) The Board shall withhold funds from a primary LEA of enrollment and make payments to a provider consistent with Sections 53A-15-1206, 53A-15-1206.5, and 53A-15-1207.

(5) The Board may refuse to provide funds under a CCA if the Board finds that information has been submitted fraudulently or in violation of the law or Board rule by any of the parties to a CCA.

(6) The Superintendent shall receive and investigate complaints, and impose sanctions, if appropriate, regarding course integrity, financial mismanagement, enrollment fraud or inaccuracy, or violations of the law or this rule specific to the requirements and provisions of the program.

(7) If a Board investigation finds that a provider has violated the IDEA or Section 504 provisions for a student taking online courses, the provider shall compensate the student's primary LEA of enrollment for all costs related to compliance.

(8)(a) The Superintendent may audit, at the Board's sole discretion, an LEA's or program participant's compliance with any requirement of state or federal law or Board rule under the program.

(b) All participants shall provide timely access to all records, student information, financial data or other information requested by the Board, the Board's auditors, or the Superintendent upon request.

(9) The Board may withhold funds from a program participant for the participant's failure to comply with a reasonable request for records or information.

(10) Program records are available to the public subject to the Government Records Access and Management Act, (GRAMA).

(11) The Superintendent shall withhold online course payment from a primary LEA of enrollment and payments to an eligible provider at the nearest monthly transfer of funds, subject to verification of information, in an amount consistent with, and at the time a provider qualifies to receive payment, under Subsection 53A-15-1206(4).

(12) The Superintendent shall pay a provider consistent with Minimum School Program funding transfer schedules.

(13)(a) The Superintendent may make decisions on questions or issues unresolved by Title 53A, Chapter 15, Part 12, Statewide Online Program Act or this rule on a case-by-case basis.

(b) The Superintendent shall report decisions described in Subsection (13)(a) to the Board consistent with the purposes of the law and this rule.

**R277-726-7. Provider Requirements and Responsibilities.**

(1)(a) A provider shall administer statewide assessments as directed by the Superintendent, including proctoring statewide assessments, consistent with Section 53A-15-1210 and Rule R277-404.

(b) A provider shall pay administrative and proctoring costs for all statewide assessments.

(2) A provider shall provide a parent or a student with email and telephone contacts for the provider during regular business hours in order to facilitate parent information.

(3) A provider and any third party working with a provider shall, for all eligible students, satisfy all Board requirements for:

- (a) consistency with course standards;
- (b) criminal background checks for provider employees;
- (c) documentation of student enrollment and participation; and
- (d) compliance with:
  - (i) the IDEA;
  - (ii) Section 504; and
  - (iii) requirements for ELL students.

(4) A provider shall receive payments for a student properly enrolled in the program from the Superintendent consistent with:

- (a) Board procedures;
- (b) Board timelines; and
- (c) Sections 53A-15-1206, 53A-15-1206.5, 53A-15-1207, and 53A-15-1208.

(5)(a) A provider may charge a fee consistent with other secondary schools.

(b) If a provider intends to charge a fee, the provider:

- (i) shall notify the primary school of enrollment with whom the provider has the CCA of the purpose for fees and amounts of fees;
- (ii) provide timely notice to a parent of required fees and fee waiver opportunities;
- (iii) post fees on the provider website; and
- (iv) shall be responsible for fee waivers for an eligible student, including all materials for a student designated fee waiver eligible by a student's primary school of enrollment.

(6) A provider shall maintain a student's records and comply with the federal Family Educational Rights and Privacy Act, Title 53A, Chapter 13, Part 3, Utah Family Educational Rights and Privacy Act, and Rule R277-487, including protecting the confidentiality of a student's records and providing a parent and an eligible student access to records.

(7) Except as provided in Subsection R277-726-9, a provider shall submit a student's credit and grade to the Superintendent, primary school of enrollment, and the student's parent no later than:

(a) 30 days after a student satisfactorily completes an online semester or quarter course; or

(b) June 30 of the school year.

(8) A provider may not withhold a student's credits, grades, or transcripts from the student, parent, or the student's school of enrollment for any reason.

(9)(a) If a provider seeks to suspend a student from an online course for disciplinary reasons, the provider is responsible for all student due process procedures, including the IDEA and Section 504 of the Rehabilitation Act of 1973.

(b) A provider shall notify the Superintendent of a student's withdrawal, if the student is suspended for more than 10 days.

(10)(a) A provider shall provide to the Superintendent a list of course options using USBE-provided course codes.

(b) All program courses shall be coded as semester or quarter courses.

(c) A provider shall update the provider's course offerings in January and August annually.

(11) A provider shall serve a student on a first-come-first-served basis who desires to take courses and who is designated eligible by a primary school of enrollment if desired courses have space available.

(12) A provider shall provide all records maintained as part of a public online school or program, including:

- (a) financial and enrollment records; and
- (b) information for accountability and audit purposes upon request by the Superintendent and the provider's external auditors.

(13) A provider shall maintain documentation of student work, including dates of submission, for program audit purposes.

(14) A provider is responsible for complete and timely submissions of record changes to executed CCAs and submission of other reports and records as required by the Superintendent.

(15) A provider shall inform a student and the student's parent of expectations for active participation in course work.

(16) An LEA may participate in the program as a provider by offering a school or program to a Utah student in grades 9-12 who is not a resident student of the LEA consistent with Section 53A-15-1205(2).

(17) A program school or program shall:

- (a) be accredited by the accrediting entity adopted by the Board consistent with Rule R277-410;
- (b) have a designated administrator who meets the requirements of Section 53A-6-110;
- (c) ensure that a student who qualifies for a fee waiver shall receive all services offered by and through the public schools consistent with Section 53A-12-103 and Rule R277-407;
- (d) maintain student records consistent with:
  - (i) the federal Family Educational Rights and Privacy Act, 20 U.S.C. Sec 1232g and 34 CFR Part 99; and
  - (ii) Rule R277-487; and
- (e) shall offer course work:
  - (i) aligned with Utah Core standards;
  - (ii) in accordance with program requirements; and
  - (iii) in accordance with the provisions of Rules R277-700 and R277-404.

(18) An LEA that offers an online program or school as a provider under the program:

(a) shall employ only licensed Utah educators as teachers;  
 (b) may not employ an individual whose educator license has been suspended or revoked;

(c) shall require all employees to meet requirements of Sections 53A-15-1503 and 53A-15-1504 prior to the provider offering services to a student;

(d) may only employ teachers who meet the requirements of Rule R277-510, Educator Licensing - Highly Qualified Assignment;

(e) shall agree to administer and have the capacity to carry out statewide assessments, including proctoring statewide assessments, consistent with Section 53A-15-1210(2) and Rule R277-404;

(f) in accordance with Section R277-726-8, shall provide services to a student consistent with requirements of the IDEA, Section 504, and Title VI of the Civil Rights Act of 1964 for English Language Learners (ELL);

(g) shall maintain copies of all CCAs for audit purposes; and

(h) shall agree that funds shall be withheld by the Superintendent consistent with Sections 53A-15-1206 and 53A-15-1206.5.

(19) A provider shall cooperate with the Superintendent in providing timely documentation of student participation, enrollment, and other additional data consistent with Board directives and procedures and as requested.

(20) A provider shall post all required information online on the provider's individual website including required assessment and accountability information.

**R277-726-8. Services to Students with Disabilities Participating in the Program.**

(1)(a) If a student requests services related to a Section 504 accommodation under ~~[the Americans with Disabilities Act]~~ Section 504 of the Rehabilitation Act of 1973, a provider shall:

(i) except as provided in Subsection (1)(b), prepare a Section 504 plan for the student; and

(ii) provide the services or accommodations to the student in accordance with the student's Section 504 plan.

(b) An LEA of enrollment shall provide a Section 504 plan of a student described in Subsection (1)(a) to a provider within 72 business hours if:

(i) the student is enrolled in a primary LEA of enrollment; and

(ii) the primary LEA of enrollment has a current Section 504 plan for the student.

(2) For a student enrolled in a primary LEA of enrollment, if a student participating in the program qualifies to receive services under the IDEA:

(a) the student's primary LEA of enrollment shall:

(i) prepare an IEP for the student in accordance with the timelines required by the IDEA;

(ii) provide the IEP described in Subsection (2)(a)(i) to the provider within 72 business hours of completion of the student's IEP; and

(iii) continue to claim the student in the primary LEA of enrollment's membership; and

(b) the provider shall provide special education services to the student in accordance with the student's IEP described in Subsection (2)(a)(i).

(3) If a home or private school student participating in the program qualifies to receive special education services under the IDEA, the home or private school student:

(a) may waive the student's right to receive the special education services; or

(b) subject to the requirements of Subsection (4), enroll in the home or private school student's resident school for the purpose of receiving special education services.

(4) If a home or private school student requests to receive special education services as described in Subsection (3)(b):

(a) the home or private school student's resident school shall:

(i) prepare an IEP for the student in accordance with the timelines required by the IDEA;

(ii) provide the IEP described in Subsection (4)(a)(i) to the provider within 72 business hours of completion of the student's IEP; and

(iii) claim the student in the resident school's membership; and

(b) the provider shall provide special education services to the student in accordance with the student's IEP described in Subsection (4)(a)(i).

**R277-726-9. Home and Private School Appropriation.**

(1) The Superintendent shall allocate the annual appropriation for home and private school tuition, along with any carryover or unobligated funds, as follows:

(a) 50% of the total appropriation for home school students; and

(b) 50% of the total appropriation for private school students.

(2) The Superintendent shall receive and accept enrollment requests on a first come, first served basis until all available funds are obligated.

(3) If home school or private school student funds remain by March 1, the Superintendent may release the funds for any pending enrollment requests.

**R277-726-10. Other Information.**

(1) A primary school of enrollment shall set reasonable timelines and standards.

(2) A provider shall adhere to timelines and standards described in Subsection (1) for student grades and enrollment in online courses for purposes of:

(a) school awards and honors;

(b) Utah High School Activities Association participation; and

(c) high school graduation.

**KEY: statewide online education program**

**Date of Enactment or Last Substantive Amendment:** ~~August 11, 2016~~

**Notice of Continuation: December 15, 2015**

Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53A-15-1210; 53A-15-1213; 53A-1-401

**Environmental Quality, Waste  
Management and Radiation Control,  
Waste Management  
R315-15-13  
Registration and Permitting of Used Oil  
Handlers**

**NOTICE OF PROPOSED RULE**

(Amendment)  
DAR FILE NO.: 40879  
FILED: 10/13/2016

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The purpose of this amendment is to add an NAICS code to the list of facilities described by NAICS code that can self transport used oil in quantities exceeding 55 gallons and update the NAICS code referred to in the rule. The rule change was requested by a large utility operating in Utah.

**SUMMARY OF THE RULE OR CHANGE:** This filing modifies Subsection R315-15-13.4(f)(1)(i) to change the reference to the NAICS code from the 2007 to the 2017 revision, and add the code for utilities, 22, to the list of facilities types that can transport their own used oil in quantities larger than 55 gallons.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 19-6-704

**ANTICIPATED COST OR SAVINGS TO:**

- ◆ **THE STATE BUDGET:** The change will not affect on the administration of the used oil program, and therefore, will have no cost or savings to the state.
- ◆ **LOCAL GOVERNMENTS:** Local governments are not affected by the change and would see no increased costs nor will any savings result from the change.
- ◆ **SMALL BUSINESSES:** No small businesses are covered by the NAICS code being added; therefore, no costs or savings will result for the change.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Any utility that generates over 55 gallons of used oil will save the cost of paying a transporter to collect the used oil. The savings is between \$0.30 and \$0.90 per gallon. The aggregate savings is unknown as the amount of used oil that will be transported by utilities under the rule change is not known.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** The rule change will decrease compliance costs. The cost decrease is unknown. The per gallon decrease could range between \$0.30 and \$0.90.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** The rule change will allow utilities in Utah to transport their own used oil, allowing them to save the cost of hiring a used oil transporter to collect and transport the used oil to a used oil recycler.

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

ENVIRONMENTAL QUALITY  
WASTE MANAGEMENT AND RADIATION  
CONTROL, WASTE MANAGEMENT  
SECOND FLOOR  
195 N 1950 W  
SALT LAKE CITY, UT 84116-3097  
or at the Office of Administrative Rules.

**DIRECT QUESTIONS REGARDING THIS RULE TO:**

◆ Ralph Bohn by phone at 801-536-0212, by FAX at 801-536-0222, or by Internet E-mail at rbohn@utah.gov, or mail at PO Box 144880, Salt Lake city, UT 84114-4880

**INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 12/01/2016**

**THIS RULE MAY BECOME EFFECTIVE ON: 12/08/2016**

**AUTHORIZED BY:** Scott Anderson, Director

**R315. Environmental Quality, Waste Management and Radiation Control, Waste Management.**

**R315-15. Standards for the Management of Used Oil.**

**R315-15-13. Registration and Permitting of Used Oil Handlers.**

13.1 DO-IT-YOURSELF USED OIL COLLECTION CENTERS TYPES A AND B

(a) **Applicability.** A person may not operate a do-it-yourselfer (DIYer) Type A or B used oil collection center without holding a registration number issued by the Director.

(b) **General.** The application for a registration number shall include the following information regarding the DIYer used oil collection center:

- (1) the name and address of the operator;
- (2) the location of the center;
- (3) the type of storage and secondary containment to be used;
- (4) the status of the business, zoning, or other licenses and permits if required by federal, state and local governmental entities;
- (5) a spill containment plan in the event of a release of used oil; and

(6) proof of insurance or other means of financial responsibility for liabilities that may be incurred in collecting or storing used oil.

(c) Waiver of proof of insurance or other means of financial responsibility for liabilities that may be incurred in collecting or storing used oil. In accordance with Utah Annotated 19-6-710, the Director may waive the requirement of proof of liability insurance or other means of financial responsibility if the following criteria are satisfied:

(1) The used oil storage tank or container is in good condition with no severe rusting, apparent structural defects or deterioration, and no visible leaks;

(2) There is adequate secondary containment for the tank or container that is impervious to used oil to prevent any used oil released into the secondary containment system from migrating out of the system to the soil, groundwater or surface water;

(3) The storage tank or container is clearly labeled with the words "Used Oil;"

(4) DIYer log entries are complete including the name and address of the generator, date and quantity of used oil received;

(5) EPA-approved test kits for total halogens are readily available and operators are trained to perform halogen tests on any used oil received that may have been mixed with hazardous waste; and

(6) Oil sorbent material is readily available on site for immediate clean-up of spills.

(d) Changes in information. The owner or operator of the facility shall notify the Director in writing of any changes in the information submitted to apply for a registration number within 20 days of the change.

### 13.2 GENERATOR USED OIL COLLECTION CENTERS TYPES C AND D

(a) Applicability. A person may not operate a generator used oil collection center Type C or D without holding a registration number issued by the Director.

(b) General. The application for registration shall include the following information regarding the generator used oil collection center:

(1) the name and address of the operator;

(2) the location of the center;

(3) whether the center will accept DIYer used oil;

(4) the type of storage and secondary containment to be used;

(5) the status of the business, zoning, or other licenses and permits if required by federal, state and local governmental entities;

(6) a spill containment plan in the event of a release of used oil; and

(7) proof of insurance or other means of financial responsibility for liabilities that may be incurred in collecting or storing used oil.

(c) Permit. Waiver of proof of insurance or other means of financial responsibility for liabilities that may be incurred in collecting or storing used oil. In accordance with Utah Code Annotated 19-6-710, the Director may waive the requirement of proof of liability insurance or other means of financial responsibility if the following criteria are satisfied:

(1) The used oil storage tank or container is in good condition with no severe rusting, apparent structural defects or deterioration, and no visible leaks;

(2) There is adequate secondary containment for the tank or container that is impervious to used oil to prevent any used oil released into the secondary containment system from migrating out of the system to the soil, groundwater or surface water;

(3) The storage tank or container is clearly labeled with the words "Used Oil;"

(4) DIYer log entries are complete including the name and address of the generator, date and quantity of used oil received;

(5) EPA-approved test kits for total halogens are readily available and operators are trained to perform halogen tests on any used oil received that may have been mixed with hazardous waste; and

(6) Oil sorbent material is readily available on site for immediate clean up of spills.

(d) Changes in information. The owner or operator of the facility shall notify the Director in writing of any changes in the information submitted to apply for a registration number within 20 days of the change.

### 13.3 USED OIL AGGREGATION POINTS

(a) Applicability. A person may operate a used oil aggregation point without holding a registration number issued by the Director if that aggregation point also accepts used oil from household do-it-yourselfers (DIYers) or other generators.

(b) If an aggregation point accepts used oil from household DIYers, it must register with the Director as a DIYer collection center and comply with the DIYer standards in Section R315-15-3.1.

(c) If an aggregation point accepts used oil from other generators it must register with the Director as a generator collection center and comply with the standards in R315-15-3.2.

### 13.4 USED OIL TRANSPORTERS AND USED OIL TRANSFER FACILITIES

(a) Applicability. Except as provided by R315-15-13.4(f), a person may not operate as a used oil transporter without holding a used oil transporter permit issued by the Director. A person shall not operate a used oil transfer facility without holding a used oil transfer facility permit specific to that facility, issued by the Director.

(b) General. The application for a permit shall include the following information:

(1) The name and address of the operator;

(2) The location of the transporter's base of operations and the location of any transfer facilities, if applicable;

(3) Maps of all transfer facilities, if applicable;

(4) The methods to be used for collecting, storing, and delivering used oil;

(5) The methods to be used to determine if used oil received by the transporter or facility is on-specification or off-specification and how the transporter will comply with the rebuttable requirements of R315-15-4.5;

(6) The type of containment and the volume, including type and number of storage vessels to be used and the number and type of transportation vehicles, if applicable;

(7) The methods of disposing of any waste by-products;

(8) The status of business, zoning, and other applicable licenses and permits if required by federal, state, and local government entities;

(9) An emergency spill containment plan, including a list of spill containment equipment to be carried in vehicles used to transport used oil and spill containment equipment maintained at the used oil transfer facility, and how the transporter shall comply with the requirements of R315-15-9;

(10) Proof of liability insurance or other means of financial responsibility for liabilities that may be incurred in collecting, transporting, or storing used oil;

(11) Proof of form and amount of reclamation surety for any facility used in conjunction with transportation or storage of used oil;

(12) A closure plan meeting the requirements of R315-15-11;

(13) Proof of applicant's ownership of any property and facility used for storage of used oil or, if the property and facility is not owned by the applicant, the owners' written statement acknowledging the activities specified in the application;

(14) For transfer facility permit applications, tank certification in accordance with R315-264-190 through 200 for used oil storage tanks at the transfer facility;

(15) For transfer facility permit applications, a facility piping and instrument drawing certified by a Professional Engineer;

(16) If rail transport is part of the application, a loading/off-loading plan for rail tanker cars used to transport used oil. This plan shall include detailed procedures to be followed to minimize the potential for releases and on-site accidents. At a minimum, the following items shall be addressed:

(i) Personal safety equipment;

(ii) Coordination with railroad to ensure exclusive rights to the loading track during the entire period of loading/offloading;

(iii) A minimum number and qualification of workers involved in the loading or off-loading operations;

(iv) Braking and blocking of rail car wheels;

(v) Procedures for Depressurizing tank car prior to opening manhole covers and outlet valves;

(vi) The sequence of valve openings and closings on any hosing or piping involved in the loading or off-loading process,

(vii) A description of how and where pipe and hose fitting will be attached, including a description of which rail car valves/openings will be used;

(viii) Use of catchment container to collect any used oil released from hoses, valves, and pipes during and following the loading/offloading operation;

(ix) Measures to insure ignition sources are not present;

(x) Procedures for cleanup of any spills that occur during the loading/offloading operations; and

(xi) Other site-specific requirements required by the Director to protect human health and the environment.

(c) Permit fees. Registration and permitting fees are established under the terms and conditions of Utah Code Annotated 63J-1-504. A copy of the Division's Fee Schedule is available upon request. Payment of appropriate fees is required prior to issuance of permit approvals and annual used oil handler certificates.

(d) Annual Reporting. Each transporter and transfer facility shall submit an annual report to the Director of its activities

during the calendar year. The annual report shall be submitted to the Director no later than March 1, of the year following the reported activities. The Annual report shall either be submitted on a form provided by the Director or shall contain the following information:

(1) the EPA identification number, name, and address of the transporter/transfer facility;

(2) the calendar year covered by the report;

(3) the total amount of used oil transported;

(4) the itemized amounts and types of used oil transferred to permitted transporters and transfer facilities, used oil processors/re-refiners, off-specification used oil burners, and used oil fuel marketers; and

(5) the itemized amounts and types of used oil transferred inside and outside the state, indicating the state to which used oil is transferred, and the specific name, address and telephone number of the operations or facility to which used oil was transferred.

(e) Changes in information. The owner or operator of the facility shall notify the Director in writing of any changes in the information submitted to apply for a permit within 20 days of the change.

(f) Transporter and Transfer Facility Permit by rule. Notwithstanding any other provisions of R315-15-13.4, a used oil generator who self-transported used oil generated by that generator at a non-contiguous operation to a central collection facility in the generator's own service vehicles in quantities exceeding 55 gallons shall be deemed to have an approved used oil transporter permit or used oil transfer facility permits, or both if the generator meets all applicable requirements of R315-15-13.4(f)(1) through (4).

(1) All used oil transporters or transfer facilities who qualify for a permit by rule shall submit a notification to the Director of their intent to operate under R315-15-13.4(f) and comply with the following conditions:

(i) The generator's facility is defined under the North American Industry Classification System (NAICS), published in [2007]2017 Revision, by the US Economic Classification Policy Committee, with a NAICS code of 21 (Mining), 22 (Utilities), 23 (Construction), or 541360 (Geophysical Surveying and Mapping Services);

(ii) The generator self-transported and delivers the used oil to facilities that the generator owns, operates, or both.

(iii) The generator notifies the Director with the information required by R315-15-13.4(b)(1) through (10); and

(iv) The generator complies with R315-15-4.3, R315-15-4.4(b) through (d), R315-15-4.6(b) through (f), R315-15-4.7(b) and (d), and R315-15-4.8.

(2) A generator who self-transported used oil in accordance with R315-15-13.4(f)(1) and who burns all the collected used oil for energy recovery is deemed to be approved by rule to operate as a used oil transporter for that activity if the following additional conditions are met:

(i) The generator only burns the self-collected used oil for energy recovery at that generator's own central collection facility.

(ii) The generator registers as a used oil fuel marketer in accordance with R315-15-13.7 and complies with R315-15-7.

(3) A generator who self-transported used oil in accordance with R315-15-13.4(f)(1) and only stores the used oil for subsequent collection by permitted used oil transporters is deemed to be

approved by rule to operate as a used oil transporter and transfer facility for that activity if the following additional conditions are met:

(i) The generator arranges for permitted used oil transporters to collect the generator's used oil.

(ii) The self-transported used oil is not stored at the generator's facility longer than 35 days. If the self-transported used oil is stored longer than 35 days, the generator becomes a used oil processor in accordance with R315-15-4.6(a) and shall obtain a used oil processor permit in accordance with R315-15-13.5.

(4) A generator who self-transported used oil in accordance with R315-15-13.4(f)(1), and who both burns their collected used oil for energy recovery and arranges for permitted use oil transporters to collect that used oil, is deemed to be approved by rule to operate as a used oil transporter and transfer facility for that activity if the following additional conditions are met:

(i) The self-transported used oil burned for energy recovery is only burned at the generator's central collection facility;

(ii) The generator registers as a used oil fuel marketer in accordance with R315-15-13.7 and complies with R315-15-7; and

(iii) The generator arranges for permitted used oil transporters to collect the generator's used oil not burned on site.

(iv) The self-transported used oil is not stored at the generator's facility longer than 35 days. If the self-transported used oil is stored longer than 35 days, the generator becomes a used oil processor in accordance with R315-15-4.6(a) and shall obtain a used oil processor permit in accordance with R315-15-13.5.

(g) All used oil transporters and transfer facilities shall obtain and maintain a used oil handler certificates in accordance with R315-15-13.8.

### 13.5 USED OIL PROCESSORS/RE-REFINERS

(a) Applicability. A person may not operate as a used oil processing/re-refining facility without holding a permit issued by the Director.

(b) General. The application for a permit shall include the following information:

(1) The name and address of the operator;

(2) The location of the facility;

(3) A map of the facility;

(4) The grades of oil to be produced;

(5) The methods to be used to determine if used oil received by the transporter or facility is on-specification or off-specification;

(6) The type of containment and the volume, including type and number of storage vessels to be used and the number and type of transportation vehicles, if applicable;

(7) The methods of disposing of any waste by-products;

(8) The status of business, zoning, and other applicable licenses and permits if required by federal, state, and local government entities;

(9) An emergency spill containment plan, including a list of spill containment equipment to be maintained at the used oil processor facility;

(10) Proof of liability insurance or other means of financial responsibility for liabilities that may be incurred in processing or re-refining used oil;

(11) Proof of form and amount of reclamation surety for any facility used in conjunction with transportation or storage of used oil;

(12) Any other information the Director finds necessary to ensure the safe handling of used oil;

(13) A closure plan meeting the requirements of R315-15-11.

(14) A contingency plan meeting the requirements of R315-15-5.3(b);

(15) Proof of applicant's ownership of the property and facility or, if the property and facility is not owned by the applicant, the owner's written statement acknowledging the activities specified in the application;

(16) Tank certification in accordance with R315-264-190 through 200 for used oil storage tanks at the processor facility; and

(17) A facility piping and instrument drawing certified by a Professional Engineer.

(c) Permit fees. Registration and permitting fees are established under the terms and conditions of Department fee schedule 63J-1-504. A copy of the Division's Fee Schedule is available upon request. Payment of appropriate fees is required prior to issuance of permit approvals and annual used oil handler certificates.

(d) Annual Reporting. Each used oil processing or re-refining facility shall submit an annual report to the Director of its activities during the calendar year. The annual report shall be submitted to the Director no later than March 1 of the year following the reported activities. The annual report shall either be submitted on a form provided by the Director or shall contain the following information:

(1) the EPA identification number, name, and address of the processor/re-refiner facility;

(2) the calendar year covered by the report;

(3) the quantities of used oil accepted for processing/re-refining and the manner in which the used oil is processed/re-refined, including the specific processes employed;

(4) the average daily quantities of used oil processed at the beginning and end of the reporting period;

(5) an itemization of the total amounts of used oil processed or re-refined during the reporting period year specifying the type and amounts of products produced, i.e., lubricating oil, fuel oil, etc.; and

(6) the amounts of used oil prepared for reuse as a lubricating oil, as a fuel, and for other uses, specifying each type of use, the amounts of used oil consumed or used in the process of preparing used oil for reuse, specifying the amounts and types of waste by-products generated including waste, water, and the methods and specific locations utilized for disposal.

(e) Changes in information. The owner or operator of the facility shall notify the Director in writing of any changes in the information submitted to apply for a permit within 20 days of the change.

(f) Used oil processors and re-refiners shall obtain and maintain a current used oil handler certificate in accordance with R315-15-13.8.

### 13.6 USED OIL BURNERS

(a) On-specification used oil fuel burners. Facilities burning only on-specification used oil fuel are not required to register as used oil burners with the Director for the purpose of R315-15-13.6, if they hold a valid air quality operating order or are exempt under R315-15-2.4.

(b) Off-specification used oil fuel burners

(1) **Applicability.** The permitting requirements of this section apply to used oil burners who burn off-specification used oil for energy recovery except as specified in R315-15-6.1(a)(1) through (3). A person may not burn off-specification used oil fuel for energy recovery without holding a permit issued by the Director.

(2) **Permit application.** The application for a permit shall include the following information regarding the facility:

- (i) The name and address of the operator;
- (ii) The location of the facility;
- (iii) The type of containment and type and capacity of storage;
- (iv) The type of burner to be used;
- (v) The methods of disposing of any waste by-products;
- (vi) The status of business, zoning, and other applicable licenses and permits required by federal, state, and local governmental entities;
- (vii) An emergency spill containment plan; including a list of spill containment equipment to be maintained at the used oil processor facility.
- (viii) Proof of insurance or other means of financial responsibility for liabilities that may be incurred in storing and burning off-specification used oil fuels.
- (ix) Proof of form and amount of reclamation surety for any facility receiving and burning off-specification used oil.
- (x) A closure plan meeting the requirements of R315-15-11;
- (xi) Proof of applicant's ownership of the property and facility or, if the property and facility is not owned by the applicant, the owner's written statement acknowledging the activities specified in the application;
- (xii) Tank certification in accordance with R315-264-190 through 200 for used oil storage tanks at the processor facility; and
- (xiii) A facility piping and instrument drawing certified by a Professional Engineer.

(3) **Permit fees.** Registration and permitting fees are established under the terms and conditions of Utah Code Annotated 63J-1-504. A copy of the Division's Fee Schedule is available upon request. Payment of appropriate fees is required prior to issuance of permit approvals and annual used oil handler certificates.

(4) **Changes in information.** The owner or operator of the facility shall notify the Director in writing of any changes in the information submitted during permit application within 20 days of the change.

(5) **Permits by rule.** Any facility permitted by rule is not required to obtain a permit as required by R315-15-13.6(b)(1), but may be required to follow operational practices, as determined by the Director, to minimize risk to human health or the environment. A permit by rule is conditional upon continued compliance with the requirements of R315-15-13.6(b), as determined by the Director. Notwithstanding any other provisions of R315-15-13.6, a hazardous waste incinerator facility that has been issued a final permit under R315-270-1, and that implements the requirements of R315-264-340 through 351, shall be deemed to have an approved off-specification used oil burner permit if that facility meets all of the following conditions:

- (i) It burns off-specification used oil only in devices specified in R315-15-6.2(a);
- (ii) It stores used oil in the manner described in R315-15-6.5;

(iii) It tracks off-specification used oil shipments as described in R315-15-6.6;

(iv) It complies with R315-15-6.3 and R315-15-6.7;

(v) It modifies its closure plan required under R315-264-110 through 120 (Closure and Post Closure), to include used oil storage and burning devices, taking into account any used oil activities at this facility;

(vi) It modifies its financial mechanism or mechanisms required R315-264-140 Through 151 (Financial Requirements), using a mechanism other than a corporate financial test/corporate written guarantee, to reflect the used oil activities at the facility; and

(vii) It submits to the Director the information required by R315-15-13.6(b)(2)(i) through (vi), and a one-time declaration that the facility intends to burn off-specification used oil.

(6) **Annual Reporting.** Each off-specification used oil burner, including those permitted by rule under R315-15-13.6(b)(5), shall submit an annual report to the Director of their activities during the calendar year. The annual report shall be submitted to the Director no later than March 1, of the year following the reported activities. The annual report shall either be submitted on a form provided by the Director or shall contain the following information:

- (i) The EPA identification number, name, and address of the burner facility;
  - (ii) The calendar year covered by the report; and
  - (iii) The total amount of used oil burned.
- (c) Off-specification used oil burners shall obtain and maintain a current used oil handler certificate in accordance with R315-15-13.8.

#### 13.7 USED OIL FUEL MARKETERS

(a) **Applicability.** A person may not act as a used oil fuel marketer, as defined in R315-15-7, without holding a registration number issued by the Director.

(b) **General.** The application for a registration number shall include the following information regarding the facility acting as a used oil fuel marketer:

- (1) The name and address of the marketer.
- (2) The location of any facilities used by the marketer to collect, transport, process, or store used oil subject to separate permits, or registrations under this section.

(3) The status of business, zoning, and other applicable licenses and permits required by federal, state, and local governmental entities, including registrations or permits required under this part to collect, process/re-refine, transport, or store used oil.

(4) **Sampling and Analysis Plan.** Marketers shall develop and follow a written analysis plan describing the procedures that will be used to comply with the analysis requirements of R315-15, including the applicable portions of R315-15-1.2, R315-15-5.4, R315-15-7.3, and R315-15-18. The owner or operator shall keep the plan at the facility. The plan shall address at a minimum the following:

(i) **Specification used oil fuel.** The analysis plan shall describe how the marketer will comply with R315-15-1.2, R315-15-5.6, and R315-15-7.3, as applicable.

(ii) **Analytical methods.** The plan shall specify the preparation and analytical methods for each parameter.

(iii) **PCBs.** The analysis plan shall describe how the marketer will comply with R315-15-18.



(iv) Generator knowledge. The plan shall describe the requirements for generator knowledge, if applicable.

(v) Sample Quality Control. The plan shall specify the quality control parameters and acceptance limits.

(vi) Rebuttable presumption for used oil. The analysis plan shall describe how the marketer will comply with R315-15-1.1(b)(ii) and R315-15-5.4, if applicable.

(vii) Sampling. The analysis plan shall describe the sampling protocol used to obtain representative samples, including:

(A) Sampling methods. The marketer shall use one of the sampling methods in R315-261 Appendix I, or a method shown to be equivalent under R315-260-21.

(B) Sample frequency. The plan shall specify the frequency of sampling to be performed, and whether the analysis will be performed on site or off site.

(c) Registration fees. Registration and permitting fees are established under the terms and conditions of Utah Code Annotated 63J-1-504. A copy of the Division's Fee Schedule is available upon request. Payment of appropriate fees is required prior to issuance of registration numbers and annual used oil handler certificates.

(d) A person who acts as used oil fuel marketer shall annually obtain a used oil handler certificate in accordance with R315-15-13.8. A used oil fuel marketer shall not operate without a used oil handler certificate.

(e) Changes in information. The owner or operator of the facility shall notify the Director in writing of any changes in the information submitted to apply for a registration within 20 days of the change.

#### 13.8 USED OIL HANDLER CERTIFICATES

(a) Applicability. As well as obtaining permits and registration described in R315-15-13.4 through 13.7, a person shall not act as a used oil transporter, operator of a transfer facility, processor/re-refiner, off-specification burner, or marketer without applying for, receiving, and maintaining a current used oil handler certificate issued by the Director for each applicable activity. Each used oil permit and marketer registration described in R315-15-13.4 through 13.7 above requires a separate used oil handler certificate.

(b) General. Each application for a used oil handler certificate shall include the following information:

- (1) business name;
- (2) address to include:
  - (i) mailing address; and
  - (ii) site address if different from mailing address
- (3) telephone number
- (4) name of business owner;
- (5) name of business operator;
- (6) permit/registration number; and
- (7) type of permit/registration number (i.e., processor, transporter, transfer facility, off-specification burner, or marketer).

(c) Changes in information. A used oil handler certificate holder shall notify the Director of any changes in the information provided in Subsection R315-15-13.8(b) within 20 days of implementation of the change.

(d) A used oil handler certificate will be issued to an applicant following the:

(1) completion and approval of the application required by R315-15-13.8(a); and

(2) payment of the fee required by the Annual Appropriations Act.

(e) A used oil handler certificate is not transferable and shall be valid January 1 through December 31 of the year issued. The certificate shall become void if the permit or registration associated with the used oil activity described in the certificate, in accordance with R315-15-13.8(b)(6) in the application, is revoked under R315-15-15.2 or if the Director, upon the written request of the permittee or registration holder, cancels the certificate.

(f) The certificate registration fee shall be paid prior to operation within any calendar year.

**KEY: hazardous waste, used oil**

**Date of Enactment or Last Substantive Amendment:**  
~~November 12, 2015~~ 2016

**Notice of Continuation: March 10, 2016**

**Authorizing, and Implemented or Interpreted Law: 19-6-704**

## Health, Health Care Financing, Coverage and Reimbursement Policy **R414-1-5** Incorporations by Reference

### NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 40870

FILED: 10/13/2016

### RULE ANALYSIS

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** Subsection 26-18-3(2)(a) requires the Medicaid program to implement policy through administrative rules. The Department, in order to draw down federal funds, must have an approved state plan with the Centers for Medicare and Medicaid Services (CMS). The purpose of this change, therefore, is to incorporate the most current Medicaid state plan by reference.

**SUMMARY OF THE RULE OR CHANGE:** The Department incorporates by reference the Utah Medicaid State Plan and approved State Plan Amendments (SPAs) to 10/01/2016. Specifically, the Department incorporates by reference the following SPAs: SPA 16-0007-UT Non-Routine Services, QI Incentive, and Other Clarifications, which updates hyperbaric oxygen therapy as a non-routine service and removes certain education requirements for the Quality Improvement Incentive Program. It also incorporates by reference SPA 16-0011-UT Reimbursement for Home Health Services, which updates the effective date of rates for home health services to 07/01/2016; SPA 16-0012-UT Reimbursement for Physician and Anesthesia Services, which updates the effective date of rates for physician and anesthesia services to 07/01/2016; SPA 16-0013-UT Reimbursement for Optometry Services, which updates the effective date of rates for optometry services to 07/01/2016; SPA 16-0014-UT Reimbursement for Speech Pathology Services, which updates the effective date

of rates for speech pathology services to 07/01/2016; SPA 16-0015 Reimbursement for Audiology Services, which updates the effective date of rates for audiology services to 07/01/2016; SPA 16-0016-UT Reimbursement for Chiropractic Services, which updates the effective date of rates for chiropractic services to 07/01/2016; SPA 16-0017-UT Reimbursement for Eyeglasses Services, which updates the effective date of rates for eyeglasses services to 07/01/2016; SPA 16-0018-UT Reimbursement for Clinic Services, which updates the effective date of rates for clinic services to 07/01/2016; SPA 16-0019-UT Reimbursement for Physical Therapy and Occupational Therapy, which updates the effective date of rates for physical and occupational therapy to 07/01/2016; SPA 16-0020-UT Reimbursement for Rehabilitative Mental Health Services, which updates the effective date of rates for rehabilitative mental health services to 07/01/2016; SPA 16-0021-UT Reimbursement for Transportation Services, which updates the effective date of rates for transportation services to 07/01/2016; SPA 16-0022-UT Outpatient Hospital Supplemental Payments, which updates the trend for the outpatient hospital upper payment limit to 4.1% for State Fiscal Year 2017; SPA 16-0023-UT Payment for Dialysis Services, which updates the effective date of rates for dialysis services to 04/01/2016; SPA 16-0024-UT Pediatric Dental Fee, which provides a fee-for-service supplemental payment to pediatric dental providers in accordance with legislative appropriations for pediatric dental services; and SPA 16-0026-UT Citizenship and Non-Citizen Eligibility, which implements the state's option to provide Medicaid coverage to individuals who are under 19 years of age, are otherwise eligible, and are lawfully residing in the United States. This option also waives the five-year bar for these individuals. This proposed rule also incorporates by reference the following Medicaid provider manuals: Medical Supplies and Durable Medical Equipment Utah Medicaid Provider Manual and the manual's attachment for Donor Human Milk Request Form, effective 10/01/2016; Hospital Services Utah Medicaid Provider Manual with its attachments, effective 10/01/2016; the Home Health Agencies Utah Medicaid Provider Manual and the manual's attachment for the Private Duty Nursing Acuity Grid, effective 10/01/2016; the Speech-Language Pathology and Audiology Services Utah Medicaid Provider Manual, effective 10/01/2016; the Hospice Care Utah Medicaid Provider Manual and the manual's attachment for the Utah Medicaid Prior Authorization Request for Hospice Services, effective 10/01/2016; the Long Term Care Services in Nursing Facilities Utah Medicaid Provider Manual with its attachments, effective 10/01/2016; the Utah Home and Community-Based Waiver Services for Individuals Age 65 or Older Utah Medicaid Provider Manual, effective 10/01/2016; the Personal Care Utah Medicaid Provider Manual and the manual's attachment for the Request for Prior Authorization: Personal Care and Capitated Programs effective 10/01/2016; the Utah Home and Community-Based Waiver Services for Individuals with an Acquired Brain Injury Utah Medicaid Provider Manual, effective 10/01/2016; Utah Community Supports Waiver for Individuals with Intellectual Disabilities or Other Related Conditions Utah Medicaid Provider Manual,

effective 10/01/2016; the Utah Home and Community-Based Services Waiver for Individuals with Physical Disabilities Utah Medicaid Provider Manual, effective 10/01/2016; the Utah Home and Community-Based Waiver Services New Choices Waiver Utah Medicaid Provider Manual, effective 10/01/2016; the Utah Home and Community-Based Services Waiver for Technology Dependent, Medically Fragile Individuals Utah Medicaid Provider Manual, effective 10/01/2016; the Utah Home and Community-Based Waiver Services Medicaid Autism Waiver Utah Medicaid Provider Manual, effective 10/01/2016; the Office of Inspector General (OIG) Administrative Hearings Procedures Manual, effective 10/01/2016; the Pharmacy Services Utah Medicaid Provider Manual with its attachments, effective 10/01/2016; the Coverage and Reimbursement Code Look-up Tool, effective 10/01/2016; the CHEC Services Utah Medicaid Provider Manual with its attachments, effective 10/01/2016; the Chiropractic Medicine Utah Medicaid Provider Manual, effective 10/01/2016; the Dental, Oral Maxillofacial, and Orthodontia Services Utah Medicaid Provider Manual, effective 10/01/2016; the General Attachments (All Providers) for the Utah Medicaid Provider Manual, effective 10/01/2016; the Indian Health Utah Medicaid Provider Manual, effective 10/01/2016; the Laboratory Services Utah Medicaid Provider Manual with its attachments, effective 10/01/2016; the Medical Transportation Utah Medicaid Provider Manual, effective 10/01/2016; the Non-Traditional Medicaid Plan Utah Medicaid Provider Manual with attachment, effective 10/01/2016; the Licensed Nurse Practitioner Utah Medicaid Provider Manual, effective 10/01/2016; the Physical Therapy and Occupational Therapy Services Utah Medicaid Provider Manual and the manual's attachment for Physical Therapy and Occupational Therapy Decision Tables, effective 10/01/2016; the Physician Services, Anesthesiology and Laboratory Services Utah Medicaid Provider Manual with its attachments, effective 10/01/2016; the Podiatric Services Utah Medicaid Provider Manual, effective 10/01/2016; the Primary Care Network Utah Medicaid Provider Manual with its attachments, effective 10/01/2016; the Rehabilitative Mental Health and Substance Use Disorder Services Utah Medicaid Provider Manual, effective 10/01/2016; the Rural Health Clinics and Federally Qualified Health Centers Services Utah Medicaid Provider Manual, effective 10/01/2016; the School-Based Skills Development Services Utah Medicaid Provider Manual, effective 10/01/2016; Section I: General Information Utah Medicaid Provider Manual, effective 10/01/2016; the Targeted Case Management for Individuals with Serious Mental Illness Utah Medicaid Provider Manual, effective 10/01/2016; Targeted Case Management for Early Childhood (Ages 0-4) Utah Medicaid Provider Manual, effective 10/01/2016; Vision Care Services Utah Medicaid Provider Manual, effective 10/01/2016; Women's Services Utah Medicaid Provider Manual, effective 10/01/2016; Medically Complex Children's Waiver Utah Medicaid Provider Manual, effective 10/01/2016; and Autism Spectrum Disorder Related Services for EPSDT Eligible Individuals Utah Medicaid Provider Manual, effective 10/01/2016.

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

MATERIALS INCORPORATED BY REFERENCE:

- ◆ Updates Personal Care Utah Medicaid Provider Manual, and Request for Prior Authorization: Personal Care and Capitated Programs, published by Division of Medicaid and Health Financing, 10/01/2016
- ◆ Updates Licensed Nurse Practitioner Utah Medicaid Provider Manual, published by Division of Medicaid and Health Financing, 10/01/2016
- ◆ Updates Utah Home and Community-Based Waiver Services for Individuals Age 65 or Older Utah Medicaid Provider Manual, published by Division of Medicaid and Health Financing, 10/01/2016
- ◆ Updates Long Term Care Services in Nursing Facilities Utah Medicaid Provider Manual, with attachments, published by Division of Medicaid and Health Financing, 10/01/2016
- ◆ Updates Office of Inspector General Administrative Hearings Procedures Manual, published by Office of Inspector General and Medicaid Services, 10/01/2016
- ◆ Updates Chiropractic Medicine Utah Medicaid Provider Manual, published by Division of Medicaid and Health Financing, 10/01/2016
- ◆ Updates School-Based Skills Development Services Utah Medicaid Provider Manual, published by Division of Medicaid and Health Financing, 10/01/2016
- ◆ Updates Medically Complex Children's Waiver Utah Medicaid Provider Manual, published by Division of Medicaid and Health Financing, 10/01/2016
- ◆ Updates Indian Health Utah Medicaid Provider Manual, published by Division of Medicaid and Health Financing, 10/01/2016
- ◆ Updates Rural Health Clinics and Federally Qualified Health Centers Services Utah Medicaid Provider Manual, published by Division of Medicaid and Health Financing, 10/01/2016
- ◆ Updates Vision Care Services Utah Medicaid Provider Manual, published by Division of Medicaid and Health Financing, 10/01/2016
- ◆ Updates Targeted Case Management for Early Childhood (Ages 0-4) Utah Medicaid Provider Manual, published by Division of Medicaid and Health Financing, 10/01/2016
- ◆ Updates Women's Services Utah Medicaid Provider Manual, published by Division of Medicaid and Health Financing, 10/01/2016
- ◆ Updates Utah Medicaid State Plan, published by Centers for Medicare and Medicaid Services, 10/01/2016
- ◆ Updates Utah Home and Community-Based Waiver Services Medicaid Autism Waiver Utah Medicaid Provider Manual, published by Division of Medicaid and Health Financing, 10/01/2016
- ◆ Updates Targeted Case Management for Individuals with Serious Mental Illness Utah Medicaid Provider Manual, published by Division of Medicaid and Health Financing, 10/01/2016
- ◆ Updates Home Health Agencies Utah Medicaid Provider Manual, and Private Duty Nursing Acuity Grid, published by Division of Medicaid and Health Financing, 10/01/2016
- ◆ Updates Utah Home and Community-Based Waiver Services for Individuals with an Acquired Brain Injury Utah Medicaid Provider Manual, published by Division of Medicaid and Health Financing, 10/01/2016
- ◆ Updates Podiatric Services Utah Medicaid Provider Manual, published by Division of Medicaid and Health Financing, 10/01/2016
- ◆ Updates Laboratory Services Utah Medicaid Provider Manual with attachments, published by Division of Medicaid and Health Financing, 10/01/2016
- ◆ Updates Autism Spectrum Disorder Related Services for EPSDT Eligible Individuals Utah Medicaid Provider Manual, published by Division of Medicaid and Health Financing, 10/01/2016
- ◆ Updates Utah Home and Community-Based Waiver Services New Choices Waiver Utah Medicaid Provider Manual, published by Division of Medicaid and Health Financing, 10/01/2016
- ◆ Updates Physical Therapy and Occupational Therapy Services Utah Medicaid Provider Manual, and the manual's attachment for Physical Therapy and Occupational Therapy Decision Tables, published by Division of Medicaid and Health Financing, 10/01/2016
- ◆ Updates Speech-Language Pathology and Audiology Services Utah Medicaid Provider Manual, published by Division of Medicaid and Health Financing, 10/01/2016
- ◆ Updates Pharmacy Services Utah Medicaid Provider Manual with attachments, published by Division of Medicaid and Health Financing, 10/01/2016
- ◆ Updates Physician Services, Anesthesiology and Laboratory Services Utah Medicaid Provider Manual with attachments, published by Division of Medicaid and Health Financing, 10/01/2016
- ◆ Updates Utah Home and Community-Based Services Waiver for Individuals with Physical Disabilities, published by Division of Medicaid and Health Financing, 10/01/2016
- ◆ Updates Primary Care Network Utah Medicaid Provider Manual with attachments, published by Division of Medicaid and Health Financing, 10/01/2016
- ◆ Updates Utah Community Supports Waiver for Individuals with Intellectual Disabilities or Other Related Conditions Utah Medicaid Provider Manual, published by Division of Medicaid and Health Financing, 10/01/2016

- ◆ Updates Non-Traditional Medicaid Plan Utah Medicaid Provider Manual with attachment, published by Division of Medicaid and Health Financing, 10/01/2016
- ◆ Updates Coverage and Reimbursement Code Look-up Tool, published by Division of Medicaid and Health Financing, 10/01/2016
- ◆ Updates Medical Transportation Utah Medicaid Provider Manual, published by Division of Medicaid and Health Financing, 10/01/2016
- ◆ Updates General Attachments (All Providers) for the Utah Medicaid Provider Manual, published by Division of Medicaid and Health Financing, 10/01/2016
- ◆ Updates Utah Home and Community-Based Services Waiver for Technology Dependent, Medically Fragile Individuals Utah Medicaid Provider Manual, published by Division of Medicaid and Health Financing, 10/01/2016
- ◆ Updates Rehabilitative Mental Health and Substance Use Disorder Services Utah Medicaid Provider Manual, published by Division of Medicaid and Health Financing, 10/01/2016
- ◆ Updates Medical Supplies and Durable Medical Equipment Utah Medicaid Provider Manual, and Donor Human Milk Request Form, published by Division of Medicaid and Health Financing, 10/01/2016
- ◆ Updates Section I: General Information Utah Medicaid Provider Manual, published by Division of Medicaid and Health Financing, 10/01/2016
- ◆ Updates Hospice Care Utah Medicaid Provider Manual, and Utah Medicaid Prior Authorization Request for Hospice Services, published by Division of Medicaid and Health Financing, 10/01/2016
- ◆ Updates Hospital Services Utah Medicaid Provider Manual with attachments, published by Division of Medicaid and Health Financing, 10/01/2016
- ◆ Updates Dental, Oral Maxillofacial, and Orthodontia Services Utah Medicaid Provider Manual, published by Division of Medicaid and Health Financing, 10/01/2016
- ◆ Updates CHEC Services Utah Medicaid Provider Manual with attachments, published by Division of Medicaid and Health Financing, 10/01/2016

**ANTICIPATED COST OR SAVINGS TO:**

- ◆ **THE STATE BUDGET:** There is no budget impact because this change only fulfills the requirement to incorporate the State Plan by reference. Implementation of the State Plan is within legislative budget allotments. Further, the rule's incorporation of ongoing Medicaid policy described in the provider manuals and Look-up Tool, and hearings procedures described in the OIG manual do not create costs or savings to the Department or other state agencies.
- ◆ **LOCAL GOVERNMENTS:** There is no budget impact because this change only fulfills the requirement to incorporate the State Plan by reference. Implementation of the State Plan is within legislative budget allotments. Further,

the rule's incorporation of ongoing Medicaid policy described in the provider manuals and Look-up Tool, and hearings procedures described in the OIG manual do not create costs or savings to local governments.

◆ **SMALL BUSINESSES:** There is no budget impact because this change only fulfills the requirement to incorporate the State Plan by reference. Implementation of the State Plan is within legislative budget allotments. Further, the rule's incorporation of ongoing Medicaid policy described in the provider manuals and Look-up Tool, and hearings procedures described in the OIG manual do not create costs or savings to small businesses.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There is no budget impact because this change only fulfills the requirement to incorporate the State Plan by reference. Implementation of the State Plan is within legislative budget allotments. Further, the rule's incorporation of ongoing Medicaid policy described in the provider manuals and Look-up Tool, and hearings procedures described in the OIG manual do not create costs or savings to Medicaid recipients and to Medicaid providers.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** There are no compliance costs because this change only fulfills the requirement to incorporate the State Plan by reference. Implementation of the State Plan is within legislative budget allotments. Further, the rule's incorporation of ongoing Medicaid policy described in the provider manuals and Look-up Tool, and hearings procedures described in the OIG manual do not create costs or savings to a single Medicaid recipient or to a Medicaid provider.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** There is no fiscal impact on business because all changes are already in the 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 Office 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, or mail at PO Box 143102, Salt Lake city, UT 84114-3102

**INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 12/01/2016**

**THIS RULE MAY BECOME EFFECTIVE ON: 12/08/2016**

AUTHORIZED BY: Joseph Miner, MD, Executive Director

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

**R414-1. Utah Medicaid Program.**

**R414-1-5. Incorporations by Reference.**

The Department incorporates the ~~July~~October 1, 2016, versions of the following by reference:

(1) Utah Medicaid State Plan, including any approved amendments, under Title XIX of the Social Security Act Medical Assistance Program;

(2) Medical Supplies and Durable Medical Equipment Utah Medicaid Provider Manual~~[-Section 2, Medical Supplies]~~, as applied in Rule R414-70, and the manual's attachment for Donor Human Milk Request Form;

(3) Hospital Services Utah Medicaid Provider Manual with its attachments;

(4) Home Health Agencies Utah Medicaid Provider Manual, and the manual's attachment for the Private Duty Nursing Acuity Grid;

(5) Speech-Language Pathology and Audiology Services Utah Medicaid Provider Manual;

(6) Hospice Care Utah Medicaid Provider Manual, and the manual's attachment for the Utah Medicaid Prior Authorization Request for Hospice Services;

(7) Long Term Care Services in Nursing Facilities Utah Medicaid Provider Manual with its attachments;

(8) Personal Care Utah Medicaid Provider Manual and the manual's attachment for the Request for Prior Authorization: Personal Care and Capitated Programs;

(9) Utah Home and Community-Based Waiver Services for Individuals Age 65 or Older Utah Medicaid Provider Manual;

(10) Utah Home and Community-Based Waiver Services for Individuals with an Acquired Brain Injury Utah Medicaid Provider Manual;

(11) Utah Community Supports Waiver for Individuals with Intellectual Disabilities or Other Related Conditions Utah Medicaid Provider Manual;

(12) Utah Home and Community-Based Services Waiver for Individuals with Physical Disabilities Utah Medicaid Provider Manual;

(13) Utah Home and Community-Based Waiver Services New Choices Waiver Utah Medicaid Provider Manual;

(14) Utah Home and Community-Based Services Waiver for Technology Dependent, Medically Fragile Individuals Utah Medicaid Provider Manual;

(15) Utah Home and Community-Based Waiver Services Medicaid Autism Waiver Utah Medicaid Provider Manual;

(16) Office of Inspector General Administrative Hearings Procedures Manual;

(17) Pharmacy Services Utah Medicaid Provider Manual with its attachments;

(18) Coverage and Reimbursement Code Look-up Tool found at <http://health.utah.gov/medicaid/stplan/lookup/CoverageLookup.php>;

(19) CHEC Services Utah Medicaid Provider Manual with its attachments;

(20) Chiropractic Medicine Utah Medicaid Provider Manual;

(21) Dental, Oral Maxillofacial, and Orthodontia Services Utah Medicaid Provider Manual;

(22) General Attachments (All Providers) for the Utah Medicaid Provider Manual;

(23) Indian Health Utah Medicaid Provider Manual;

(24) Laboratory Services Utah Medicaid Provider Manual with its attachments;

(25) Medical Transportation Utah Medicaid Provider Manual;

(26) Non-Traditional Medicaid Plan Utah Medicaid Provider Manual with attachment;

(27) Licensed Nurse Practitioner Utah Medicaid Provider Manual;

(28) Physical Therapy and Occupational Therapy Services Utah Medicaid Provider Manual, and the manual's attachment for Physical Therapy and Occupational Therapy Decision Tables;

(29) Physician Services, Anesthesiology and Laboratory Services Utah Medicaid Provider Manual with its attachments;

(30) Podiatric Services Utah Medicaid Provider Manual;

(31) Primary Care Network Utah Medicaid Provider Manual with its attachments;

(32) Rehabilitative Mental Health and Substance Use Disorder Services Utah Medicaid Provider Manual;

(33) Rural Health Clinics and Federally Qualified Health Centers Services Utah Medicaid Provider Manual;

(34) School-Based Skills Development Services Utah Medicaid Provider Manual;

(35) Section I: General Information Utah Medicaid Provider Manual;

(36) Targeted Case Management for Individuals with Serious Mental Illness Utah Medicaid Provider Manual;

(37) Targeted Case Management for Early Childhood (Ages 0-4) Utah Medicaid Provider Manual;

(38) Vision Care Services Utah Medicaid Provider Manual;

(39) Women's Services Utah Medicaid Provider Manual;

(40) Medically Complex Children's Waiver Utah Medicaid Provider Manual; and

(41) Autism Spectrum Disorder Related Services for EPSDT Eligible Individuals Utah Medicaid Provider Manual.

**KEY: Medicaid**

**Date of Enactment or Last Substantive Amendment:** ~~September 15~~, 2016

**Notice of Continuation: March 2, 2012**

**Authorizing, and Implemented or Interpreted Law: 26-1-5; 26-18-3; 26-34-2**

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

### **R428-2**

## Health Data Authority Standards for Health Data

### **NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 40851

FILED: 10/02/2016

### **RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The purpose of this change is to clarify policy for releasing identified data.

**SUMMARY OF THE RULE OR CHANGE:** This change adds a definition required in statute, adjusts effective dates, and clarifies policy for releasing identified data.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 26-33a-1091

#### **ANTICIPATED COST OR SAVINGS TO:**

◆ **THE STATE BUDGET:** This rule amendment clarifies policy for release of identified data. The Utah Department of Health (UDOH) determines enactment of the amended version will not create any cost or savings impact to the state budget or UDOH's budget since the change 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 affect on small business budgets for costs or savings.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Technical changes will not create any cost or savings to businesses, individuals, local governments, or persons that are not small businesses.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** These changes are being made to align with existing business practice; therefore, no compliance costs are expected.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** The proposed amendment clarifies policy for releasing data, to the extent allowed by statute, to third parties who create analytics tools for data users. There is no fiscal impact on

business because the change will align the rule with current business 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 Office 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, or mail at PO Box 144004, Salt Lake city, UT 84114-4004

◆ Norman Thurston by phone at 801-538-7052, by FAX at 801-237-0787, or by Internet E-mail at nthurston@utah.gov, or mail at PO Box 144004, Salt Lake city, UT 84114-4004

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 12/01/2016

THIS RULE MAY BECOME EFFECTIVE ON: 12/08/2016

AUTHORIZED BY: Joseph Miner, MD, 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 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 any of the following Third Party Payors as defined in 26-33a-102(16):

(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;

(x) a pharmacy benefit manager, defined to be a person that provides pharmacy benefit management services as defined in Section 49-20-502 on behalf of any other carrier defined in subsection R428-2-3.

(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) "Emergency Room Data" means the consolidation of complete billing, medical, and personal information describing a patient, the services received, and charges billed for a single visit

and treatment of a patient in an emergency room into an emergency room data record.

(m) "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.

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

(o) "Healthcare 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.

(p) "Healthcare Facility" means a hospital or ambulatory surgical facility.

(q) "Healthcare Facility Data" means ambulatory surgery data, discharge data, or emergency room data.

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

(s) "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.

(t) "Hospital" means a general acute hospital or specialty hospital as defined in Section 21-21-2 that is licensed under Rule R432.

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

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

(w) "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.

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

(y) "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.

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

(aa) "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.

(bb) "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.

(cc) "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.

(dd) "Research and Statistical Purposes" means having the objective of creating knowledge or answering questions, including a systematic investigation that includes development, testing, and evaluation; the description, estimation, projection, or analysis of the characteristics of individuals, groups, or

organizations; an analysis of the relationships between or among these characteristics; the identification or creation of sampling frames and the selection of samples; the preparation and publication of reports describing these matters; and the development, implementation, and maintenance of methods, procedures, or resources to support the efficient use or management of the data.

(~~ee~~) "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.

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

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

(~~hh~~) "Sampling Frame" means the carrier enrollment file as described criteria outlined by the NCQA survey specifications.

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

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

(~~kk~~) "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.

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

(~~mm~~) "Utah Healthcare Facility Data Submission Guide" means the document referenced in Subsection R428-1-4(1).

(~~nn~~) "NCQA Survey Specifications" means the document referenced in Subsection R428-1-4(2)

(~~oo~~) "NCQA HEDIS Specifications" means the document referenced in Subsection R428-1-4(3)

(~~pp~~) "Data Submission Guide for Claims Data" means the document referenced in Subsection R428-1-4(4) for data submissions required from April 1, 2016[2015] to February 28[29], 2017[2016] and the document referenced in Subsection R428-1-4(5) for data submissions beginning March 1, 2017[2016].

#### **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.

(3) The Office or its designee may reject any data submission that fails to conform to the submission requirements. A data supplier 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.

#### **R428-2-7. 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) ~~As allowed by Section 26-33a-109, the [The] committee may [approve the] release [of] identified data for [a research data set to an institution, association or organization for bona fide] research and statistical purposes [of health care cost, quality, access, health promotion programs, or public health issues.] A person requesting a research data set [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 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) and R428-2-9(3), a data supplier 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

(c) Deadlines established in separate sections of Title R428 are considered as separate provisions.

(5) The Office may impose a fine on any data supplier that misses a deadline to submit data required in Title R428 as follows:

(a) A fine of \$250 per violation shall be imposed until the data has been supplied as required

(b) The fines shall increase to \$500 per violation for each violation when any data supplier that is currently in violation misses another deadline

(c) After forty-five consecutive calendar days of violation, the Office may adjust the per day penalty subject to the limits in (4)(a) taking into account the following aggravating and mitigating circumstances:

(i) Prior violation history and history of compliance

(ii) Good faith efforts to prevent violations

(iii) The size and financial capability of the data supplier.

#### **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 data supplier requests an extension, the data supplier must submit its request no less than seven 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 as of January 1 of a given year is exempt from all requirements of this title except that once a carrier has covered a cumulative total of 2,500 such individuals during a calendar year, they are no longer considered exempt for the remainder of that year.

#### **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.

#### **R428-2-12. Data Supplier Contacts.**

(1) Data suppliers required to submit healthcare claims data or healthcare facility data shall provide current contact information to the Office by September 1 of each year using a website provided by the Office for this purpose.

(2) Each data supplier newly required to submit healthcare claims data or healthcare facility data under this rule, including by a change to the rule or because it no longer qualifies for an exemption, shall provide contact information to the Office within 30 days of learning that they will be required to submit data under this rule.

(3) Each data supplier shall designate a person who is responsible for submitting data and a person who is responsible for communicating with the Office regarding the submission of the data. Each data supplier shall notify the Office of changes in this designation within thirty calendar days.

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

**Date of Enactment or Last Substantive Amendment: [March 25], 2016**

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

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

## **Health, Disease Control and Prevention, Laboratory Services R438-10**

### **Rules for Establishment of a Procedure to Examine the Blood of All Adult Pedestrians and All Drivers of Motor Vehicles Killed in Highway Accidents for the Presence and Concentration of Alcohol, for the Purpose of Deriving Statistics Therefrom**

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

(Repeal)

DAR FILE NO.: 40868

FILED: 10/12/2016

#### **RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The purpose of this rule was to allow for data collection regarding motor vehicle accidents related to alcohol consumption. After reviewing this rule for the 5-year review process, it was decided this rule could be repealed. The rule is outdated, and this process of data collection has been fulfilled by S.B. 13 (2012), which amended the duties of the state medical examiner's office to assume custody of a body when it appears the death was the result of a highway accident. A standard test run at autopsy is a blood alcohol concentration.

**SUMMARY OF THE RULE OR CHANGE:** This rule establishes a procedure for collecting blood alcohol information for motor vehicle accidents. We are asking for this rule to be repealed since it is outdated, and there are other mechanisms in place to fulfill the statute regarding data collection.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 26-1-30

**ANTICIPATED COST OR SAVINGS TO:**

◆ **THE STATE BUDGET:** None--This rule is outdated and was not used for many years. There will be no costs or savings from the repeal.

◆ **LOCAL GOVERNMENTS:** None--This rule is outdated and was not used for many years. There will be no costs or savings from the repeal.

◆ SMALL BUSINESSES: None--This rule is outdated and was not used for many years. There will be no costs or savings from the repeal.

◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: None--This rule is outdated and was not used for many years. There will be no costs or savings from the repeal.

COMPLIANCE COSTS FOR AFFECTED PERSONS: None--This rule is outdated and was not used for many years. There will be no costs or savings from the repeal.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule is being repealed because it is outdated and there are other mechanisms in place to fulfill the statute regarding data collection.

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

HEALTH  
DISEASE CONTROL AND PREVENTION,  
LABORATORY SERVICES  
4431 S 2700 W  
TAYLORSVILLE, UT 84119  
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Robyn Atkinson by phone at 801-965-2424, by FAX at 801-969-3704, or by Internet E-mail at rmatkinson@utah.gov, or mail at PO Box 142109, Salt Lake city, UT 84114-2109

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 12/01/2016

THIS RULE MAY BECOME EFFECTIVE ON: 12/08/2016

AUTHORIZED BY: Joseph Miner, MD, Executive Director

**R438. Health, Disease Control and Prevention, Laboratory Services.**

~~[R438-10. Rules for Establishment of a Procedure to Examine the Blood of all Adult Pedestrians and all Drivers of Motor Vehicles Killed in Highway Accidents for the Presence and Concentration of Alcohol, for the Purpose of Deriving Statistics Therefrom.~~

**R438-10-1. Definitions.**

\_\_\_\_\_(1) "Victim" means any driver of a motor vehicle, or any adult pedestrian who dies as a result of, and within four hours after the time of, a highway accident.

\_\_\_\_\_(2) "Blood specimen collector" means a person required to obtain a blood specimen from any driver of a motor vehicle, or any adult pedestrian who dies as a result of a highway accident, which person shall be:

\_\_\_\_\_(a) Any mortician licensed in the State of Utah.

\_\_\_\_\_(b) The Chief Medical Examiner and his authorized designates.

\_\_\_\_\_(c) Any other person as authorized by the Department of Health.

**R438-10-2. Procedure.**

\_\_\_\_\_(1) Blood specimen collection

\_\_\_\_\_(a) The Department of Health shall provide specimen collection supplies, sampling instructions, mailing containers, and report forms to those authorized and responsible to collect blood specimens for this procedure. The blood specimen collector shall obtain a specimen from the victim in accordance with the sampling instructions.

\_\_\_\_\_(b) Any blood specimen collector having custody of any driver of a motor vehicle or any adult pedestrian who dies as a result of a highway accident shall be required to initiate the report form, listing all available information, and to submit the specimen and report form to the State Health Laboratory of the Department of Health, in the mailing container provided.

\_\_\_\_\_(c) In the event that a highway fatality cannot be identified as to driver, pedestrian, or passenger, the blood specimen collector shall obtain a specimen from all persons within his custody who died as a result of the accident.

\_\_\_\_\_(2) Chemical analysis

All specimens shall be analyzed by the State Health Laboratory. The State Health Laboratory shall employ methodology, analytical techniques, and documented quality control practices to best ensure accurate results. The State Health Laboratory shall add the result of the alcohol analysis to the report form, and forward the form to the Bureau of Health Statistics of the Department of Health.

\_\_\_\_\_(3) Statistical analysis

The Department of Public Safety shall forward a copy of all motor vehicle accident reports involving fatalities to the Bureau of Health Statistics. The Bureau of Health Statistics shall assemble all available information, including accident reports, death certificates, and alcohol analyses, and subject these data to appropriate statistical analyses. These statistics shall be provided to the Commissioner of Public Safety on a monthly basis. The Bureau of Health Statistics shall also make an annual report to the Commissioner of Public Safety.

**KEY: accident law**

~~Date of Enactment or Last Substantive Amendment: 1987~~

~~Notice of Continuation: October 12, 2011~~

~~Authorizing, and Implemented or Interpreted Law: 26-1-30(2) (q); 26-1-30(2)(r)]~~

Insurance, Administration  
**R590-262**  
Health Data Authority Health Insurance  
Claims Reporting

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 40891

FILED: 10/14/2016

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The proposed rule changes adopt a process to allow a self-funded employer plan to affirmatively select to provide healthcare claim data to Utah's All Payer Claim Database (APCD).

**SUMMARY OF THE RULE OR CHANGE:** Prior to the Supreme Court's decision in *Gobeille v. Liberty Mutual Ins. Co.* issued this last March, insurers and third-party administrators were required to submit healthcare claim data for all fully insured and employer self-funded plans to Utah's APCD. After the Court's decision, Utah's rule was revised to remove the mandatory reporting requirements for the employer self-funded plans, see Subsection R590-262-2(3)(c). To be able to continue to collect self-funded employer data, the proposed rule changes require an insurer and third-party administrator to provide an employer of a self-funded health plan a form that allows an employer to instruct the plan administrator to continue to submit data to the APCD.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Subsection 31A-22-614.5(3)(a)

**ANTICIPATED COST OR SAVINGS TO:**

◆ **THE STATE BUDGET:** Because the proposed amendments apply to health insurers and third-party administrators, the changes to this rule do not have an anticipated cost or savings to the state budget.

◆ **LOCAL GOVERNMENTS:** Because the proposed amendments only apply to health insurers and third-party administrators, there is no cost impact to local governments.

◆ **SMALL BUSINESSES:** The proposed amendments apply to health insurers and third-party administrators, and some third-party administrators may be a small business. The impact will be minimal. The rule changes require a health insurer or third-party administrator to provide a document to a self-funded employer client. If the client chooses to submit their data to the APCD, the health insurer, or third-party administrator would then be required to submit the data. The applicable data is currently being submitted for all fully insured commercial health insurance. It was also being submitted for self-funded employer plans up until March 2016 when the Supreme Court decided such entities were not required to provide the data. However, the decision did not bar an employer from voluntarily providing such data to the APCD. This rule sets forth a process for self-funded employers to voluntarily provide data.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** The proposed amendments apply to health insurers and third-party administrators. The impact will be minimal. The rule changes require a health insurer or third-party administrator to provide a document to a self-funded employer client. If the client chooses to submit their data to the APCD, the health insurer, or third-party administrator would then be required to submit the data. The applicable data is currently being

submitted for all fully insured commercial health insurance. It was also being submitted for self-funded employer plans up until May 2016 when the Supreme Court decided such entities were not required to provide the data. However, the decision did not bar an employer from voluntarily providing such data to the APCD. This rule sets forth a process for self-funded employers to voluntarily provide data.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** There should only be minimal costs due to the requirement to provide a client a single-page opt-in form for an affirmative election. There should not be any additional compliance costs for the submission of data because the information had been required to be submitted until March 2016.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** There are no anticipated costs or savings to any businesses. Other than providing a client an opt-in form, the updates are already an industry standard, so the requirements are already in force with affected entities.

**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 Office of Administrative Rules.

**DIRECT QUESTIONS REGARDING THIS RULE TO:**

◆ Steve Gooch by phone at 801-538-3803, by FAX at 801-538-3829, or by Internet E-mail at [sgooch@utah.gov](mailto:sgooch@utah.gov), or mail at PO Box 146901, Salt Lake city, UT 84114-6901

**INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 12/01/2016**

**INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:**

◆ 11/09/2016 01:00 PM, State Office Bldg, 450 N State St., Room 3112, Salt Lake City, UT

**THIS RULE MAY BECOME EFFECTIVE ON: 12/08/2016**

**AUTHORIZED BY:** Steve Gooch, Information Specialist

**R590. Insurance, Administration.****R590-262. Health Data Authority Health Insurance Claims Reporting.****R590-262-1. Authority.**

This rule is promulgated pursuant to Subsection 31A-22-614.5(3)(a) to coordinate with the provision of Subsection 26-1-37(2)(b) and Utah Department of Health rules R428-1 and R428-15.

**R590-262-2. Purpose and Scope.**

(1) This rule establishes requirements for certain entities that pay for health care to submit data to the Utah Department of Health.

(2) This rule allows the data to be shared with the state's designated secure health information master index person index, Clinical Health Information Exchange (cHIE), to be used:

(a) in compliance with data security standards established by:

(i) the federal Health Insurance Portability and Accountability Act of 1996, Pub. L. 104-191, 110 Stat. 1936; and

(ii) the electronic commerce agreements established in a business associate agreement;

(b) for the purpose of coordination of health benefit plans; and

(c) for the enrollment data elements identified in Utah Administrative Rule R428-15, Health Data Authority Health Insurance Claims Reporting.

(3)(a) This rule applies to an insurer offering:

(i) a health benefit plan; or

(ii) a dental plan.

(b) This rule does not apply to:

(i) an insurer that covers fewer than 2500 individual Utah residents;

(ii) a long-term care insurance policy; or

(iii) an income replacement policy.

(c) ~~[This]~~ Except as provided in Subsection (4), this rule does not require a person to provide information concerning a self-funded employee ~~[welfare benefit] plan [as defined in 29 U.S.C. Section 1002(1)].~~

~~(4)(a) The submission of health care claims data by an insurer on behalf of a self-funded employee plan is considered mandatory if and only if the self-funded employee plan opts-in under R590-262-7.~~

~~(b) An insurer is not obligated to submit data on behalf of a self-funded employee plan that fails to respond to opt-in requests required in R590-262-7.~~

**R590-262-3. Definitions.**

In addition to the definitions in Section 31A-1-301, the following definitions shall apply for the purpose of this rule:

(1) "Claim" means a request or demand on an insurer for payment of a benefit.

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

(3) "Insurer" means:

(a) a person engaged in the business of offering a health benefit plan or a dental plan, including a business under an administrative services organization or administrative services contract arrangement;

(b) a third party administrator that collects premiums or settles claims for health care insurance policies;

(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; or

(e) a licensed professional employer organization that is acting as an administrator of a health care insurance policy.

~~(5) "Office" means the Office of Health Care Statistics within the Utah Department of Health, which serves as staff to the Utah Health Data Committee.~~

~~(5) "Reporting period" means a calendar year.~~

~~(6)(a) "Self-funded employee plan" means an employee welfare benefit plan as defined in 29 U.S.C. Section 1002(1) whose health coverage is provided other than through an insurance policy.~~

~~(b) Self-funded employee plan does not include:~~

~~(i) a governmental plan as defined in Section 414 (d), Internal Revenue Code;~~

~~(ii) a non-electing church plan as described in Section 410 (d), Internal Revenue Code; or~~

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

~~(7) "Technical specifications" means the technical specifications document published by the Health Data Committee describing the variables and formats of the data that are to be submitted as well as submission directions and guidelines.~~

**R590-262-4. Reporting Requirements.**

(1) Each insurer shall submit enrollment, medical claims, and pharmacy data described in R428-15-~~[5]3~~ and R590-262-5, where Utah is the patient's primary residence, for services provided in or out of the state of Utah.

(2) Each insurer shall permit the Utah Department of Health to redisclose the enrollment and eligibility information with the state designated entity for the purpose of coordination of benefits.

(3) Each insurer shall submit monthly health care claims data. Each monthly submission is due no later than the last day of the following month.

**R590-262-5. Reporting Process.**

~~[(+)]~~ Submission procedures and guidelines are described in detail in the technical specifications published by the Health Data Committee. The health care claims data shall be ~~[either X12 format, or flat text files]~~ formatted and submitted according to the technical specifications.

~~[(2) All medical claims shall be submitted to the Office through the Utah Health Information Network (UHIN) in X12 format.~~

~~[(3) All enrollment and pharmacy data files shall be submitted to the Office in flat text files using either UHIN or FTP Secure.]~~

**R590-262-6. Required Data Elements.**

(1) The enrollment, medical claims, dental claims, and pharmacy data elements are described in detail in the technical specifications published by the Health Data Committee. Each insurer shall submit data for all fields contained in the submission specifications if the data are available to the insurer.

~~[(a) Each insurer must submit enrollment files as a flat file.~~

~~[(b) Each insurer must submit medical claims as X12 messages as modified by this rule. All X12 format messages must contain all the necessary segments for processing through UHIN.~~

This includes ISA/IEA segments, GS and GE segments, Segment Qualifier codes, etc., as specified in the X12 implementation guides. If a segment or qualifier is required for X12 format, it is required for all submissions under this rule. If a segment or qualifier is not required for X12 format, but is required by this rule, it must be submitted as required by this rule. Submitted files must be in the ASC X12 4010A1 x098 for a Professional Claim and in the ASC X12 4010A1 x096 for an Institutional Claim.

(c) Each insurer must submit pharmacy claims as a flat file.]

(2) Each insurer must submit the enrollment files, provider files, professional medical claims, institutional medical claims, and pharmacy claims data elements as required in R428-15.

**R590-262-7. Voluntary Opt-In for Self-Funded Employee Plans.**

(1)(a) Each insurer providing claim administration services for an employer who maintains a self-funded employee plan shall provide an employer a copy of the APCD Self-funded Employee Health Plan Opt-In form for purposes of determining whether an employer agrees to opt-in to submission of its self-funded employee plan's health care claims data as described in this rule.

(b) An insurer may use a form that they have developed for multi-state use instead of the form referenced in Subsection (1) (a) if the form is substantially similar and is approved by the Office in advance.

(c) Each insurer shall provide the APCD Self-funded Employee Health Plan Opt-In form:

(i) by December 15, 2016 for existing clients; or

(ii) within 15 days after claims administration services are retained and it is determined the employer meets the requirements of this section, for clients retained after December 1, 2016.

(2)(a) Except as provided in Subsections (b) and (c), an opt-in is effective for the reporting period in which it is signed and all future reporting periods. An employer may not opt-in for a partial reporting period.

(b) An opt-in signed by an employer and received by an insurer before March 1, 2017 shall be effective for the claims adjudicated in 2016 and not previously submitted to the Office, if otherwise required by this rule.

(c) An employer that has opted-in may opt-out for subsequent reporting periods by notifying the insurer in writing at least 30 days before the beginning of the next reporting period.

(3) For a self-funded employee plan whose employer has made an affirmative election for the submission of health care claims data, the insurer shall:

(a) include the self-funded employee plan data as part of the insurer's data submission otherwise required by this rule; and

(b) for plans that opt-in before March 1, 2017 as provided in Subsection (2)(b), include claims adjudicated in 2016 that were not previously submitted to the Office.

(4) Each insurer shall file with the Office, annually by January 31 of each year the following for the prior calendar year:

(a) a list of the self-funded employee plans whose employer made an affirmative election for the submission of their health care claim data;

(b) a list of employers who previously filed an opt-in request and have elected to opt-out for future reporting periods as provided under Subsection (2)(c); and

(c) a certification from an officer of the insurer that the insurer has taken reasonable efforts to provide the form to all known required employers; and

(d) a list identifying the employers to whom the form was provided and their contact information.

(5) The APCD Self-funded Employee Health Plan Opt-In form is for use only with self-funded employee plans and does not affect the mandatory reporting otherwise required by this rule.

(6) Nothing in this section requires an insurer to submit claims processed before the insurer was contracted to provide services.

**R590-262-8. 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.

**R590-262-[8]9. Insurer Registration.**

Each insurer shall register with the Office by completing the registration online at <http://health.utah.gov/hda/apd/> no later than 30 days after becoming subject to this rule and annually thereafter by no later than September 1.

**R590-262-[9]10. Testing of Files.**

Insurers that become subject to this rule 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.

**R590-262-[10]11. Rejection of Files.**

The Office or its designee may reject and return any data submission that fails to conform to the submission requirements. Paramount among submission requirements are: First Name, Last Name, Member ID, Relationship to Subscriber, Date of Birth, Address, City, State, Zip Code, Sex, which are key data fields that the insurer must submit for each enrolled member and claim. An insurer whose submission is rejected shall resubmit the data in the appropriate, corrected format to the Office, or its designee within ten state business days of notice that the data does not meet the submission requirements.

**R590-262-[11]12. Replacement of Data Files.**

An insurer 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 insurer can establish exceptional circumstances for the replacement.

**R590-262-[12]13. Provider Notification.**

(1) The following notification must be provided to a person that receives shared data, "This shared data is provided for informational purposes only. Contact the insurer for current, specific eligibility, or benefits coverage determination."

(2) The notification in this ~~[section]~~Section shall be provided in coordination with provider participation in the master index patient index and the cHIE programs.

**R590-262-~~[13]~~14. Limitation of Liability.**

(1) A person furnishing information of the kind described in this rule is immune from liability and civil action if the information is furnished to or received from:

(a) the commissioner of the Insurance Department, the executive director of the Department of Health, or their employees or representatives;

(b) federal, state, or local law enforcement or regulatory officials or their employees or representatives; or

(c) the insurer that issued the policy connected with the data set.

(2) As provided in Section 26-25-1, any insurer that submits data pursuant to this rule cannot be held liable for having provided the required information to the Office.

**R590-262-~~[14]~~15. Exemptions and Extensions.**

(1) The Office may grant exemptions or extensions from reporting requirements in this rule under certain circumstances.

(2) The Office may grant an exemption to an insurer when the insurer demonstrates that compliance imposes an unreasonable cost.

(a) An insurer may request an exemption from any particular requirement or set of requirements of this rule. The insurer must submit a request for exemption no less than 30 calendar days before the date the insurer would have to comply with the requirement.

(b) The Office may grant an exemption for a maximum of one calendar year. An insurer wishing an additional exemption must submit an additional, separate request.

(3) The Office may grant an extension to an insurer when the insurer demonstrates that technical or unforeseen difficulties prevent compliance.

(a) An insurer may request an extension for any deadline required in this rule. For each deadline for which the insurer requests an extension, the insurer must submit its request no less than seven calendar days before the deadline in question.

(b) The Office may grant an extension for a maximum of 30 calendar days. An insurer wishing an additional extension must submit an additional, separate request.

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

(a) The insurer'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) An insurer may exclude from the requirements of this rule an employer who maintains a self-funded employee plan:

(a) with less than 100 individual Utah residents as of the first day of the reporting period that services are provided; or

(b) whose primary place of business is outside the state of Utah and no more than 25% of the employees are residents.

**R590-262-16. Penalties.**

A person found to be in violation of this rule shall be subject to penalties as provided in Section 31A-2-308.

**R590-262-~~[15]~~17. Enforcement Date.**

The commissioner will begin enforcing this rule upon the rule's effective date.

**R590-262-~~[16]~~18. Severability.**

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

**KEY: health insurance claims reporting**

**Date of Enactment or Last Substantive Amendment: ~~[May 23], 2016~~**

**Authorizing, and Implemented or Interpreted Law: 31A-2-614.5(3)(a)**

**Natural Resources, Wildlife Resources  
R657-13**

**Taking Fish and Crayfish**

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 40867

FILED: 10/11/2016

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** This rule is being amended pursuant to Regional Advisory Council and Wildlife Board meetings that are conducted annually for taking public input and reviewing the Division of Wildlife Resources' (DWR) fish and crayfish management program.

**SUMMARY OF THE RULE OR CHANGE:** This rule revision: 1) allows for the use of corn as bait on specified water bodies; 2) adds Big Sand Wash and Red Fleet Reservoirs to the list of water bodies where dead yellow perch may be used as bait; and 3) allows dead burbot from Flaming Gorge Reservoir to be used as bait only in Flaming Gorge Reservoir.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 23-14-18 and Section 23-14-19

**ANTICIPATED COST OR SAVINGS TO:**

♦ **THE STATE BUDGET:** This amendment allows Utah anglers additional options for bait on specified waters. DWR determines that these amendments do not create a cost or savings impact to the state budget or DWR's budget, since

the changes will not increase workload and can be carried out with existing budget.

♦ **LOCAL GOVERNMENTS:** Since this amendment only adds opportunity to anglers, this should have little to no effect on the local government. This filing does not create any direct cost or savings impact to local governments because 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:** This amendment provides additional opportunity to anglers; therefore, this rule does not impose any additional financial requirements on small businesses or generate a cost or saving impact to small businesses.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** This amendment provides additional opportunity to anglers; therefore, this rule does not impose any additional financial requirements on persons nor generate a cost or saving impact to other persons.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** DWR determines that these amendments do not create a cost or savings impact to individuals who participate in fishing in Utah.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** The amendments to this rule do not create an impact on businesses.

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

NATURAL RESOURCES  
WILDLIFE RESOURCES  
1594 W NORTH TEMPLE  
SALT LAKE CITY, UT 84116-3154  
or at the Office 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, or mail at PO Box 146301, Salt Lake city, UT 84114-6301

**INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 12/01/2016**

**THIS RULE MAY BECOME EFFECTIVE ON: 12/08/2016**

**AUTHORIZED BY: Gregory Sheehan, Director**

**R657. Natural Resources, Wildlife Resources.**

**R657-13. Taking Fish and Crayfish.**

**R657-13-1. Purpose and Authority.**

(1) Under authority of Sections 23-14-18 and 23-14-19 of the Utah Code, the Wildlife Board has established this rule for taking fish and crayfish.

(2) Specific dates, areas, methods of take, requirements and other administrative details which may change annually and are pertinent are published in the proclamation of the Wildlife Board for taking fish and crayfish.

**R657-13-12. Bait.**

(1) Use or possession of corn, hominy, or live baitfish while fishing is unlawful, except as authorized by the Wildlife Board in the Fishing Guidebook.

(2) Use or possession of tiger salamanders (live or dead) while fishing is unlawful.

(3) Use or possession of any bait while fishing on waters designated artificial fly and lure only is unlawful.

(4) Use or possession of artificial baits which are commercially imbedded or covered with fish or fish parts while fishing is unlawful.

(5) Use or possession of bait in the form of fresh or frozen fish or fish parts while fishing is unlawful, except as provided below and in Subsections (7) and (8).

(a) Dead Bonneville cisco may be used as bait only in Bear Lake.

(b) Dead yellow perch may be used as bait only in: Big Sand Wash, Deer Creek, Echo, Fish Lake, Gunnison, Hyrum, Johnson, Jordanelle, Mantua, Mill Meadow, Newton, Pineview, Red Fleet, Rockport, Starvation, Utah Lake, Willard Bay and Yuba reservoirs.

(c) Dead white bass may be used as bait only in Utah Lake and the Jordan River.

(d) Dead shad, from Lake Powell, may be used as bait only in Lake Powell. Dead shad must not be removed from the Glen Canyon National Recreation Area.

(e) Dead striped bass, from Lake Powell, may be used as bait only in Lake Powell.

(f) Dead fresh or frozen salt water species including sardines and anchovies may be used as bait in any water where bait is permitted.

(g) Dead mountain sucker, white sucker, Utah sucker, reidside shiner, speckled dace, mottled sculpin, fat head minnow, Utah chub, and common carp may be used as bait in any water where bait is permitted.

(h) Dead burbot, from Flaming Gorge Reservoir, may be used as bait only in Flaming Gorge Reservoir.

(6) Commercially prepared and chemically treated baitfish or their parts may be used as bait in any water where bait is permitted.

(7) The eggs of any species of fish caught in Utah, except prohibited fish, may be used in any water where bait is permitted. However, eggs may not be taken or used from fish that are being released.

(8) Use of live crayfish for bait is legal only on the water where the crayfish is captured. It is unlawful to transport live crayfish away from the water where captured.

(9) Manufactured, human-made items that may not be digestible, that are chemically treated with food stuffs, chemical fish attractants, or feeding stimulants may not be used on waters where bait is prohibited.

(10) On any water declared infested by the Wildlife Board with an aquatic invasive species, or that is subject to a closure order or control plan under R657-60, it shall be unlawful to



transport any species of baitfish (live or dead) from the infested water for use as bait in any other water of the State. Baitfish are defined as those species listed in sections (5)(b), (5)(c), (5)(f) and (8).

**KEY: fish, fishing, wildlife, wildlife law**

**Date of Enactment or Last Substantive Amendment:**  
~~December 8, 2014~~ 2016

**Notice of Continuation: October 1, 2012**

**Authorizing, and Implemented or Interpreted Law: 23-14-18; 23-14-19; 23-19-1; 23-22-3**

**Regents (Board of), Administration**  
**R765-609**  
**Regents' Scholarship**

**NOTICE OF PROPOSED RULE**  
 (Amendment)

DAR FILE NO.: 40862  
 FILED: 10/10/2016

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** This amendment updates the rule to reflect current practices in administering the scholarship program and to address concerns about the appeals process for scholarship applicants who disagree with the eligibility determination.

**SUMMARY OF THE RULE OR CHANGE:** Several definitions are updated to current terminology; new definitions are included for the appeals process including the standards for overturning decisions and allowing for late appeals; wording in the base scholarship eligibility is clarified, as well as wording in the application procedures. The rule is reorganized for clarity with some sections being moved to other sections and combined.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 53B-8-108

**ANTICIPATED COST OR SAVINGS TO:**

◆ **THE STATE BUDGET:** This change has no impact on the costs of administration. The changes are organizational and procedural only and do not require additional appropriations nor do the changes result in any perceivable cost savings. There is the possibility that students who have been denied the scholarship may be awarded the scholarship based on their appeal, but that is a case by case basis and does not impact the annual appropriation from the legislature.

◆ **LOCAL GOVERNMENTS:** This rule impacts students who apply for the Regents' Scholarship and results in scholarship funding being awarded to students who may use it at one of the state's public institutions of higher education or any of its local, non-profit institutions (i.e., BYU and Westminster).

Local government is neither involved in the program nor does it benefit from the program.

◆ **SMALL BUSINESSES:** There are no small businesses in Utah that are eligible institutions of higher education for which students may use the scholarship. These amendments, therefore, do not impact small businesses.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Although these changes address the scholarship program that may be used at non-profit, private institutions of higher education (namely BYU and Westminster), the changes do not have any budgetary impact; they do not impact the amount of the scholarship nor do they change who may qualify for the scholarship. The changes are procedural and organizational and provide clarity and fairness to the application and appeals process.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** There are no compliance costs for affected individuals. Students who are applying for the scholarship will have the same compliance costs as prior to the changes. The only impact will be the process for filing an appeal and understanding the application process and eligibility requirements.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** These changes are procedural and organizational in nature and do not substantively impact the scholarship award amount or the cost of administration. The changes do not increase or decrease the costs to businesses; they impact only the students who wish to apply for the scholarship and only in respect to the application and appeals process.

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

REGENTS (BOARD OF)  
 ADMINISTRATION  
 BOARD OF REGENTS BUILDING, THE GATEWAY  
 60 SOUTH 400 WEST  
 SALT LAKE CITY, UT 84101-1284  
 or at the Office of Administrative Rules.

**DIRECT QUESTIONS REGARDING THIS RULE TO:**

◆ Geoff Landward by phone at 801-321-7136, or by Internet E-mail at glandward@ushe.edu, or mail at PO Box 45202, Salt Lake City, UT 84145-0202

**INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 12/01/2016**

**THIS RULE MAY BECOME EFFECTIVE ON: 12/08/2016**

**AUTHORIZED BY:** Dave Buhler, Commissioner of Higher Education

**R765. Regents (Board of), Administration.****R765-609. Regents' Scholarship.****R765-609-1. Purpose.**

The Regents' Scholarship encourages Utah high school students to prepare for college academically and financially by taking a core course of study in grades 9-12 and saving for college. This statewide scholarship is aligned with the Utah Scholars Core Course of Study which is based on national recommendations as outlined by the State Scholars Initiative. The courses required by the scholarship are proven to help students become college and career ready. In addition, this scholarship encourages high school students to complete meaningful course work through their senior year.

**R765-609-2. References.**

- 2.1. Utah Code Ann. Section 53B-8-108 et seq., Regents' Scholarship Program.
- 2.2. Utah Admin. Code Section R277-700-6, High School Requirements (Effective for graduating students beginning with the 2010-2011 School Year).
- 2.3. Regents' Policy and Procedures R604, New Century Scholarship.

**R765-609-3. Definitions.**

3.1. "Applicant" means a student who is in their last term in high school and on track to complete the high school graduation requirements of a public school established by the Utah State Board of Education and the student's school district or charter school or a private high school in the state that is accredited by a regional accrediting body approved by the Utah State Board of Regents.

3.2. "Base award" means a one-time scholarship to be awarded to applicants who complete the eligibility requirements of section 4.1 of this policy.

3.3. "Board" means the Utah State Board of Regents.

3.4. "College Course Work" means instance in which college credit is earned, including but limited to, concurrent enrollment, distance education, dual enrollment, or early college.

3.4]5. "Core Course of Study" means the [Utah Scholars Core Course of Study]the courses taken during grades 9-12, for the Core Course of Study which include[s]:

3.4]5.1. 4.0 credits of English;

3.4]5.2. 4.0 credits of mathematics taken in a progressive manner (at minimum [Algebra I, Geometry, Algebra II, and a class beyond Algebra II or Math 3]Secondary Mathematics I, Secondary Mathematics II, Secondary Mathematics III and one class beyond); if the student is attending a school that has not implemented the Utah Core "K-12" Standards, a student would complete at minimum Algebra I, Geometry, Algebra II, and a class beyond Algebra II;

3.4]5.3. 3.5 credits of social studies;

3.4]5.4. 3.0 credits of lab-based natural science (one each of Biology, Chemistry, and Physics); and

3.4]5.5. 2.0 credits of the same world or classical language, other than English, taken in a progressive manner.

3.5]6. "Eligible Institutions" means institutions of USHE, or [at]any private, nonprofit institution of higher education in Utah accredited by the [Northwest Association of Schools and Colleges]Northwest Commission on Colleges and Universities (NWCCU).

3.7. "Excusable Neglect" means a failure to take proper steps at the proper time, not in consequence of carelessness, inattention, or willful disregard of the scholarship application process, but in consequence of some unexpected or unavoidable hindrance or accident.

3.[6]8. "Exemplary Academic Achievement award" (Exemplary Award) means a renewable scholarship to be awarded to students who complete the eligibility requirements of section 4.2 of this policy.

3.9. "Good Cause" means the student's failure to meet a scholarship application process requirement was due to circumstances beyond the student's control or circumstances that are compelling and reasonable.

3.[7]10. "High school" means a public school established by the Utah State Board of Education or private high school within the boundaries of the State of Utah. If a private high school, it shall be accredited by a regional accrediting body approved by the Board.

3.[8]11. "Home-schooled" refers to a student who has not graduated from a Utah high school and received letter grades for the Core Course of Study in grades 9-12.

3.[9]12. "Recipient" means an applicant who receives an award under the requirements set forth in this policy.

[-----3.10. "Regents' Diploma Endorsement" means a certificate or transcript notation that may be awarded to students who qualify for the Exemplary Academic Achievement award of the Regents' Scholarship.]

3.[4]13. "Reasonable progress" means enrolling and completing at least fifteen credit hours during Fall and Spring semesters and earning a 3.3 grade point average (GPA) or higher each semester while enrolled at an eligible institution and receiving the award.

3.[4]14. "Renewal Documents" [means a college transcript demonstrating that the recipient has met the required semester GPA and a detailed schedule providing proof of enrollment in fifteen credit hours for the semester which the recipient is seeking award payment]include institutionally produced documents demonstrating that the recipient has met the required semester GPA and a detailed schedule providing proof of enrollment in fifteen credit hours for the semester for which the recipient is seeking award payment.

3.[4]15. "Scholarship [Review]Appeals Committee" means the committee [approved]designated by the Commissioner of Higher Education to review appeals of Regents' Scholarship [applications]award decisions and [make]take final [decisions]agency action regarding awards.

3.16. "Scholarship Staff" means the group assigned to review Regents' Scholarship applications and make initial decisions awarding the scholarships.

3.17. "Substantial Compliance" means the applicant, in good faith, complied with the substantial or essential scholarship application requirements and has demonstrated likely eligibility but failed to comply exactly with the application specifics.

[-----3.14. "Two years of full-time equivalent enrollment" means the equivalent of four semesters of full-time enrollment (minimum of twelve credit hours per semester).]

3.[4]18. "UESP" means the Utah Educational Savings Plan.

3.[46]19. "USHE" means the Utah System of Higher Education, which includes the University of Utah, Utah State University, Weber State University, Southern Utah University, Snow College, Dixie State University, Utah Valley University, and Salt Lake Community College.

3.20. "Weighted Grade" means a grade shall be weighted if a student completed an advanced placement, international baccalaureate or college course. The grade weight given is half the value of the high school credits earned for the course. For AP and IB courses all grades are averaged and then the weight is applied. When college credit is earned the grade weight is applied to the grade shown on the college transcript.

**R765-609-4. [Conditions of the Regents' Scholarship Program and Program Terms;]Base Award Requirements**

4.1. To qualify for the Regents' Scholarship Base Award, the applicant shall satisfy the following criteria:

4.[+2]. [Base Award: To qualify for the Regents' Scholarship Base award, the applicant shall satisfy the following criteria:]Complete the Core Course of Study as defined in section 3.5 of this policy subject to the following criteria:

4.[+2].1. [Complete the Core Course of Study as defined in section 3.4 of this policy:]Not all courses that meet state and individual district high school graduation requirements meet the scholarship requirements;

4.[+2].2. [GPA: The applicant shall demonstrate completion of the Core Course of Study with a cumulative high school GPA of at least 3.0.]Course Availability: In addition to taking courses at the school they are attending, a student may complete coursework through other accredited Utah high schools or Utah eligible institutions;

4.[+2].3. [Minimum Grade requirement: the applicant shall have no individual core course grade lower than a "C" on a transcript. Certain courses may receive a weighted grade as outlined under subsection 9.5 of this policy.]A student may meet a course requirement through a competency-based assessment provided it is documented on a transcript and has a letter grade (A-C) assigned;

4.[+2].4. [ACT Score: The applicant shall submit at least one verified ACT score.]The courses completed shall be unique except when repeated for a higher grade as noted in section 4.4. Students may not take a standard course and then enroll in the honors version of the same course and count both toward meeting the scholarship credit requirements and, when applicable, the requirement of progression; and

4.[+2].5. [Utah High School Graduation: The applicant shall have graduated from a Utah high school.]Repeated course work shall not count toward accumulation of required credits.

[4.1.6. Citizenship Requirement: A recipient shall be a citizen of the United States or a noncitizen who is eligible to receive federal student aid.

4.1.7. No Criminal Record Requirement: A recipient shall not have a criminal record; with the exception of a misdemeanor traffic citation.

4.1.8. Mandatory Fall Term Enrollment: A recipient shall enroll in fifteen credit hours at an eligible institution by Fall semester immediately following the student's high school graduation date or receive an approved deferral from the Board under subsection 7.2.

~~4.1.9. New Century Scholarship: A recipient shall not receive a Regents' Scholarship and the New Century Scholarship established in Utah Code Section 53B-8-105 and administered in R604.~~

~~4.2. Exemplary Academic Achievement award: To qualify for the Regents' Scholarship Exemplary Academic Achievement award, the applicant shall satisfy all requirements for the Base award, and additionally meet all of the following requirements:]~~

~~4.[2-1].3. [Required-]GPA: The applicant shall [have a cumulative high school GPA of at least 3.5]demonstrate completion of the Core Course of Study with a non-weighted cumulative high school GPA of at least 3.0.~~

4.[2-2].4. Minimum Grade [F]Requirement: the applicant shall earn[s] a course grade on a transcript of "[B]C" or above in each individual course listed in [Utah Code 53B-8-109(1)(d)(i)]section 3.5. Certain courses may receive a weighted grade as outlined under subsection 9.5 [of this policy]as part of the scholarship award determination.

4.5. Replacing Low Grades by Retaking a Course: An applicant may retake a course to replace a low grade received. When retaking courses to replace a grade the following subsections apply:

4.5.1. The Entire Course: The applicant shall either (1) retake the entire original course, or (2) complete an approved course equal to or greater in credit value in the same subject-area. The math and foreign language requirement of progression shall be shown. This is true even if the applicant only received a lower grade in a single semester, term, trimester, or quarter.

4.5.2. The Higher of Two Grades: The higher of two grades in the same or an approved course will count towards meeting the scholarship requirements.

4.5.3. Approved Courses and Progression Determined by the Regents' Scholarship Review Committee: The Regents' Scholarship Review Committee reserves the right to determine if the repeated course qualifies as an approved course in the same subject-area and if progression is required and demonstrated.

4.5.4. "P" and "I" Grades not Accepted: Pass/fail or incomplete grades do not meet the minimum scholarship grade requirement.

4.6. College Course Work: College course work will only be evaluated if the applicant submits an official college transcript. If an applicant enrolls in and completes a college course worth three or more college credits, this shall be counted as one high school credit toward the scholarship requirements. The student is evaluated on the college grade earned, with the weight added to the college grade as defined in section 3.19.

4.[2-3].7. [Required-]ACT Score: The applicant shall submit [a]at least one verified [composite-]ACT score[- of at least 26].

4.8. Utah High School Graduation: The applicant shall have graduated from a Utah high school.

4.9. Citizenship: A recipient shall be a citizen of the United States or a noncitizen who is eligible to receive federal student aid.

4.10. No Criminal Record: A recipient shall not have a criminal record, with the exception of a misdemeanor traffic citation.

4.11. Mandatory Fall Semester Enrollment: A recipient shall enroll in fifteen credit hours at an eligible institution by Fall semester immediately following the student's high school graduation

date or receive an approved deferral from the Board under subsection 7.2. Documentation shall include the recipient's name, the semester the recipient will attend, the name of the institution they are attending and the number of credits for which the recipient is enrolled.

4.12. New Century Scholarship: A recipient shall not receive both a Regents' Scholarship and the New Century Scholarship established in Utah Code Section 53B-8-105 and administered in R765-604.

#### **R765-609-5. Exemplary Academic Achievement Award Requirements.**

5.1. To qualify for the Regents' Scholarship Exemplary Academic Achievement Award, the applicant shall satisfy all requirements for the base award (see Subsection 3.4), and additionally meet all of the following requirements:

5.2. GPA: The applicant shall have a non-weighted cumulative high school GPA of at least 3.5.

5.3. Minimum Grade: The applicant shall earn a course grade on a transcript of "B" or above in each individual course listed in section 3.4. Certain courses may receive a weighted grade as part of the scholarship award determination.

5.4. ACT Score: The applicant shall submit a verified composite ACT score of at least 26.

#### **R765-609-6. Continuation and Renewal of the Exemplary Award.**

[4.2.4]6.1. Duty of Student to Report Reasonable Progress Toward Degree Completion: In order to renew the Exemplary [Academic] Achievement Award, the recipient shall submit renewal documents each semester, providing evidence of reasonable progress toward degree completion by the deadlines established in current program materials.

[4.2.4.1]6.2. If the recipient fails to maintain a 3.3 GPA in a single semester the recipient is placed on probation and shall earn a 3.3 GPA or better the following semester to maintain eligibility. If the recipient again at any time earns less than a 3.3 GPA or fails to enroll and complete fifteen credit hours, except as outlined in section 7.2 of this policy, the scholarship may be revoked.

[4.2.4.2. Each semester, the recipient shall submit renewal documents to the Scholarship Review Committee providing evidence of making reasonable progress, by the deadlines listed below:

4.2.4.2.1. For Fall semester renewal documents shall be submitted by September 30.

4.2.4.2.2. For Spring/Winter semester renewal documents shall be submitted by February 15.

4.2.4.2.3. For Summer semester renewal documents shall be submitted by June 30.

4.2.4.2.4. If the recipient is attending Brigham Young University during Spring term renewal documents shall be submitted by May 30.]

[4.2.5]6.3. A recipient will not be required to enroll in fifteen credit hours if the student can complete his/her degree program with fewer credits.

[4.3. Replacing Low Grades by Retaking a Course: An applicant may retake a course to replace a low grade received. When retaking courses to replace a grade the following subsections apply:

4.3.1. The Entire Course: The applicant shall either (1) retake the entire original course, or (2) complete an approved course

equal to or greater in credit value in the same subject area. The math and foreign language requirement of progression shall be shown. This is true even if the applicant only received a lower grade in a single semester, term, trimester, or quarter.

4.3.2. The Higher of Two Grades: The higher of two grades in the same or an approved course will count towards meeting the scholarship requirements.

4.3.3. Approved Courses and Progression Determined by the Regents' Scholarship Review Committee: The Regents' Scholarship Review Committee reserves the right to determine if the repeated course qualifies as an approved course in the same subject area and if progression is required and demonstrated.

4.4. Student Transfer: A scholarship may be transferred to a different eligible institution upon request of the student.

4.5. "P" and "I" Grades not Accepted: Pass/fail or incomplete grades do not meet the minimum grade requirement, nor do they qualify toward the scholarship renewal requirements.]

#### **R765-609-[5]7. Application Procedures.**

[5]7.1. Application Deadline: Applicants shall submit an official scholarship application to the [Scholarship Review Committee] no later than February 1 of the year that they graduate from high school. A priority deadline may be established each year. Applicants who meet the priority deadline may be given first priority or consideration for the scholarship. Subject to funding, students may be considered based on date of completed and submitted application.

[5]7.2. Required Documentation: Scholarship awards [may]shall be denied if all documentation is not complete and submitted by the specified deadlines. If any documentation demonstrates that the applicant did not satisfactorily fulfill all course and GPA requirements, or if any information, including the attestation of criminal record or citizenship status, proves to be falsified the scholarship award may be denied. Required documents that shall be submitted with a scholarship application include:

[5]7.2.1. the official online application;

[5]7.2.2. an official high school paper or electronic transcript, official college transcript(s) when applicable, and any other miscellaneous transcripts demonstrating all completed courses and GPA. [A-f]Final transcript(s) [showing the last semester of coursework] will be requested if the student is found conditionally approved, meaning that the student appears to be on track to receive the scholarship;

[5]7.2.3. verified ACT score(s); and

5.2.4. a class schedule form, provided by the Board, demonstrating the courses and credits that the student will complete during grade twelve. Simply submitting a high school transcript does not satisfy this requirement.

5.3. Incomplete Documentation: Applications or other submissions that have missing information or missing documents are considered incomplete, and will not be reviewed.]

#### **R765-609-[6]8. Amount of Awards and Distribution of Award Funds.**

[6]8.1. Funding Constraints of Awards: The Board may limit or reduce the Base award and/or the Exemplary Academic Achievement award, as well as supplemental awards granted, depending on the annual legislative appropriations and the number of qualified applicants.

[6]8.2. Amount of Awards.

[6]8.2.1. Base Award: The Base award of up to \$1,000 may be adjusted annually by the Board in an amount up to the average percentage tuition increase approved by the Board for USHE institutions.

[6]8.2.2. Exemplary Academic Achievement Award: The Exemplary Academic Achievement award is up to the amount provided by law and as determined each spring by the Board based on legislative funding and the number of applicants. The Exemplary Academic Achievement award may be renewed for the shortest of the following:

[6]8.2.2.1. Four semesters of enrollment in fifteen credit hours;

[6]8.2.2.2. Sixty-five credit hours; or

[6]8.2.2.3. Until the student meets the requirements for a baccalaureate degree.

8.2.3. UESP Supplemental Award to Encourage College Savings: Subject to available funding, an applicant who qualifies for the Base award is eligible to receive up to an additional \$400 in state funds to be added to the total scholarship award.

8.2.3.1. For each year the applicant is 14, 15, 16, or 17 years of age and had an active UESP account, the Board may contribute, subject to available funding, \$100 (i.e., up to \$400 total for all four years) to the recipient's award if at least \$100 was deposited into the account for which the applicant is named the beneficiary.

8.2.3.2. If no contributions are made to an applicant's account during a given year, the matching amount will likewise be \$0.

8.2.3.3. If contributions total more than \$100 in a given year, the matching amount will cap at \$100 for that year.

8.2.3.4. Matching funds apply only to contributions, not to transfers, earnings, or interest.

[6]8.3. Distribution of Award Funds.

~~[6.3.1. Enrollment Documentation: The award recipient shall submit to the Scholarship Review Committee a copy of the college class schedule verifying that the recipient is enrolled in fifteen credit hours or more at an eligible institution. Documentation shall include the recipient's name, the semester the recipient will attend, the name of the institution they are attending and the number of credits for which the recipient is enrolled.]~~

[6]8.3.[2]1. Award Payable to Institution: The award will be made payable to the institution. The institution may pay over to the recipient any excess award funds not required for tuition payments. Award funds shall be used for any qualifying higher education expense including: tuition, fees, books, supplies, equipment required for course instruction, or housing.

[6]8.3.[3]2. Credit Hours Dropped After Award Payment: If a recipient drops credit hours after having received the award which results in enrollment below fifteen credit hours, the scholarship will be revoked.

~~[6.4. UESP Supplemental Award to Encourage College Savings: Subject to available funding, an applicant who qualifies for the Base award is eligible to receive up to an additional \$400 in state funds to be added to the total scholarship award.~~

~~6.4.1. For each year the applicant is 14, 15, 16, or 17 years of age and had an active UESP account, the Board may contribute, subject to available funding, \$100 (i.e., up to \$400 total for all four years) to the recipient's award if at least \$100 was deposited into the account for which the applicant is named the beneficiary.~~

~~6.4.2. If no contributions are made to an applicant's UESP account during a given year, the matching amount will likewise be \$0.~~

~~6.4.3. If contributions total more than \$100 in a given year, the matching amount will cap at \$100 for that year.~~

~~6.4.4. Matching funds apply only to contributions, not to transfers, earnings, or interest.]~~

#### **R765-609-[7]9. Time Constraints and Continuing Eligibility.**

[7]9.1. Time Limitation: A Regents' Scholarship recipient shall use the award in its entirety within five years after his/her high school graduation date.

[7]9.2. Deferral or Leave of Absence: A recipient shall apply for a deferral or leave of absence if they do not continuously enroll in fifteen credit hours.

[7]9.2.1. Deferrals or leaves of absence may be granted, at the discretion of the Scholarship Review Committee, for military service, humanitarian/religious service, documented medical reasons, and other exigent reasons.

[7]9.2.2. An approved deferral or leave of absence will not extend the time limits of the scholarship. The scholarship may only be used for academic terms which begin within five years after the recipient's high school graduation date.

[7]9.3. No Guarantee of Degree Completion: Neither a Base award nor an Exemplary Academic Achievement award guarantees that the recipient will complete his or her associate or baccalaureate program within the recipient's scholarship eligibility period.

#### **R765-609-[8]10. Scholarship Determinations and Appeals.**

[8]10.1. Scholarship Determinations: Submission of a scholarship application does not guarantee a scholarship award. ~~[Individual scholarship applications will be reviewed, and award decisions made, at the discretion of a Scholarship Review Committee]~~ shall review individual scholarship applications and make the awards determination. Awards are based on available funding, applicant pool, and applicants' completion of scholarship criteria by the specified deadline. ~~[Each applicant will receive a letter informing the applicant of the decision on his/her application.]~~

[8]10.2. Appeals: ~~[Applicants and recipients have the right to appeal an adverse decision.]~~ An applicant has the right to appeal the Scholarship Staff's adverse decision by filing an appeal with the Scholarship Appeals Committee subject to the following conditions:

[8]10.2.1. ~~[Appeals shall be (postmarked) within 30 days of date of notification by submitting a completed Appeal Application found on the program Web site]~~ The appeal must be in writing and submitted in person or through the U.S. Mail. Appeals must be hand delivered to the office or postmarked within 30 days of the date on which the scholarship notification was issued.

[8]10.2.2. ~~[An appeal filed before the applicant/recipient receives official notification from the Scholarship Review Committee regarding their application, will not be considered]~~ In the appeal, the applicant must provide his or her full name, mailing address, the high school he or she last attended, a statement of the reason for the appeal, and all information or evidence that supports the appeal. The failure of an applicant to provide the information in this subsection shall not preclude the acceptance of an appeal.

~~[8]10.2.3. [The appeal shall provide evidence that an adverse decision was made in error, such as that in fact, the applicant/recipient met all scholarship requirements and submitted all requested documentation by the deadline.]An appeal filed before the applicant receives official notification from the Scholarship Staff of its decision shall not be considered.~~

~~[8]10.2.4. [Appeals are not accepted for late document submission.]If an applicant failed to file his or her appeal on time, the Scholarship Appeals Committee shall notify the applicant of the late filing and give him or her an opportunity to explain the reasons for failing to file the appeal by the deadline. The Scholarship Appeals Committee shall not have jurisdiction to consider the merits of an appeal that is filed beyond the deadline unless it determines the applicant established excusable neglect.~~

~~[8]10.2.5. [A submission of an appeal does not guarantee a reversal of the original decision.]The Scholarship Appeals Committee shall review the appeal to determine if the award decision was made in error, or if the applicant demonstrated substantial compliance with the scholarship application requirements but failed to meet one or more requirements for good cause.~~

~~[8]10.2.6. [It is the applicant/recipient's responsibility to file the appeal, including all supplementary documentation. All documents shall be mailed to the Regents' Scholarship address.]If the Scholarship Appeals Committee determines the applicant has shown by a preponderance of the evidence that the initial decision was made in error, it shall either reverse the initial decision or remand it back to the Scholarship Staff for further review in accordance with the Appeals Committee's instructions.~~

~~[8]10.2.7. [Appeals will be reviewed and decided by an appeals committee appointed by the Commissioner of Higher Education.]If the Scholarship Appeals Committee determines the applicant has shown by a preponderance of the evidence that he or she demonstrated substantial compliance with the application process requirements and good cause for failing to meet one or more of the requirements, the Appeals Committee shall grant the applicant a reasonable period of time to complete the remaining requirements and to resubmit the completed application to the Scholarship Staff for a redetermination. In such a case, the applicant shall have the right to appeal an adverse decision according to this rule.~~

~~10.2.8. The Scholarship Appeals Committee's decision shall be in writing and contain its findings of facts, reasoning and conclusions of law and notice of the right to judicial review.~~

~~10.2.9. The Scholarship Appeals Committee's decision represents the final agency action. An applicant who disagrees with the Scholarship Appeal Committee's Decision may seek judicial review in accordance with Utah Code 63G-4-402.~~

~~**[R765-609-9. Rules for Completing Course Work.]**~~

~~9.1. Although a course may meet state and individual-district high school graduation requirements, the course may not meet the scholarship requirements. If a required course is not taught at the school the student attends they can elect to enroll in the Utah Electronic High School, distance education concurrent enrollment, or a course offered at another accredited Utah high school or college. Course work found at additional online sources shall be from an accredited institution approved by the Board.~~

~~9.2. Applicants are required to complete the entire curriculum for a course. For example, if a course is designed to be taken as a full year or for one full credit, the student shall complete the entire course in order to have it count toward the completion of a requirement for the scholarship.~~

~~9.3. Course work that is "tested out" of is not accepted for the Regents' Scholarship.~~

~~9.4. In each content area, the courses completed shall be unique.~~

~~9.4.1. Students cannot take a standard course and then enroll in the honors version of the same class and count both toward meeting the credit requirement and, in cases, the requirement of progression.~~

~~9.4.2. Repeated course work does not count toward the credit fulfillment.~~

~~9.5. Weighted Grade: The grade earned in any course designated on the student's high school transcript as Advanced Placement (AP) International Baccalaureate (IB), or a college course concurrent enrollment shall be weighted (only if a college transcript is provided) according to the Scholarship Review Committee's standard procedures.~~

~~9.6. College Course Work: The Scholarship Review Committee reserves the right to apply a 3:1 ratio in relation to college course work. If an applicant enrolls in and completes a college course worth three or more college credits, this may be counted as one full credit toward the scholarship requirements. However, the student then is evaluated on the college grade earned, with the weight added to the college grade earned.]~~

**KEY: higher education, scholarships, secondary education**

**Date of Enactment or Last Substantive Amendment: [July 8, 2013]2016**

**Notice of Continuation: February 25, 2015**

**Authorizing, and Implemented or Interpreted Law: 53B-8-108**

**Tax Commission, Administration**  
**R861-1A-2**  
**Rulemaking Power Pursuant to Utah**  
**Code Ann. Section 59-1-210 and 63-**  
**46a-4**

**NOTICE OF PROPOSED RULE**  
**(Amendment)**

DAR FILE NO.: 40853

FILED: 10/04/2016

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This section is outdated and removed.

SUMMARY OF THE RULE OR CHANGE: Title 63G, Chapter 3, provides all of the necessary guidance for agency rulemaking and is, in fact, what the Tax Commission follows in its rulemaking. This section is, therefore, unnecessary.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 59-1-210 and Section 63-46a-4

ANTICIPATED COST OR SAVINGS TO:

- ◆ THE STATE BUDGET: None--The Tax Commission follows Title 63G, Chapter 3, in its rulemaking and not this section.
- ◆ LOCAL GOVERNMENTS: None--The Tax Commission follows Title 63G, Chapter 3, in its rulemaking and not this section.
- ◆ SMALL BUSINESSES: None--The Tax Commission follows Title 63G, Chapter 3, in its rulemaking and not this section.
- ◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: None--The Tax Commission follows Title 63G, Chapter 3, in its rulemaking and not this section.

COMPLIANCE COSTS FOR AFFECTED PERSONS: None--The Tax Commission follows Title 63G, Chapter 3, in its rulemaking and not this section.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: None--The Tax Commission follows Title 63G, Chapter 3, in its rulemaking and not this section.

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

TAX COMMISSION  
 ADMINISTRATION  
 210 N 1950 W  
 SALT LAKE CITY, UT 84134-0002  
 or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ Christa Johnson by phone at 801-297-3901, by FAX at 801-297-3907, or by Internet E-mail at [cj@utah.gov](mailto:cj@utah.gov)

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 12/01/2016

THIS RULE MAY BECOME EFFECTIVE ON: 12/08/2016

AUTHORIZED BY: Rebecca Rockwell, Commissioner

**R861. Tax Commission, Administration.**

**R861-1A. Administrative Procedures.**

~~**[R861-1A-2. Rulemaking Power Pursuant to Utah Code Ann. Section 59-1-210 and 63-46a-4.**~~

~~A. Policy and Scope. In accordance with the responsibility placed upon it by law, the Commission shall enact appropriate rules. These rules shall prescribe practices and procedures for the Commission and other state and county officials and agencies over which the Commission has supervisory power and shall interpret laws the Commission is charged with administering when such interpretation is deemed necessary and in the public interest.~~

~~B. Preparation. In the preparation of rules the Commission may refer to appropriate materials and consult such parties as it deems advisable, whether or not such persons are employees of the Commission. Drafts of proposed rules may be submitted to the Office of the Attorney General for examination as to legality and form.~~

~~C. Notice and Hearing. The Commission may publish, by means of local communication, notice of its intent to exercise its rulemaking power in a particular area. Notice therein will be given of a scheduled hearing or hearings not sooner than 15 days after such notice, at which hearing or hearings any party who would be substantially affected by such exercise may present argument in support thereof or in objection thereto. Such notice and hearing or hearings will be instituted when the Commission deems them to be of substantial value and in the public interest or in accordance with Utah Code Ann. Section 63-46a-5. Such notice and hearing or hearings shall not be a prerequisite to the validity of any rule.~~

~~D. Adoption. Rules will be adopted by the Commission at formal meetings with a quorum present. Adopted rules will be written and entered into the official minutes of the Commission, which minutes are a public record available for examination by interested members of the public at the Commission offices. This proceeding and no other will be necessary for validity, unless otherwise required by the rulemaking procedures.~~

~~E. Effective Date. In accordance with Utah Code Ann. Section 63-46a-4.~~

~~F. Publication. Copies of adopted rules will be prepared and made available to interested parties requesting the same. Such rules may also be published periodically in booklets and bulletins. It shall be the policy of the Commission to provide for publication of all new rules at the time of each compilation of rules in the particular area. No rule, however, shall be deemed invalid by failure to prepare copies for distribution or to provide for publication in the manner herein described.~~

~~G. Petitions for Exercise of Rulemaking Power. The Commission may be petitioned to exercise its power to adopt a rule of general application. Such petition shall be submitted in writing by any party who would be substantially and directly affected by such rule. The Commission will have wide discretion in this area and will exercise this rulemaking power upon petition only when it deems that such exercise would be of substantial value to the citizens of Utah. If the Commission accepts such a petition, it may adopt such rule as it deems appropriate; however, the petitioning party may submit a proposed rule for the consideration of the Commission. If the Commission acts favorably upon such a petition, it will adopt and publish the rule in the manner hereinabove described, and in addition notify the petitioner of such adoption by mail at his last known address. If the Commission declines to act on such petition, it will so notify the petitioning party in the same manner.~~

~~H. Repeal and Amendment. The procedure above described for the enactment of rules shall also be followed for the amendment or repeal of existing rules.]~~

**KEY:** developmental disabilities, grievance procedures, taxation, disclosure requirements  
**Date of Enactment or Last Substantive Amendment:** [October 24, 2013]2016

**Notice of Continuation: January 3, 2012**

**Authorizing, and Implemented or Interpreted Law:** 10-1-405; 41-1a-209; 52-4-207; 59-1-205; 59-1-207; 59-1-210; 59-1-301; 59-1-302.1; 59-1-304; 59-1-401; 59-1-403; 59-1-404; 59-1-405; 59-1-501; 59-1-502.5; 59-1-602; 59-1-611; 59-1-705; 59-1-706; 59-1-1004; 59-1-1404; 59-7-505; 59-10-512; 59-10-532; 59-10-533; 59-10-535; 59-12-107; 59-12-114; 59-12-118; 59-13-206; 59-13-210; 59-13-307; 59-10-544; 59-14-404; 59-2-212; 59-2-701; 59-2-705; 59-2-1003; 59-2-1004; 59-2-1006; 59-2-1007; 59-2-704; 59-2-924; 59-7-517; 63G-3-301; 63G-4-102; 76-8-502; 76-8-503; 59-2-701; 63G-4-201; 63G-4-202; 63G-4-203; 63G-4-204; 63G-4-205 through 63G-4-209; 63G-4-302; 63G-4-401; 63G-4-503; 63G-3-201(2); 68-3-7; 68-3-8.5; 69-2-5; 42 USC 12201; 28 CFR 25.107 1992 Edition

**Tax Commission, Auditing  
R865-19S-41**

**Sales to The United States  
Government and Its Instrumentalities  
Pursuant to Utah Code Ann. Sections  
59-12-104 and 59-12-106**

**NOTICE OF PROPOSED RULE  
(Amendment)**

DAR FILE NO.: 40854  
FILED: 10/04/2016

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The proposed amendment deletes language that is unenforceable.

**SUMMARY OF THE RULE OR CHANGE:** The proposed amendment deletes language that requires the federal government to pay sales tax on merchandise or services it pays for with funds held in trust for nonexempt individuals or organizations. There is no statutory authority for this language.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 59-12-104 and Section 59-12-106

**ANTICIPATED COST OR SAVINGS TO:**

- ◆ **THE STATE BUDGET:** None--The Tax Commission is not enforcing this provision.
- ◆ **LOCAL GOVERNMENTS:** None--The Tax Commission is not enforcing this provision.
- ◆ **SMALL BUSINESSES:** None--The Tax Commission is not enforcing this provision.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** None--The Tax Commission is not enforcing this provision.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** None--There is no statutory authority for this provision. Accordingly, the Tax Commission is unable to enforce this provision.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** The proposal amendment results in no fiscal impact on businesses because the provision is unable to be enforced.

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

TAX COMMISSION  
AUDITING  
210 N 1950 W  
SALT LAKE CITY, UT 84134  
or at the Office of Administrative Rules.

**DIRECT QUESTIONS REGARDING THIS RULE TO:**

◆ Christa Johnson by phone at 801-297-3901, by FAX at 801-297-3907, or by Internet E-mail at [cj@utah.gov](mailto:cj@utah.gov)

**INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 12/01/2016**

**THIS RULE MAY BECOME EFFECTIVE ON:** 12/08/2016

**AUTHORIZED BY:** Rebecca Rockwell, Commissioner

**R865. Tax Commission, Auditing.****R865-19S. Sales and Use Tax.****R865-19S-41. Sales to The United States Government and Its Instrumentalities Pursuant to Utah Code Ann. Sections 59-12-104 and 59-12-106.**

~~[A.](1)~~ Sales to the United States government are exempt if federal law or the United States Constitution prohibits the collection of sales or use tax.

~~[B. If the United States government pays for merchandise or services with funds held in trust for nonexempt individuals or organizations, sales tax must be charged.]~~

~~[C.](2)~~ Sales made directly to the United States government or any authorized instrumentality thereof are not taxable, provided the sale is paid for directly by the federal government. If an employee of the federal government pays for the purchase with his own funds and is reimbursed by the federal government, that sale is not made to the federal government and does not qualify for the exemption.

~~[D.](3)~~ Vendors making exempt sales to the federal government are subject to the recordkeeping requirements of Tax Commission rule R865-19S-23.

**KEY:** charities, tax exemptions, religious activities, sales tax  
**Date of Enactment or Last Substantive Amendment:** [April 14], 2016

**Notice of Continuation: January 3, 2012**



**Authorizing, and Implemented or Interpreted Law:** 9-2-1702; 9-2-1703; 10-1-303; 10-1-306; 10-1-307; 10-1-405; 19-6-808; 26-32a-101 through 26-32a-113; 59-1-210; 59-12; 59-12-102; 59-12-103; 59-12-104; 59-12-105; 59-12-106; 59-12-107; 59-12-108; 59-12-118; 59-12-301; 59-12-352; 59-12-353

**Tax Commission, Property Tax**  
**R884-24P-53**  
**2016 Valuation Guides for Valuation of**  
**Land Subject to the Farmland**  
**Assessment Act Pursuant to Utah Code**  
**Ann. Section 59-2-515**

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 40855

FILED: 10/04/2016

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** This amendment annually updates the agricultural productive values to be applied by county assessors to land qualifying for valuation and assessment under the Farmland Assessment Act (FAA). The values are recommended to the Commission by the State Farmland Evaluation Advisory Committee, which meets under the authority of Section 59-2-514.

**SUMMARY OF THE RULE OR CHANGE:** Section 59-2-515 authorizes the State Tax Commission to promulgate rules regarding the Property Tax Act, Part 5, Farmland Assessment Act. Section 59-2-514 authorizes the State Tax Commission to receive valuation recommendations from the State Farmland Advisory Committee for implementation as outlined in Section R884-24P-53. The section sets the acreage value rates for 418 separate class-county combinations.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 59-2-515

**ANTICIPATED COST OR SAVINGS TO:**

♦ **THE STATE BUDGET:** The amount of savings or cost to state government is undetermined. The state receives tax revenue for assessing and collecting and for the Education Fund based on increased or decreased real and personal property valuation, including property assessed under the FAA. Property valuation (taxable value) changes have been recommended by class and by county. This year it is proposed that 286 rates increase slightly and 132 have no change. No total cost or savings can be calculated without an exhaustive study of farmland acreage in each county by class and a listing of property newly qualifying or no longer qualifying for FAA in the coming year. However, it is

estimated that the overall change is minimal due to this amendment.

♦ **LOCAL GOVERNMENTS:** The amount of saving or cost to local government is undetermined. Local governmental entities receive tax revenue based on increased or decreased property valuation, including property assessed under FAA. Property valuation changes have been recommended by class and by county. This year it is proposed that 286 rates increase slightly and 132 have no change. No total cost or savings can be calculated without an exhaustive study of farmland acreage in each county by class and a listing of property newly qualifying or no longer qualifying for FAA in the coming year. However, it is estimated that the overall change is minimal due to this amendment. County assessors' offices statewide will be required to input the new value indicators into their computer systems to be applied against the acreage for individual properties. This input process is easily accomplished on an annual basis and represents no significant cost in time or money to the assessors' offices.

♦ **SMALL BUSINESSES:** Each property owner with property eligible for assessment under FAA may see a change in value, depending on property class and situs county. The affect on the property owner will depend on the mix of property types and situs. No total cost or savings can be calculated without an exhaustive study of farmland acreage in each county by class and a listing of property newly qualifying or no longer qualifying for FAA in the coming year. In addition, the cost will be further altered by changes to local property tax rates. However, it is estimated that the overall change due to this amendment is minimal.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Each property owner with property eligible for assessment under FAA may see a change in value, depending on property class and situs county. The affect on the property owner will depend on the mix of property types and situs. No total cost or savings can be calculated without an exhaustive study of farmland acreage in each county by class and a listing of property newly qualifying or no longer qualifying for FAA in the coming year. In addition, the cost will be further altered by changes to local property tax rates. However, it is estimated that the overall change due to this amendment is minimal.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** Each property owner with property eligible for assessment under FAA may see a change in value, depending on property class and situs county. The affect on the property owner will depend on the mix of property types and situs. No total cost or savings can be calculated without an exhaustive study of farmland acreage in each county by class and a listing of property newly qualifying or no longer qualifying for FAA in the coming year. In addition, the cost will be further altered by changes to local property tax rates. However, it is estimated that the overall change due to this amendment is minimal.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: These changes may affect property values which may result in a change of property tax amounts due.

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

TAX COMMISSION  
PROPERTY TAX  
210 N 1950 W  
SALT LAKE CITY, UT 84134  
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
♦ Christa Johnson by phone at 801-297-3901, by FAX at 801-297-3907, or by Internet E-mail at cj@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 12/01/2016

THIS RULE MAY BECOME EFFECTIVE ON: 12/08/2016

AUTHORIZED BY: Rebecca Rockwell, Commissioner

**R884. Tax Commission, Property Tax.**  
**R884-24P. Property Tax.**  
**R884-24P-53. [2016]2017 Valuation Guides for Valuation of Land Subject to the Farmland Assessment Act Pursuant to Utah Code Ann. Section 59-2-515.**

(1) Each year the Property Tax Division shall update and publish schedules to determine the taxable value for land subject to the Farmland Assessment Act on a per acre basis.

(a) The schedules shall be based on the productivity of the various types of agricultural land as determined through crop budgets and net rents.

(b) Proposed schedules shall be transmitted by the Property Tax Division to county assessors for comment before adoption.

(c) County assessors may not deviate from the schedules.

(d) Not all types of agricultural land exist in every county. If no taxable value is shown for a particular county in one of the tables, that classification of agricultural land does not exist in that county.

(2) All property qualifying for agricultural use assessment pursuant to Section 59-2-503 shall be assessed on a per acre basis as follows:

(a) Irrigated farmland shall be assessed under the following classifications.

(i) Irrigated I. The following counties shall assess Irrigated I property based upon the per acre values listed below:

TABLE 1  
Irrigated I

1) Box Elder	[789] 799
2) Cache	[681] 688
3) Carbon	[511] 525

4) Davis	[839] 853
5) Emery	[487] 498
6) Iron	[777] 793
7) Kane	[410] 417
8) Millard	[774] 788
9) Salt Lake	[692] 711
10) Utah	[734] 749
11) Washington	[636] 649
12) Weber	[780] 803

(ii) Irrigated II. The following counties shall assess Irrigated II property based upon the per acre values listed below:

TABLE 2  
Irrigated II

1) Box Elder	[693] 702
2) Cache	[581] 587
3) Carbon	[407] 418
4) Davis	[738] 751
5) Duchesne	[476] 486
6) Emery	[392] 401
7) Grand	[375] 383
8) Iron	[681] 695
9) Juab	[437] 444
10) Kane	[315] 320
11) Millard	[679] 691
12) Salt Lake	[595] 611
13) Sanpete	[526] 535
14) Sevier	[549] 562
15) Summit	[451] 459
16) Tooele	[440] 447
17) Utah	[635] 648
18) Wasatch	[478] 485
19) Washington	[542] 553
20) Weber	[684] 704

(iii) Irrigated III. The following counties shall assess Irrigated III property based upon the per acre values listed below:

TABLE 3  
Irrigated III

1) Beaver	[554] 557
2) Box Elder	[545] 552
3) Cache	[441] 445
4) Carbon	[269] 277
5) Davis	[593] 603
6) Duchesne	[334] 341
7) Emery	[247] 252
8) Garfield	[206] 210
9) Grand	[237] 242
10) Iron	[541] 552
11) Juab	[294] 299
12) Kane	[174] 177
13) Millard	[537] 547
14) Morgan	[379] 384
15) Piute	[326] 332
16) Rich	[174] 177
17) Salt Lake	[453] 465
18) San Juan	[171] 173
19) Sanpete	[385] 392
20) Sevier	[409] 418
21) Summit	[307] 313
22) Tooele	[295] 299
23) Uintah	[363] 370
24) Utah	[487] 497
25) Wasatch	[332] 337
26) Washington	[398] 406
27) Wayne	[322] 328
28) Weber	[544] 560

(iv) Irrigated IV. The following counties shall assess Irrigated IV property based upon the per acre values listed below:

TABLE 4  
Irrigated IV

1) Beaver	[455] 458
2) Box Elder	[450] 456
3) Cache	[342] 345
4) Carbon	[173] 178
5) Daggett	[185] 188
6) Davis	[496] 504
7) Duchesne	[234] 239
8) Emery	[153] 156
9) Garfield	[111] 113
10) Grand	[143] 146
11) Iron	[442] 451
12) Juab	[195] 198
13) Kane	[79] 80
14) Millard	[437] 445
15) Morgan	[281] 285
16) Piute	[228] 232
17) Rich	[81] 82
18) Salt Lake	[351] 360
19) San Juan	[78] 79
20) Sanpete	[290] 295
21) Sevier	[313] 320
22) Summit	[212] 216
23) Tooele	[201] 204
24) Uintah	[268] 273
25) Utah	[391] 399
26) Wasatch	[237] 240
27) Washington	[300] 306
28) Wayne	[227] 231
29) Weber	[444] 457

(c) Meadow IV property shall be assessed per acre based upon the following schedule:

TABLE 6  
Meadow IV

1) Beaver	[234] 235
2) Box Elder	[252] 255
3) Cache	[261] 264
4) Carbon	[127] 131
5) Daggett	[153] 156
6) Davis	[264] 268
7) Duchesne	[163] 166
8) Emery	[135] 138
9) Garfield	[102] 104
10) Grand	[130] 133
11) Iron	[256] 261
12) Juab	[150] 152
13) Kane	[107] 109
14) Millard	[190] 193
15) Morgan	[193] 196
16) Piute	[187] 190
17) Rich	[103] 105
18) Salt Lake	[222] 228
19) Sanpete	[190] 193
20) Sevier	[195] 199
21) Summit	[198] 202
22) Tooele	[183] 186
23) Uintah	[203] 207
24) Utah	[246] 251
25) Wasatch	[205] 208
26) Washington	[223] 227
27) Wayne	[169] 172
28) Weber	[292] 300

(b) Fruit orchards shall be assessed per acre based upon the following schedule:

TABLE 5  
Fruit Orchards

1) Beaver	[601] 614
2) Box Elder	[651] 665
3) Cache	[601] 614
4) Carbon	[601] 614
5) Davis	[656] 670
6) Duchesne	[601] 614
7) Emery	[601] 614
8) Garfield	[601] 614
9) Grand	[601] 614
10) Iron	[601] 614
11) Juab	[601] 614
12) Kane	[601] 614
13) Millard	[601] 614
14) Morgan	[601] 614
15) Piute	[601] 614
16) Salt Lake	[601] 614
17) San Juan	[601] 614
18) Sanpete	[601] 614
19) Sevier	[601] 614
20) Summit	[601] 614
21) Tooele	[601] 614
22) Uintah	[601] 614
23) Utah	[661] 675
24) Wasatch	[601] 614
25) Washington	[711] 726
26) Wayne	[601] 614
27) Weber	[656] 670

(d) Dry land shall be classified as one of the following two categories and shall be assessed on a per acre basis as follows:

(i) Dry III. The following counties shall assess Dry III property based upon the per acre values listed below:

TABLE 7  
Dry III

1) Beaver	51
2) Box Elder	[92] 93
3) Cache	[117] 118
4) Carbon	[48] 49
5) Davis	[51] 52
6) Duchesne	[53] 54
7) Garfield	[47] 48
8) Grand	[48] 49
9) Iron	[48] 49
10) Juab	[50] 51
11) Kane	[47] 48
12) Millard	[46] 47
13) Morgan	[63] 64
14) Rich	[47] 48
15) Salt Lake	[53] 54
16) San Juan	[52] 53
17) Sanpete	[53] 54
18) Summit	[47] 48
19) Tooele	[51] 52
20) Uintah	[53] 54
21) Utah	[49] 50
22) Wasatch	[47] 48
23) Washington	[47] 48
24) Weber	[76] 78

(ii) Dry IV. The following counties shall assess Dry IV property based upon the per acre values listed below:

TABLE 8  
Dry IV

1) Beaver	15
2) Box Elder	<del>[58]</del> 59
3) Cache	<del>[82]</del> 83
4) Carbon	15
5) Davis	16
6) Duchesne	19
7) Garfield	15
8) Grand	15
9) Iron	15
10) Juab	16
11) Kane	15
12) Millard	14
13) Morgan	28
14) Rich	15
15) Salt Lake	15
16) San Juan	17
17) Sanpete	19
18) Summit	15
19) Tooele	14
20) Uintah	19
21) Utah	16
22) Wasatch	15
23) Washington	14
24) Weber	<del>[44]</del> 45

(ii) Graze II. The following counties shall assess Graze II property based upon the per acre values listed below:

TABLE 10  
GR II

1) Beaver	22
2) Box Elder	23
3) Cache	23
4) Carbon	15
5) Daggett	14
6) Davis	19
7) Duchesne	22
8) Emery	21
9) Garfield	23
10) Grand	22
11) Iron	22
12) Juab	19
13) Kane	24
14) Millard	24
15) Morgan	21
16) Piute	26
17) Rich	20
18) Salt Lake	<del>[24]</del> 22
19) San Juan	24
20) Sanpete	18
21) Sevier	18
22) Summit	20
23) Tooele	20
24) Uintah	<del>[28]</del> 29
25) Utah	23
26) Wasatch	17
27) Washington	21
28) Wayne	<del>[28]</del> 29
29) Weber	20

(e) Grazing land shall be classified as one of the following four categories and shall be assessed on a per acre basis as follows:

(i) Graze 1. The following counties shall assess Graze I property based upon the per acre values listed below:

TABLE 9  
GR I

1) Beaver	70
2) Box Elder	<del>[74]</del> 75
3) Cache	70
4) Carbon	<del>[51]</del> 52
5) Daggett	<del>[51]</del> 52
6) Davis	<del>[60]</del> 61
7) Duchesne	<del>[68]</del> 69
8) Emery	<del>[70]</del> 72
9) Garfield	<del>[75]</del> 76
10) Grand	<del>[76]</del> 78
11) Iron	<del>[73]</del> 74
12) Juab	<del>[64]</del> 65
13) Kane	<del>[74]</del> 75
14) Millard	<del>[75]</del> 76
15) Morgan	<del>[66]</del> 67
16) Piute	<del>[89]</del> 91
17) Rich	<del>[64]</del> 65
18) Salt Lake	<del>[68]</del> 70
19) San Juan	<del>[74]</del> 75
20) Sanpete	<del>[62]</del> 63
21) Sevier	<del>[63]</del> 64
22) Summit	<del>[71]</del> 72
23) Tooele	<del>[70]</del> 71
24) Uintah	<del>[79]</del> 80
25) Utah	<del>[65]</del> 66
26) Wasatch	<del>[52]</del> 53
27) Washington	<del>[64]</del> 65
28) Wayne	<del>[87]</del> 89
29) Weber	<del>[68]</del> 70

(iii) Graze III. The following counties shall assess Graze III property based upon the per acre values below:

TABLE 11  
GR III

1) Beaver	16
2) Box Elder	17
3) Cache	15
4) Carbon	<del>[12]</del> 13
5) Daggett	11
6) Davis	<del>[12]</del> 13
7) Duchesne	13
8) Emery	14
9) Garfield	16
10) Grand	15
11) Iron	15
12) Juab	13
13) Kane	15
14) Millard	16
15) Morgan	13
16) Piute	18
17) Rich	13
18) Salt Lake	<del>[14]</del> 15
19) San Juan	<del>[16]</del> 17
20) Sanpete	13
21) Sevier	13
22) Summit	14
23) Tooele	13
24) Uintah	19
25) Utah	<del>[13]</del> 14
26) Wasatch	12
27) Washington	13
28) Wayne	18
29) Weber	14

(iv) Graze IV. The following counties shall assess Graze IV property based upon the per acre values listed below:

TABLE 12  
GR IV

1)	Beaver	6
2)	Box Elder	5
3)	Cache	5
4)	Carbon	5
5)	Daggett	5
6)	Davis	5
7)	Duchesne	5
8)	Emery	6
9)	Garfield	5
10)	Grand	6
11)	Iron	6
12)	Juab	5
13)	Kane	5
14)	Millard	5
15)	Morgan	6
16)	Piute	6
17)	Rich	5
18)	Salt Lake	5
19)	San Juan	5
20)	Sanpete	5
21)	Sevier	5
22)	Summit	5
23)	Tooele	5
24)	Uintah	6
25)	Utah	5
26)	Wasatch	5
27)	Washington	5

28)	Wayne	5
29)	Weber	6

(f) Land classified as nonproductive shall be assessed as follows on a per acre basis:

TABLE 13  
Nonproductive Land

Nonproductive Land	
1) All Counties	5

**KEY: taxation, personal property, property tax, appraisals**  
**Date of Enactment or Last Substantive Amendment: [July 14], 2016**

**Notice of Continuation: January 3, 2012**

**Authorizing, and Implemented or Interpreted Law: Art. XIII, Sec 2; 9-2-201; 11-13-302; 41-1a-202; 41-1a-301; 59-1-210; 59-2-102; 59-2-103; 59-2-103.5; 59-2-104; 59-2-201; 59-2-210; 59-2-211; 59-2-301; 59-2-301.3; 59-2-302; 59-2-303; 59-2-303.1; 59-2-305; 59-2-306; 59-2-401; 59-2-402; 59-2-404; 59-2-405; 59-2-405.1; 59-2-406; 59-2-508; 59-2-514; 59-2-515; 59-2-701; 59-2-702; 59-2-703; 59-2-704; 59-2-704.5; 59-2-705; 59-2-801; 59-2-918 through 59-2-924; 59-2-1002; 59-2-1004; 59-2-1005; 59-2-1006; 59-2-1101; 59-2-1102; 59-2-1104; 59-2-1106; 59-2-1107 through 59-2-1109; 59-2-1113; 59-2-1115; 59-2-1202; 59-2-1202(5); 59-2-1302; 59-2-1303; 59-2-1308.5; 59-2-1317; 59-2-1328; 59-2-1330; 59-2-1347; 59-2-1351; 59-2-1365; 59-2-1703**

**End of the Notices of Proposed Rules Section**



## NOTICES OF CHANGES IN PROPOSED RULES

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After an agency has published a **PROPOSED RULE** in the *Utah State Bulletin*, it may receive comment that requires the **PROPOSED RULE** to be altered before it goes into effect. A **CHANGE IN PROPOSED RULE** allows an agency to respond to comments it receives.

As with a **PROPOSED RULE**, a **CHANGE IN PROPOSED RULE** is preceded by a **RULE ANALYSIS**. This analysis provides summary information about the **CHANGE IN PROPOSED RULE** including the name of a contact person, anticipated cost impact of the rule, and legal cross-references.

While the law does not designate a comment period for a **CHANGE IN PROPOSED RULE**, it does provide for a 30-day waiting period. An agency may accept additional comments during this period and, at its option, may designate a comment period or may hold a public hearing. The 30-day waiting period for **CHANGES IN PROPOSED RULES** published in this issue of the *Utah State Bulletin* ends December 1, 2016.

Following the **RULE ANALYSIS**, the text of the **CHANGE IN PROPOSED RULE** is usually printed. The text shows only those changes made since the **PROPOSED RULE** was published in an earlier edition of the *Utah State Bulletin*. Additions made to the rule appear underlined (example). Deletions made to the rule appear struck out with brackets surrounding them (~~example~~). A row of dots in the text between paragraphs (. . . . .) indicates that unaffected text, either whole sections or subsections, was removed to conserve space. If a **CHANGE IN PROPOSED RULE** is too long to print, the Office of Administrative Rules may include only the **RULE ANALYSIS**. A copy of rules that are too long to print is available from the agency or from the Office of Administrative Rules.

From the end of the 30-day waiting period through March 1, 2017, an agency may notify the Office of Administrative Rules that it wants to make the **CHANGE IN PROPOSED RULE** effective. When an agency submits a **NOTICE OF EFFECTIVE DATE** for a **CHANGE IN PROPOSED RULE**, the **PROPOSED RULE** as amended by the **CHANGE IN PROPOSED RULE** becomes the effective rule. The agency sets the effective date. The date may be no fewer than 30 days nor more than 120 days after the publication date of the **CHANGE IN PROPOSED RULE**. If the agency designates a public comment period, the effective 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. Alternatively, the agency may file another **CHANGE IN PROPOSED RULE** in response to additional comments received. If the Office of Administrative Rules does not receive a **NOTICE OF EFFECTIVE DATE** or another **CHANGE IN PROPOSED RULE** by the end of the 120-day period after publication, the **CHANGE IN PROPOSED RULE** filing, along with its associated **PROPOSED RULE**, lapses.

**CHANGES IN PROPOSED RULES** are governed by Section 63G-3-303, Rule R15-2, and Sections R15-4-3, R15-4-4, R15-4-5b, R15-4-7, R15-4-9, and R15-4-10.

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

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

### **R414-10A**

#### Transplant Services Standards

#### NOTICE OF CHANGE IN PROPOSED RULE

DAR FILE NO.: 40490

FILED: 10/12/2016

#### **RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** This change is based on comments the Department received after filing this rule for public comment in June 2016.

**SUMMARY OF THE RULE OR CHANGE:** This amendment clarifies some definitions in the text. It further clarifies provisions for psycho-social evaluations, clarifies stem cell transplantation services, reinstates search coverage for donors, removes address information for the Prior Authorization Unit, clarifies non-covered services for solid organ transplantation, and makes other technical changes. (Editor's Note: The original proposed repeal and reenactment upon which this change in proposed rule (CPR) was based was published in the July 1, 2016, issue of the Utah State Bulletin, on page 105. Underlining in the rule below indicates text that has been added since the publication of the proposed rule mentioned above; strike-out indicates text that has been deleted. You must view the CPR and the proposed repeal and reenactment together to understand all of the changes that will be enforceable should the agency make this rule effective.)

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** 42 CFR 482.68 and Section 26-1-5 and Section 26-18-3

#### **ANTICIPATED COST OR SAVINGS TO:**

- ◆ **THE STATE BUDGET:** There is no impact to the state budget because transplant services for Medicaid recipients remain unaffected by this change.
- ◆ **LOCAL GOVERNMENTS:** There is no impact to local governments because they do not fund or provide transplant services to Medicaid recipients.
- ◆ **SMALL BUSINESSES:** There is no impact to small businesses because transplant services for Medicaid recipients remain unaffected by this change.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There is no impact to Medicaid providers and to Medicaid recipients because transplant services remain unaffected by this change.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** There are no compliance costs to a single Medicaid provider or to a Medicaid recipient because transplant services remain unaffected by this change.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** There is no fiscal impact to business because the changes do not affect the services provided in accordance with this rule.

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

HEALTH  
HEALTH CARE FINANCING,  
COVERAGE AND REIMBURSEMENT POLICY  
CANNON HEALTH BLDG  
288 N 1460 W  
SALT LAKE CITY, UT 84116-3231  
or at the Office 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, or mail at PO Box 143102, Salt Lake city, UT 84114-3102

**INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 12/01/2016**

**THIS RULE MAY BECOME EFFECTIVE ON: 12/08/2016**

**AUTHORIZED BY:** Joseph Miner, MD, Executive Director

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

##### **R414-10A. Transplant Services Standards.**

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

(1) This rule establishes standards and requirements for tissue and organ transplantation services for the State of Utah Medicaid Program.

(2) Title XIX of the Social Security Act allows coverage of transplantation services when there is no discrimination in the availability of services and high quality care is available to all eligible individuals.

(3) Section 26-18-2.3 grants the Department of Health discretion to fund transplantation services.

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

For purposes of Rule R414-10A:

(1) "Abstinence" means the documented non-use of any abusable ~~psychoactive~~ substance by the patient.

(2) "Abusable substance" means any substance which is not appropriately prescribed and taken under the direction of a physician or is not medically indicated. This includes, but is not limited to, over-



the-counter medicines, prescription medicines, alcohol, tobacco (including nicotine-bearing vapor products), ~~cannabis, benzodiazepines, narcotics, methadone, cocaine, amphetamines, opiates, tricyclic antidepressants, barbiturates,~~ and street drugs.

(3) "Active infection" means current presumptive evidence of invasion of tissue or body fluids by bacteria, viruses, fungi, rickettsiae, or parasites which is not demonstrated to be effectively controlled by the host, antibiotic or antimicrobial agents.

(4) "Active substance use" means the current use (within the most recent six months) of any abusable substance or substances that can adversely impact treatment outcomes or treatment plan adherence. This may include the personal admission of substance use with a positive drug screen.

(5) "Allogenic" means having a different genetic constitution but belonging to the same species.

(6) "Autologous" means the products or components of the same individual person.

(7) "Department" means the Utah Department of Health.

(8) "Drug screen" means testing to identify the presence of one or more drugs or substances as stated in Subsection R414-10A-2(2), ~~[that] which can adversely impact treatment outcomes or treatment plan adherence[ and which include, but are not limited to, tobacco (or any nicotine-delivery system, e.g. vapor products), cannabis, alcohol, benzodiazepines, narcotics, methadone, cocaine, amphetamines, opiates, tricyclic antidepressants, and barbiturates].~~

(9) "Emergency transplantation" means any transplantation which for reasons of medical necessity requires that a transplant be performed less than five days after determination of the need for the procedure.

(10) "Hematopoietic stem cell transplantation and bone marrow transplantation" means transplantation of cells from the bone marrow stem cells, peripheral blood stem cells, or cord blood stem cells to supplant the patient's bone marrow.

(11) "Intestine transplantation" means transplantation of the small bowel or both the small bowel and colon.

(12) "Medical necessity", for purposes of this rule, means a patient's medical condition that meets all the requirements and none of the contraindications for the type of transplantation requested.

(13) "Multi-organ transplantations" means, except for corneas, the transplantation of more than one tissue or organ during the same operative procedure.

(14) "Medicare-approved transplant center" means a center that meets Medicare's conditions of participation for transplant hospitals or, for purposes of this rule, is an approved National Marrow Donor Program (NMDP) bone marrow transplant center.

(15) "Patient" means an individual eligible to receive covered Medicaid services from an enrolled Medicaid provider and is receiving covered professional services provided or directed by a licensed practitioner of the healing arts enrolled as a Medicaid provider.

(16) "Remission" means the lack of any evidence of the cancer on physical examination and hematological evaluation, including normocellular bone marrow with less than five percent blast cells, and peripheral blood counts within normal values, except for patients who are receiving maintenance chemotherapy.

(17) "Services" means the type of medical assistance specified in Subsections 1905(a)(1) through (24) of the Social Security Act and interpreted in 42 CFR 440, Subpart A.

(18) "Substance use ~~[disorder rehabilitation]treatment program~~" means a ~~[rehabilitation]treatment~~ program developed and conducted by an inpatient or outpatient facility that, at a minimum, meets the standards of organization and staff of a chemical dependency and substance use disorder specialty facility specified in Section R432-10[2]1-4 and Rule R501-21.

(19) "Transplantation" means the transfer of a human organ or tissue from one person to another or from one site to another in the same individual, excluding skin, tendon, and bone.

#### **R414-10A-3. Patient Eligibility Requirements for Coverage of Transplantation Services.**

Transplantation services are available to categorically eligible and medically needy individuals who are Title XIX eligible and meet the requirements in this rule at the time the transplantation service is provided.

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

(1) Transplantation services may be provided only for eligible patients who meet the requirements in this rule and only for services covered under the Utah Medicaid program.

(2) Transplantation services may be provided only in a Medicare-approved transplant center.

(3) Transplantation services may be provided out-of-state in a Medicare-approved facility only when the service is not available in an approved facility in the state of Utah.

(4) All Utah transplant requirements and policies are applicable to in-state and out-of-state transplant services and facilities.

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

(1) Transplantation services are covered by the Utah Medicaid program only when requirements in this rule are met.

(2) Multi-organ transplantation services may be provided only when the requirements for each individual transplant are met.

(3) Repeat transplantations of the same tissues or organs may be covered only under Departmental review and approval based on requirements in this rule.

(4) The following transplants are covered when requirements in this rule are met:

(a) Cornea, heart, lung, kidney, liver, pancreas, intestine, bone marrow, hematopoietic stem cell.

(b) Some combinations of the above may also qualify.

(5) Emergency transplantations may be covered if all requirements are met.

#### **R414-10A-6. Prior Authorization.**

(1) Prior authorization (PA) may be required for any transplantation service.

(a) To determine if PA is required, refer to the Utah Medicaid Coverage and Reimbursement Code Lookup tool.

(2) The Department's evidence-based criteria may be used, when available, as part of the PA process.

(3) If PA is required, the request must include documentation that the patient meets the organ specific requirements in this rule.

(4) The PA request for transplantation services must include:

(a) A [D]description of condition needing transplantation[-];

(b) Transplantation treatment alternatives utilized previous to the transplant request[-];

(c) Transplantation treatment alternatives considered and discarded, including rationale for discarding[-];

(d) A comprehensive examination, evaluation and recommendation[s] completed by a Board-Certified or Board-Eligible [(BC/BE)-]specialist and medical and surgical specialists in the field directly related to the patient's condition, which demonstrates the need for a transplant. [~~needing the transplant. This must include the patient's need for and ability~~] The patient must also demonstrate the ability to tolerate the proposed transplant and subsequent treatment regimen[-];

(e) A comprehensive psycho-social evaluation of the patient [~~which must~~that includes: ~~the patient's motivation for transplant and ability to follow long-term treatment and follow-up regimen.~~]

i. motivation for transplant;

ii. willingness and ability to follow a long-term treatment and follow-up regimen; and

iii. history of active substance use.

(f) If the patient is less than 18 years of age. [~~A]a comprehensive psycho-social evaluation of the patient's parent or guardian[-], if the patient is less than 18 years of age. This evaluation must] that includes: ~~the parents and patient's motivation (age-appropriate) for transplant, substance use history, compliance, and ability to follow long-term treatment and follow-up regimen.~~~~

i. motivation for transplant;

ii. willingness and ability to follow a long-term treatment and follow-up regimen; and

iii. history of active substance use.

(g) A comprehensive psychiatric evaluation, if the patient has a history of mental illness.

(h) Documentation of a successfully completed treatment program or abstinence, if the patient has a history of substance use.

(i) Treatment program success and abstinence are supported by negative drug screens for a minimum of six months, with two negative drug screens in the most recent three months. The timing of the drug screens is in relation to the PA request date.

(j) If the history of substance use involves drugs other than those listed in this rule under Section R414-10A-2, then the drug screens must include the other substance upon drug testing availability.

(k) The patient may not be an active substance user as defined under Section R414-10A-2.

(l) Comprehensive infectious disease evaluation for a patient with a recent or current suspected infectious episode.

(m) All applicable hospital and clinic records.

(n) Completed cancer screening tests.

(o) All relevant laboratory and imaging studies.

(p) Documentation that the patient meets the eligibility and selection criteria for the transplant facility where the transplant will be performed.

(q) Any other documentation requested by PA or the Department's physician consultants.[-]

~~(5) Submit this documentation, with a completed request for authorization form, to the Division of Medicaid and Health Financing~~

~~Medicaid Prior Authorization Unit~~

~~P. O. Box 143111~~

~~Salt Lake City, UT 84114-3111]~~

~~([6]5)~~ If incomplete documentation is received by the Department, the patient's case is pended until the requested documentation has been received.

~~([7]6)~~ If a transplant requiring PA is performed without PA, reimbursement may be denied for all services related to the transplant up to the outlier threshold days for the specific type of transplant.

~~([8]7)~~ Refer to the Section I: General Information Provider Manual for retroactive authorization for emergency transplant services.

#### **R414-10A-7. Solid Organ Transplantation, Covered Services and Requirements.**

(1) The following solid organ transplant services are covered. Minimum requirements for specific transplant services are shown. As required by 42 CFR 482, Subpart E, each transplant center must also have written selection criteria.

(2) All patients must be free of active infection. Liver transplants are excepted as noted.

(3) Liver.

(a) The patient must:

(i) have progressive, irreversible liver disease requiring transplant;

(ii) be free from active infection outside the hepatobiliary system;

(iii) not have acute, severe hemodynamic compromise at the time of transplantation if this compromises non-hepatic end-organs;

(iv) be free from significant pulmonary disease;

(v) be free from any significant cardiovascular disease; and

(vi) not have stage IV hepatic coma.

(4) Cornea.

(a) The patient must be free of other associated disease that may preclude visual improvement with transplant.

(5) Cardiac.

(a) The patient must:

(i) have irreversible and progressive cardiac disease with a life expectancy of one year or less without transplant or progressive pulmonary hypertension without other treatment options; and

(ii) be free from significant pulmonary disease, except pulmonary hypertension.

(6) Intestine.

(a) The patient must:

(i) have short bowel syndrome or irreversible and progressive small bowel disease requiring daily hyperalimentation without reasonable alternatives;

(ii) be free from significant pulmonary disease; and

(iii) be free from significant cardiovascular disease.

(7) Kidney.

(a) The patient must:

(i) have irreversible, progressive end-stage renal disease;

(ii) not have acute, severe hemodynamic compromise at the time of transplantation if this compromises non-renal end-organs;

(iii) be free from significant pulmonary disease; and

(iv) be free from any significant cardiovascular disease.

(8) Lung.

(a) The patient must:

(i) not have acute, severe hemodynamic compromise at the time of the transplantation if this compromises non-pulmonary end-organs;

- (ii) be free from significant cardiovascular disease; and
- (iii) demonstrate abstinence from tobacco use within the last 6 months.
- (9) Pancreas,
  - (a) The patient must:
    - (i) have type I diabetes mellitus;
    - (ii) not have acute, severe hemodynamic compromise at the time of the transplantation if this compromises end-organs;
    - (iii) not have active peptic ulcer disease;
    - (iv) be free from significant cardiovascular disease; and
    - (v) be free from significant pulmonary disease.
- (10) Multi-organ transplants.
  - (a) Kidney/pancreas, liver/kidney, cardiac/lung, intestine/liver, and other multi-organ transplants may be considered;
    - (i) each case is reviewed individually as to medical necessity and appropriateness; and
    - (ii) complete documentation, including justification and outcomes, must be provided.

**R414-10A-8. Solid Organ Transplantation, Non-Covered Services.**

- (1) Transplants requiring prior authorization performed without prior authorization. (Refer to the Section I: General Information Provider Manual for request for retroactive authorization for emergency transplant services.)
- (2) Transplant for patients who did not qualify for Medicaid benefits at the time of transplantation. (Retroactive Medicaid qualification may be an exception.)
- (3) Transplants which are experimental or investigational in nature.
- (4) Transplant of beta cells or other pancreas cells not part of a pancreatic organ transplantation.
- (5) Transplant of cells or tissues into the coronary arteries, myocardium, central nervous system, or spinal cord.
- (6) "Bridge-to-transplant" devices for heart transplant:
  - (a) Temporary or implanted ventricular assist devices with the exception of intra-aortic balloon assist devices;
  - (b) Temporary or implanted biventricular assist devices;
- or
- (c) Temporary or implanted mechanical heart.
- (7) Transplants to patients with:
  - (a) Malignant neoplasm with a high risk for reoccurrence and non-curable malignancy (excluding localized skin cancer).
  - (b) Chronic illness with one year or less life expectancy.
  - (c) Limited, irreversible rehabilitation potential.
  - (8) ~~Payment for organ preparation or procurement.~~
  - ~~(9) All other conditions not specifically listed as covered in the rule.~~

**R414-10A-9. Hematopoietic Stem Cell Transplantation (HSCT), Covered Services and Requirements.**

- (1) ~~[HSCT]Allogeneic and syngeneic hematopoietic stem cell transplantation~~ may be approved only when the patient has a suitable HLA-matched donor and one of the covered conditions is present.
  - (a) ~~A search of related family members, unrelated persons, or both to find a suitable donor is a covered service.~~
- (2) Patient must have adequate marrow and lack of marrow involvement of primary malignancy if autologous transplant.

- (3) Patient must be free from any active infection.
- (4) Allogeneic Hematopoietic Stem Cell Transplantation (ASCT) is covered for:
  - (a) Leukemia, leukemia in remission, or aplastic anemia;
- or
- (b) Severe Combined Immunodeficiency Disease (SCID) and for the treatment of Wiskott-Aldrich syndrome.
- (5) Autologous Hematopoietic Stem Cell Transplantation (AuSCT) is covered for:
  - (a) Acute leukemia in remission with a high probability of relapse and has no Human Leucocyte Antigens (HLA)-matched;
  - (b) Resistant non-Hodgkin's lymphomas or those presenting with poor prognostic features following an initial response;
  - (c) Recurrent or refractory neuroblastoma; and
  - (d) Advanced Hodgkin's disease with failed conventional therapy and has no HLA-matched donor.
  - (e) Single AuSCT is only covered for Durie-Salmon Stage II or III that fit the following requirements:
    - (i) Newly diagnosed or responsive multiple myeloma. This includes those patients with previously untreated disease, those with at least a partial response to prior chemotherapy (defined as a 50 percent decrease either in measurable paraprotein (serum, urine or both) or in bone marrow infiltration, sustained for at least one month), and those in responsive relapse; and
    - (ii) adequate cardiac, renal, pulmonary, and hepatic function.
    - (f) When recognized clinical risk factors are employed to select patients for transplantation, High Dose Melphalan (HDM) together with AuSCT is medically reasonable and necessary for any age group with primary Amyloid Light (AL) chain amyloidosis who meet the following criteria:
      - (i) Amyloid deposition in two or fewer organs; and
      - (ii) Cardiac left ventricular Ejection Fraction (EF) greater than 45 percent.

**R414-10A-10. HSCT Transplantation, Non-Covered Services.**

- (1) HSCT is not covered as treatment for multiple myeloma.
- (2) AuSCT is not covered for:
  - (a) Acute leukemia not in remission;
  - (b) Chronic granulocytic leukemia;
  - (c) Solid tumors (other than neuroblastoma);
  - (d) Tandem transplantation (multiple rounds of AuSCT) for patients with multiple myeloma;
  - (e) Non-primary AL amyloidosis; or
  - (f) Primary AL amyloidosis for patients who are at least 64 years of age.
- (3) All other conditions not specifically listed as covered in this rule.

**R414-10A-11. Requests for Non-Covered Transplantation Services.**

Requests for non-covered services are considered based on evidence submitted as to the efficacy of the requested services. These requests are reviewed on a case-by-case basis and require Medicaid Director or designee approval. Evidence types may include, but are not limited to:

(1) Evidence published in peer-reviewed medical journals listed on the Centers for Medicare and Medicaid Services (CMS) website.

(2) Evidence of acceptable survival rates with the proposed protocol in groups with similar clinical characteristics to the patient:

(a) The current survival rate threshold is at least 75 percent one-year survival and at least 55 percent three-year survival; or

(b) Similar characteristics include age, tumor type, tumor size, resection status, presence of metastases, etc.

(3) Study size with sufficient number of individuals for statistical analysis; or

(4) Evidence that the proposed protocol is a less costly alternative to other potential treatment protocols.

**KEY: Medicaid**

**Date of Enactment or Last Substantive Amendment: 2016**

**Notice of Continuation: January 24, 2012**

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

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**End of the Notices of Changes in Proposed Rules Section**

# 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 Office of Administrative Rules. **REVIEWS** are effective upon filing.

**REVIEWS** are governed by Section 63G-3-305.

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## Commerce, Occupational and Professional Licensing

### **R156-24b**

## Physical Therapist Practice Act Rule

### **FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

DAR FILE NO.: 40858  
FILED: 10/06/2016

### **NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Title 58, Chapter 24b, provides for the licensure and regulation of physical therapists and physical therapist assistants. Subsection 58-1-106(1)(a) provides that the Division may adopt and enforce rules to administer Title 58. Subsection 58-24b-201(3) provides that the Physical Therapy Licensing Board's duties and responsibilities shall be in accordance with Section 58-1-202. Subsection 58-1-202(1)(a) provides that one of the duties of each board is to recommend appropriate rules to the Division director. This rule was enacted to clarify the provisions of Title 58, Chapter 24b, with respect to physical therapists and physical therapist assistants.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: Since this rule was last reviewed in

November 2011, it has been amended five times. The Division has received no written comments with respect to 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: This rule should be continued as it provides a mechanism to inform potential licensees of the requirements for licensure as allowed under statutory authority provided in Title 58, Chapter 24b, with respect to physical therapists and physical therapist assistants. The rule should also be continued as it provides information to ensure applicants for licensure are adequately trained and meet minimum licensure requirements and provides licensees with information concerning unprofessional conduct, definitions, and ethical standards relating to the profession.

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 Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Suzette Farmer by phone at 801-530-6789, by FAX at 801-530-6511, or by Internet E-mail at [sfarmer@utah.gov](mailto:sfarmer@utah.gov)

AUTHORIZED BY: Mark Steinagel, Director

EFFECTIVE: 10/06/2016

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**Commerce, Occupational and  
Professional Licensing  
R156-26a  
Certified Public Accountant Licensing  
Act Rule**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT  
OF CONTINUATION  
DAR FILE NO.: 40859  
FILED: 10/06/2016**

**NOTICE OF REVIEW AND STATEMENT OF  
CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Title 58, Chapter 26a, provides for the licensure and regulation of certified public accountants (CPA) and CPA firms. Subsection 58-1-106(1)(a) provides that the Division may adopt and enforce rules to administer Title 58. Subsection 58-26a-201(3) provides that the Utah Board of Accountancy's duties and responsibilities shall be in accordance with Section 58-1-202. Subsection 58-1-202(1)(a) provides that one of the duties of each board is to recommend appropriate rules to the Division director. This rule was enacted to clarify the provisions of Title 58, Chapter 26a, with respect to certified public accountants and CPA firms.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: Since this rule was last reviewed in 2011, it has been amended two times. The Division did receive a 03/02/2015 written comment from Mat Young, American Institute of CPAs (AICPA) in which the association supported the proposed amendments in a proposed rule filing yet provided a suggested wording change. The Utah Board of Accountancy reviewed the written comment at its 04/01/2015 meeting and determined to make the rule effective with no further changes as had been recommended by the AICPA association.

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 as it provides a mechanism to inform potential licensees of the requirements for licensure as allowed under statutory authority provided in Title 58, Chapter 26a, with respect to certified public accountants and CPA firms. The rule should also be continued as it provides information to ensure applicants for licensure are adequately trained and meet minimum licensure requirements and provides licensees with information

concerning unprofessional conduct, definitions, and ethical standards relating to the profession.

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 Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
♦ Dan Jones by phone at 801-530-6720, by FAX at 801-530-6511, or by Internet E-mail at dansjones@utah.gov

AUTHORIZED BY: Mark Steinagel, Director

EFFECTIVE: 10/06/2016

**Education, Administration  
R277-438  
Dual Enrollment**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT  
OF CONTINUATION  
DAR FILE NO.: 40880  
FILED: 10/14/2016**

**NOTICE OF REVIEW AND STATEMENT OF  
CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 53A-1-401 allows the Utah State Board of Education (Board) to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law; and Subsection 53A-1-402(1)(b) directs the Board to establish rules and minimum standards for access to programs.

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.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Rule R277-438 continues to be necessary because it provides statewide procedures and criteria for a home and private school student to participate in a public school course, co-curricular activity, or program.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Angela Stallings by phone at 801-538-7656, by FAX at 801-538-7768, or by Internet E-mail at [angie.stallings@schools.utah.gov](mailto:angie.stallings@schools.utah.gov)

AUTHORIZED BY: Angela Stallings, Deputy Superintendent, Policy and Communication

EFFECTIVE: 10/14/2016

## Education, Administration

### **R277-604**

Private School, Home School,  
Electronic High School (EHS), and  
Bureau of Indian Affairs (BIA) Student  
Participation in Public School  
Achievement Tests

#### **FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

DAR FILE NO.: 40881  
FILED: 10/14/2016

#### **NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 53A-1-401 allows the Utah State Board of Education (Board) to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law; and Section 53A-1-603 directs the Board to require school districts and charter schools to administer the U-PASS assessment system to uniformly measure statewide student performance.

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.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE

RULE, IF ANY: Rule R277-604 continues to be necessary because it provides procedures for Utah private school students and home school students who are Utah residents, and Utah students attending BIA schools to participate in U-PASS.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Angela Stallings by phone at 801-538-7656, by FAX at 801-538-7768, or by Internet E-mail at [angie.stallings@schools.utah.gov](mailto:angie.stallings@schools.utah.gov)

AUTHORIZED BY: Angela Stallings, Deputy Superintendent, Policy and Communication

EFFECTIVE: 10/14/2016

## Education, Administration

### **R277-605**

Coaching Standards and Athletic  
Clinics

#### **FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

DAR FILE NO.: 40882  
FILED: 10/14/2016

#### **NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 53A-1-401 allows the Utah State Board of Education (Board) to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law; and Subsection 53A-1-402(1)(b) directs the Board to adopt rules regarding access to programs.

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.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE

RULE, IF ANY: Rule R277-604 continues to be necessary because it provides procedures standards for school athletic and activity coaches and standards for athletic clinics and workshops.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:  
♦ Angela Stallings by phone at 801-538-7656, by FAX at 801-538-7768, or by Internet E-mail at [angie.stallings@schools.utah.gov](mailto:angie.stallings@schools.utah.gov)

AUTHORIZED BY: Angela Stallings, Deputy Superintendent, Policy and Communication

EFFECTIVE: 10/14/2016

**Education, Administration  
R277-609**

**Standards for LEA Discipline Plans and  
Emergency Safety Interventions**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT  
OF CONTINUATION**

DAR FILE NO.: 40883  
FILED: 10/14/2016

**NOTICE OF REVIEW AND STATEMENT OF  
CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 53A-1-401 allows the Utah State Board of Education (Board) to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law; Subsection 53A-1-402(1)(b) requires the Board to establish rules concerning discipline and control; Section 53A-15-603 requires the Board to adopt rules that require a local school board or governing board of a charter school to enact gang prevention and intervention policies for all schools within the Board's jurisdiction; and Section 53A-11-1603 requires the Board to adopt rules regarding training programs for school principals and school resource officers.

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.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Rule R277-609 continues to be necessary because it outlines requirements for school discipline plans and policies.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:  
♦ Angela Stallings by phone at 801-538-7656, by FAX at 801-538-7768, or by Internet E-mail at [angie.stallings@schools.utah.gov](mailto:angie.stallings@schools.utah.gov)

AUTHORIZED BY: Angela Stallings, Deputy Superintendent, Policy and Communication

EFFECTIVE: 10/14/2016

**Health, Health Care Financing,  
Coverage and Reimbursement Policy  
R414-510**

**Intermediate Care Facility for Persons  
with Intellectual Disabilities Transition  
Program**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT  
OF CONTINUATION**

DAR FILE NO.: 40869  
FILED: 10/12/2016

**NOTICE OF REVIEW AND STATEMENT OF  
CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 26-18-3 requires the Department to implement Medicaid policy through administrative rules, which allow the Department to administer the Medicaid program. Additionally, Section 26-1-5 allows the Department to adopt administrative rules to provide services to Medicaid recipients and reimbursement for Medicaid providers. 42 CFR 440.225 further allows the Department to provide optional services under the Transition Program.



**SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE:** After filing an amendment to this rule in 2012, the Department received written comments from the Disability Law Center (DLC), which suggested the Department set forth specific procedures to notify the public of the open application process and to implement an annual meeting to introduce the Transition Program. The Department agreed with DLC's assessment and changed the proposed rule to clarify and implement new notification requirements. The Department again received written comments from DLC after filing an amendment in 2014. DLC first expressed concern that the proposed application process would reduce resources available to those individuals whom the program was intended to help by the amendment's inclusion of persons facing eviction into Intermediate Care Facilities for Persons with Intellectual Disabilities (ICFs/ID). The Department, however, maintained that the new process would be more inclusive of all ICF/ID residents who meet Transition Program requirements because the Department will educate these residents about the option to participate in the program if selected for potential admission. DLC then expressed concern about the 12-month residency requirement as a condition of eligibility. The Department answered that the vast majority of Medicaid clients with intellectual disabilities or related conditions are already served in the Community Supports Waiver, with the minority being served in ICFs/ID. The intent, therefore, is to facilitate movement of eligible long-term residents of ICFs/ID into the Community Supports Waiver. DLC also expressed concern that allowing the Department to allocate a number of slots for individuals who are being involuntarily discharged from an ICF/ID will reduce the number of people allowed to voluntarily select participation in the Transition Program. The Department responded that its proposal will allow the agency, on a case-by-case basis, the discretion to authorize a limited number of transitions from an ICF/ID into the Community Supports Waiver when no other options are available for the resident. The Department further stated that these difficult cases frequently result in individuals being admitted to inpatient hospitals and staying longer than is necessary because no ICF/ID is willing to admit or readmit an individual. The proposed provision will allow the agency to have greater flexibility to provide needed services.

**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 sets forth eligibility and program access requirements for recipients who wish to transition into the Waiver for Individuals with Intellectual Disabilities and Other Related Conditions, and because it implements service coverage and provider reimbursement under the Transition Program. There is no opposition to the rule itself from outside parties, and the Department has resolved all concerns to previous amendments per its responses above.

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 Office 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: Joseph Miner, Executive Director

EFFECTIVE: 10/12/2016

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**Human Services, Child and Family  
 Services  
 R512-1  
 Description of Division Services,  
 Eligibility, and Service Access**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT  
 OF CONTINUATION**  
 DAR FILE NO.: 40871  
 FILED: 10/13/2016

**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-4a-102 authorizes the Division of Child and Family Services to establish rules in order to provide programs and services that support the strengthening of family values, including services which preserve and enhance family life and relationships; protect children, youth, and families; and advocate and defend family values established by public policy and advocacy and education.

**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 were received.

**REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE**

RULE, IF ANY: Continuation of this rule is necessary in order for the Division of Child and Family Services to continue to provide programs and services to support children and families in Utah.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:  
HUMAN SERVICES  
CHILD AND FAMILY SERVICES  
195 N 1950 W  
SALT LAKE CITY, UT 84116  
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
♦ Carol Miller by phone at 801-557-1772, by FAX at 801-538-3993, or by Internet E-mail at carolmiller@utah.gov  
♦ Julene Robbins by phone at 801-538-4521, by FAX at 801-538-3942, or by Internet E-mail at jhjonesrobbins@utah.gov

AUTHORIZED BY: Brent Platt, Director

EFFECTIVE: 10/13/2016

Human Services, Child and Family Services  
**R512-2**

Title IV-B Child Welfare/Family Preservation and Support Services and Title IV-E Foster Care, Adoption, and Independent Living

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**  
DAR FILE NO.: 40872  
FILED: 10/13/2016

**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-4a-102 authorizes the Division of Child and Family Services to establish rules in order to provide programs and services that support the strengthening of family values, including administering the Title IV-B and Title IV-E programs offered through the federal government.

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

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Continuation of this rule is necessary in order for the Division of Child and Family Services to continue to administer services offered through the Title IV-B and Title IV-E programs.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:  
HUMAN SERVICES  
CHILD AND FAMILY SERVICES  
195 N 1950 W  
SALT LAKE CITY, UT 84116  
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
♦ Carol Miller by phone at 801-557-1772, by FAX at 801-538-3993, or by Internet E-mail at carolmiller@utah.gov  
♦ Julene Robbins by phone at 801-538-4521, by FAX at 801-538-3942, or by Internet E-mail at jhjonesrobbins@utah.gov

AUTHORIZED BY: Brent Platt, Director

EFFECTIVE: 10/13/2016

Human Services, Child and Family Services  
**R512-31**

Foster Parent Due Process

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**  
DAR FILE NO.: 40873  
FILED: 10/13/2016

**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-4a-102 authorizes the Division of Child and Family Services to establish rules in order to provide programs and services that support the strengthening of family values. This includes defining the due process rights of foster parents when a decision is made to remove a foster child from their home as authorized by Section 62A-4a-206.

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 were received.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Continuation of this rule is necessary in order for the Division of Child and Family Services to continue to provide due process rights of foster parents when a decision is made to remove a foster child from their home as authorized by Section 62A-4a-206.

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

HUMAN SERVICES  
CHILD AND FAMILY SERVICES  
195 N 1950 W  
SALT LAKE CITY, UT 84116  
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Carol Miller by phone at 801-557-1772, by FAX at 801-538-3993, or by Internet E-mail at carolmiller@utah.gov  
♦ Julene Robbins by phone at 801-538-4521, by FAX at 801-538-3942, or by Internet E-mail at jhjonesrobbins@utah.gov

AUTHORIZED BY: Brent Platt, Director

EFFECTIVE: 10/13/2016

Human Services, Child and Family  
Services  
**R512-32**  
Children with Reportable  
Communicable Diseases

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT  
OF CONTINUATION**

DAR FILE NO.: 40874  
FILED: 10/13/2016

**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-4a-102 authorizes the Division of Child and Family Services to establish rules in order to provide programs and services that support the strengthening of family values. This includes establishing standards for confidentiality and testing of children with reportable communicable diseases.

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 were received.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Continuation of this rule is necessary in order for the Division of Child and Family Services to continue to establish standards for confidentiality and testing of children with reportable communicable diseases.

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

HUMAN SERVICES  
CHILD AND FAMILY SERVICES  
195 N 1950 W  
SALT LAKE CITY, UT 84116  
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Carol Miller by phone at 801-557-1772, by FAX at 801-538-3993, or by Internet E-mail at carolmiller@utah.gov  
♦ Julene Robbins by phone at 801-538-4521, by FAX at 801-538-3942, or by Internet E-mail at jhjonesrobbins@utah.gov

AUTHORIZED BY: Brent Platt, Director

EFFECTIVE: 10/13/2016

Human Services, Child and Family  
Services  
**R512-40**  
Recruitment, Home Studies, and  
Approval of Adoptive Families for  
Children in the Custody of Child and  
Family Services

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT  
OF CONTINUATION**

DAR FILE NO.: 40875  
FILED: 10/13/2016

**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-4a-102 authorizes the Division of Child and Family Services to establish rules in order to provide programs and services that support the strengthening of family values. This includes establishing criteria for recruitment of adoptive families, standards for conducting adoptive home studies, and requirements for approval of adoptive homes, as outlined in Sections 53-10-108, 62A-4a-205.6, 62A-4a-607, and 78B-6-128.

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 were received.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Continuation of this rule is necessary in order for the Division of Child and Family Services to continue to establish criteria for recruitment of adoptive families, standards for conducting adoptive home studies, and requirements for approval of adoptive homes, as outlined in Sections 53-10-108, 62A-4a-205.6, 62A-4a-607, and 78B-6-128.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:  
 HUMAN SERVICES  
 CHILD AND FAMILY SERVICES  
 195 N 1950 W  
 SALT LAKE CITY, UT 84116  
 or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
 ♦ Carol Miller by phone at 801-557-1772, by FAX at 801-538-3993, or by Internet E-mail at carolmiller@utah.gov  
 ♦ Julene Robbins by phone at 801-538-4521, by FAX at 801-538-3942, or by Internet E-mail at jhjonesrobbins@utah.gov

AUTHORIZED BY: Brent Platt, Director

EFFECTIVE: 10/13/2016

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**Human Services, Child and Family  
 Services  
 R512-42  
 Adoption by Relatives**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT  
 OF CONTINUATION**  
 DAR FILE NO.: 40876  
 FILED: 10/13/2016

**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-4a-102 authorizes the Division of Child and Family Services to establish rules in order to provide programs and services that support the

strengthening of family values. This includes specifying requirements for relatives to adopt a child in the custody of Child and Family Services as outlined in Sections 78A-6-307, 78B-6-128, and 78B-6-133.

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 were received.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Continuation of this rule is necessary in order for the Division of Child and Family Services to continue to specify requirements for relatives to adopt a child in the custody of Child and Family Services as outlined in Sections 78A-6-307, 78B-6-128, and 78B-6-133.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:  
 HUMAN SERVICES  
 CHILD AND FAMILY SERVICES  
 195 N 1950 W  
 SALT LAKE CITY, UT 84116  
 or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
 ♦ Carol Miller by phone at 801-557-1772, by FAX at 801-538-3993, or by Internet E-mail at carolmiller@utah.gov  
 ♦ Julene Robbins by phone at 801-538-4521, by FAX at 801-538-3942, or by Internet E-mail at jhjonesrobbins@utah.gov

AUTHORIZED BY: Brent Platt, Director

EFFECTIVE: 10/13/2016

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**Human Services, Child and Family  
 Services  
 R512-51**

**Fee Collection for Criminal Background  
 Screening for Prospective Foster and  
 Adoptive Parents and for Employees of  
 Other Department of Human Services  
 Licensed Programs**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT  
 OF CONTINUATION**  
 DAR FILE NO.: 40877  
 FILED: 10/13/2016

**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-4a-102 authorizes the Division of Child and Family Services to establish rules in order to provide programs and services that support the strengthening of family values. This includes having the ability to collect fees for processing criminal background screenings as required by Pub. Law No. 109-248, and Sections 78A-6-308 and 62A-2-120.

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 were received.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Continuation of this rule is necessary in order for the Division of Child and Family Services to continue to collect fees for processing criminal background screenings.

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

HUMAN SERVICES  
CHILD AND FAMILY SERVICES  
195 N 1950 W  
SALT LAKE CITY, UT 84116  
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
♦ Carol Miller by phone at 801-557-1772, by FAX at 801-538-3993, or by Internet E-mail at carolmiller@utah.gov  
♦ Julene Robbins by phone at 801-538-4521, by FAX at 801-538-3942, or by Internet E-mail at jhonesrobbins@utah.gov

AUTHORIZED BY: Brent Platt, Director

EFFECTIVE: 10/13/2016

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Human Services, Child and Family  
Services  
**R512-80**  
Definitions of Abuse, Neglect, and  
Dependency

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**  
DAR FILE NO.: 40878  
FILED: 10/13/2016

**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-4a-102 authorizes the Division of Child and Family Services to establish rules in order to provide programs and services that support the strengthening of family values. This includes, when determining what constitutes abuse, neglect, or dependency, the definitions in Section 62A-4a-101 et seq., Section 78A-6-105 et seq., the Criminal Code, these administrative rules, and court opinions shall apply. The definitions included in this rule are intended to clarify those definitions or judicial opinions.

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 were received.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Continuation of this rule is necessary in order for the Division of Child and Family Services to continue to determine what constitutes abuse, neglect, or dependency.

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

HUMAN SERVICES  
CHILD AND FAMILY SERVICES  
195 N 1950 W  
SALT LAKE CITY, UT 84116  
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
♦ Carol Miller by phone at 801-557-1772, by FAX at 801-538-3993, or by Internet E-mail at carolmiller@utah.gov  
♦ Julene Robbins by phone at 801-538-4521, by FAX at 801-538-3942, or by Internet E-mail at jhonesrobbins@utah.gov

AUTHORIZED BY: Brent Platt, Director

EFFECTIVE: 10/13/2016

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Transportation, Administration  
**R907-3**  
Administrative Procedure

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**  
DAR FILE NO.: 40860  
FILED: 10/07/2016

**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 63G-2-301 requires that final opinions and orders must be disclosed to the public upon request. This rule requires the Utah Department of Transportation and the Transportation Commission to make these records available for public inspection.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: There have been no comments received during and 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 should continue in effect to ensure public availability of opinions and orders as required by Section 63G-2-301. There have been no comments received in opposition to this rule.

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

TRANSPORTATION  
ADMINISTRATION  
CALVIN L RAMPTON COMPLEX  
4501 S 2700 W  
SALT LAKE CITY, UT 84119-5998  
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ Christine Newman by phone at 801-965-4026, by FAX at 801-965-4338, or by Internet E-mail at [cwnewman@utah.gov](mailto:cwnewman@utah.gov)
- ◆ James Palmer by phone at 801-965-4000, by FAX at 801-965-4338, or by Internet E-mail at [jimpalmer@utah.gov](mailto:jimpalmer@utah.gov)
- ◆ Linda Hull by phone at 801-965-4253, or by Internet E-mail at [lhull@utah.gov](mailto:lhull@utah.gov)
- ◆ Michelle Jeronimo by phone at 801-965-3883, or by Internet E-mail at [mjeronimo@utah.gov](mailto:mjeronimo@utah.gov)

AUTHORIZED BY: Carlos Braceras, Executive Director

EFFECTIVE: 10/07/2016

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**Transportation, Administration**  
**R907-66**  
**Incorporation and Use of Federal Acquisition Regulations on Federal-Aid and State-Financed Transportation Projects**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

DAR FILE NO.: 40861  
FILED: 10/07/2016

**NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule is enacted under the authority of Section 72-1-201 and incorporates federal requirements referred to in Subsection 63G-6a-107(2) and ensures that the department complies with this section and the federal regulations for federal- and state-financed transportation projects.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: There have been no comments received during and 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 should remain in effect because 23 U.S.C. 112 requires states to use the Federal Acquisition Regulations contained in 48 CFR Part 1 to calculate appropriate contract costs in all federal-aid transportation projects. Therefore, the department needs to continue to comply with the federal regulations incorporated in the rule to remain eligible for federal funding and to efficiently administer funds consistent with state law and federal regulations. It is generally most efficient to also use the Federal Acquisition Regulations for state-financed transportation projects as well, so the rule incorporates the same federal regulations for most state-financed transportation projects. Therefore, this rule should be continued.

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

TRANSPORTATION  
ADMINISTRATION  
CALVIN L RAMPTON COMPLEX  
4501 S 2700 W  
SALT LAKE CITY, UT 84119-5998  
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ Christine Newman by phone at 801-965-4026, by FAX at 801-965-4338, or by Internet E-mail at [cwnewman@utah.gov](mailto:cwnewman@utah.gov)
- ◆ James Palmer by phone at 801-965-4000, by FAX at 801-965-4338, or by Internet E-mail at [jimpalmer@utah.gov](mailto:jimpalmer@utah.gov)
- ◆ Linda Hull by phone at 801-965-4253, or by Internet E-mail at [lhull@utah.gov](mailto:lhull@utah.gov)
- ◆ Michelle Jeronimo by phone at 801-965-3883, or by Internet E-mail at [mjeronimo@utah.gov](mailto:mjeronimo@utah.gov)

AUTHORIZED BY: Carlos Braceras, Executive Director

EFFECTIVE: 10/07/2016

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





**NOTICES OF  
FIVE-YEAR REVIEW EXTENSIONS**

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Rulewriting agencies are required by law to review each of their administrative rules within five years of the date of the rule's original enactment or the date of last review (Section 63G-3-305). If the agency finds that it will not meet the deadline for review of the rule (the five-year anniversary date), it may file a **NOTICE OF FIVE-YEAR REVIEW EXTENSION (EXTENSION)** with the Office of Administrative Rules. The **EXTENSION** permits the agency to file the review up to 120 days beyond the anniversary date.

Agencies have filed **EXTENSIONS** for the rules listed below. The "Extended Due Date" is 120 days after the anniversary date.

**EXTENSIONS** are governed by Subsection 63G-3-305(6).

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Heritage and Arts, Administration  
**R450-1**  
Government Records Access and  
Management Act Rules

**FIVE-YEAR REVIEW EXTENSION**

DAR FILE NO.: 40852

FILED: 10/04/2016

**EXTENSION REASON AND NEW DEADLINE:** The responsibility for reviewing this rule, when sent to the department in late March, was overlooked because of job changes and new employees. The employees responsible for reviewing this rule only recently gained access to the documents. New deadline: 02/11/2017.

**DIRECT QUESTIONS REGARDING THIS RULE TO:**

♦ Josh Loftin by phone at 801-245-7205, or by Internet E-mail at [jloftin@utah.gov](mailto:jloftin@utah.gov)

**AUTHORIZED BY:** Julie Fisher, Executive Director

**EFFECTIVE:** 10/04/2016

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**End of the Notices of Five-Year Review Extensions 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 Office 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

### Education

#### Administration

No. 40670 (AMD): R277-403. Student Reading Proficiency and Notice to Parents  
Published: 09/01/2016  
Effective: 10/11/2016

No. 40671 (AMD): R277-419. Pupil Accounting  
Published: 09/01/2016  
Effective: 10/11/2016

No. 40672 (NEW): R277-421. Out-of-State Tuition Reimbursement  
Published: 09/01/2016  
Effective: 10/11/2016

No. 40673 (AMD): R277-530. Utah Effective Teaching and Educational Leadership Standards  
Published: 09/01/2016  
Effective: 10/11/2016

No. 40674 (AMD): R277-531. Public Educator Evaluation Requirements (PEER)  
Published: 09/01/2016  
Effective: 10/11/2016

No. 40675 (AMD): R277-606. Dropout Recovery Program  
Published: 09/01/2016  
Effective: 10/11/2016

No. 40676 (NEW): R277-711. High Quality School Readiness Expansion  
Published: 09/01/2016  
Effective: 10/11/2016

No. 40677 (NEW): R277-712. Competency-based Grant Programs  
Published: 09/01/2016  
Effective: 10/11/2016

No. 40678 (AMD): R277-750. Education Programs for Students with Disabilities  
Published: 09/01/2016  
Effective: 10/11/2016

No. 40679 (NEW): R277-922. Digital Teaching and Learning Grant Program  
Published: 09/01/2016  
Effective: 10/11/2016

No. 40680 (NEW): R277-924. Partnerships for Student Success Grant Program  
Published: 09/01/2016  
Effective: 10/11/2016

### Environmental Quality

Waste Management and Radiation Control, Radiation  
No. 40666 (REP): R313-27. Medical Use Advisory Committee  
Published: 09/01/2016  
Effective: 10/15/2016

### Human Services

#### Substance Abuse and Mental Health

No. 40653 (AMD): R523-5-7. Requirements to Remain Qualified as an Adult Peer Support Specialist  
Published: 09/01/2016  
Effective: 10/11/2016

NOTICES OF RULE EFFECTIVE DATES

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Natural Resources

Water Rights

No. 40659 (R&R): R655-3. Reports of Water Right

Conveyance

Published: 09/01/2016

Effective: 10/12/2016

No. 40660 (NEW): R655-17. Water Use Data Reporting and Verification

Published: 09/01/2016

Effective: 10/12/2016

Transportation

Operations, Aeronautics

No. 40663 (AMD): R914-1. Rules and Regulations

Published: 09/01/2016

Effective: 10/12/2016

Program Development

No. 40664 (AMD): R926-3. Class B and Class C Road Funds

Published: 09/01/2016

Effective: 10/12/2016

**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, 2016 through October 14, 2016. 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 Office of Administrative Rules (801-538-3003).

A copy of the **RULES INDEX** is available for public inspection at the Office of Administrative Rules (5110 State Office Building, Salt Lake City, UT), or may be viewed online at the Office'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>Facilities Construction and Management</u>					
R23-19	Facility Use Rules	40226	NSC	03/11/2016	Not Printed
R23-23	Health Reform -- Health Insurance Coverage in State Contracts -- Implementation	40044	NSC	01/15/2016	Not Printed
R23-23	Health Reform -- Health Insurance Coverage in State Contracts -- Implementation	40440	EMR	05/23/2016	2016-12/51
R23-23	Health Reform -- Health Insurance Coverage in State Contracts -- Implementation	40441	AMD	07/22/2016	2016-12/6
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R661-18	Outstanding Senior Award Program	40613	NEW	09/21/2016	2016-15/37
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R671-315-1	Pardons	40316	AMD	07/07/2016	2016-9/118
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R722-390	Certificate of Eligibility for Removal from the Utah White Collar Crime Offender Registry	40597	NSC	08/01/2016	Not Printed
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## RULES INDEX - BY KEYWORD (SUBJECT)

### 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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<u>Academic Pathways to Teaching</u> Education, Administration	40509	R277-511	NEW	08/12/2016	2016-13/39
<u>accelerated learning</u> Education, Administration	40428 40429	R277-707 R277-707	5YR AMD	05/16/2016 07/11/2016	2016-11/63 2016-11/21
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deception detection intern

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	40676	R277-711	NEW	10/11/2016	2016-17/24	

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