

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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SPECIAL NOTICES

Environmental Quality Air Quality

Hearing for the Regional Haze - Sulfur Dioxide Milestone Report

Utah's State Implementation Plan for Regional Haze (the Plan) adopted by the Air Quality Board on 04/06/2011, requires that Utah cooperate with New Mexico, Wyoming, and Albuquerque-Bernalillo County in producing an annual report to determine if the average emissions of sulfur dioxide (SO₂) from large industrial sources for the most current three-year period are less than the emissions milestone set in the Plan. The average emissions inventory for 2013 through 2015 is calculated by totaling all emissions from participating entities for each year, then averaging the three years of data. This number is then compared to the 2015 milestone set in the Plan. The draft report for calendar year 2015 is now available for public comment at <http://www.deq.utah.gov/NewsNotices/notices/air/Pubrulte.htm>.

The report shows that adjusted total emissions of SO₂ in 2015 from large sources in the participating entities -- Utah, New Mexico, Wyoming, and Albuquerque-Bernalillo County -- were 81,454 tons; that the average SO₂ emissions for 2013 through 2015 were 91,310 tons; and that the SO₂ milestone for 2015 is 155,940 tons. The report demonstrates that emissions from the participating entities are less than the milestone and have met the requirements of the Plan for 2015. Therefore, implementation of the SO₂ backstop trading program identified in the Plan is not triggered.

The Utah Division of Air Quality will hold a public hearing at 1:30 p.m. on 03/16/2017, in the Four Corners Conference Room, Room No. 4100, at 195 North 1950 West in Salt Lake City, Utah. In compliance with the Americans with Disabilities Act, individuals with special needs (including auxiliary communicative aids and services) should contact the Office of Human Resources, at 801-536-4412 (TDD 536-4414).

The comment period closes at 5:00 p.m. on 03/31/2017. Comments postmarked on or before that date will be accepted.

Comments may be submitted by electronic mail to jbaker@utah.gov or may be mailed to:

*ATTN: SO₂ Milestone Report
Bryce Bird, Director
Utah Division of Air Quality
PO Box 144820
Salt Lake City, UT 84114-4820*

End of the Special Notices Section

EXECUTIVE DOCUMENTS

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

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

Establishing Effective Oversight Over State Agency Rulemaking, Utah Exec. Order No. 2017-1

EXECUTIVE ORDER

Establishing Effective Oversight Over State Agency Rulemaking

WHEREAS, the public is best served by clear and concise administrative rules that protect public health, safety, and welfare; promote economic development; protect against officials' abuse of power; promote needed public programs; enhance public understanding of legal requirements; and facilitate the implementation of law; and

WHEREAS, state agencies promulgate administrative rules pursuant to Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to execute state and federal statutory mandates; and

WHEREAS, the Legislature often mandates new administrative rules, or changes to existing administrative rules; and

WHEREAS, agencies' continual review of existing rules coupled with a process of careful consideration and assessment for new rules will improve state agencies' responsiveness to the public.

NOW, THEREFORE, I, Gary R. Herbert, Governor of the State of Utah, by virtue of the authority vested in me by the Constitution and the laws of the State of Utah, do hereby order that:

All executive branch agencies implement the following procedures for promulgating administrative rules in accordance with and in addition to Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

1. An agency shall write administrative rules that are clear and concise. It shall not impose unnecessary burdens on the economy, on individuals, on public or private organizations, or on local governments. To achieve these objectives, an agency shall develop its administrative rules through a process which ensures that:

- a. there is full opportunity for public participation in the rulemaking process as prescribed by state law;
- b. the need for and purpose of each administrative rule is clearly established and articulated as part of the rule analysis submitted with each notice of proposed rule;
- c. the head of the agency and policy officials exercise effective oversight; and
- d. compliance costs, paperwork, and other burdens on the public are minimized.

2. In addition to the requirements of Section 63G-3-301, each agency shall include as part of the rule analysis the anticipated costs or savings in terms of the fiscal and non-fiscal impacts and burdens a rule may have directly or indirectly to state government, local government, small business, and persons other than small businesses, businesses, or local governmental entities, and shall review this analysis with the board or commission with rulemaking or advisory authority prior to submitting the rule filing. Each agency shall utilize the analysis tool created by the Governor's Office of Management and Budget.

3. Each cabinet level administrator, or other official of similar responsibility, who answers to the Governor shall designate and adequately train an administrative rules coordinator and report that person's name to the Office of Administrative Rules as staff changes necessitate.

4. Each administrative rules coordinator, or designee, shall:

a. examine each administrative rulemaking action prepared by an agency within the coordinator's scope of responsibility prior to the action's submission to the Office of Administrative Rules to determine:

i. that the administrative rule contains language that is necessary, and fits within the scope of a rule as defined in Subsection 63G-3-102(17);

ii. that the administrative rule has been drafted using logical, understandable, and concise language to facilitate compliance and enforcement;

iii. that interested parties have been given opportunity to participate in the development of the administrative rule pursuant to Subsection 63G-3-301(3);

iv. that standards reflect consistent and sound public regulatory policies; and

v. that the rule is formatted as prescribed in the current edition of the Office of Administrative Rules' *Rule Writing Manual for Utah*;

b. work with administrators within the coordinator's scope of responsibility to see that written documents meeting the definition of a rule are promulgated as administrative rules pursuant to Utah Code Ann., Title 63G, Chapter 3;

c. assess enacted legislation by June 1 of each year to ensure that new regulatory obligations are discovered and met in a timely manner by appropriate rulemaking action;

d. send a copy of the proposed rule and the rule analysis required by law to the Governor's Office and the Governor's Office of Economic Development;

e. recommend revised or, if necessary, new administrative rules to an agency head within the coordinator's scope of responsibility for the purpose of adequately supporting agency action, informing affected persons, and protecting the state and the public from unwarranted litigation and loss; and

f. notify the Office of Administrative Rules of staffing changes in agencies within the coordinator's scope of authority that affect who may file or authorize rules, and who the Office and the Governor's Office may contact with questions.

5. To ensure rules are consistent with statute and policy, the Governor's Office shall:

a. review administrative rules for legal authority, policy;

b. assist state entities in their role of defining public regulatory policy;

c. act as a liaison with members of the legislature on administrative rulemaking issues, and assist with the resolution of issues identified;

d. coordinate strategies to resolve regulatory questions and provide consistency among agencies;

e. receive and review the rule analysis required by law.

6. Each state agency may obtain assistance from:

a. the Attorney General to ensure that its rules meet legal and constitutional requirements as provided in Subsection 63G-3-201(9),

b. the Office of Administrative Rules for assistance with the rulemaking process as provided in Subsection 63G-3-402(1)(k), and

c. the Governor's Office of Economic Development for assistance determining and calculating fiscal and non-fiscal, direct and indirect impacts,

d. the Office of the Governor's General Counsel for assistance with coordinating rule content and policy;

7. State agency directors and department heads shall cooperate with the Governor's Office as it conducts an executive review of rules; and the Office of Administrative Rules as it implements filing, publication, and hearing procedures pursuant to Title 63G, Chapter 3.

8. This order replaces and supersedes Executive Order 13/2011, Establishing Effective Oversight Over State Agency Rulemaking, and any prior Executive Order establishing oversight over the administrative rulemaking process.

IN WITNESS, WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Utah. Done at the Utah State Capitol in Salt Lake City, Utah, on this, the 9th day of February, 2017.

(State Seal)

Gary R. Herbert
Governor

Attest:

Spencer J. Cox
Lieutenant Governor

2017/001/EO

End of the Executive Documents Section

NOTICES OF PROPOSED RULES

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 February 02, 2017, 12:00 a.m., and February 15, 2017, 11:59 p.m. are included in this, the March 01, 2017, 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 March 31, 2017. 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 June 29, 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.

The Proposed Rules Begin on the Following Page

Commerce, Occupational and Professional Licensing

R156-1

General Rule of the Division of Occupational and Professional Licensing

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 41299

FILED: 02/09/2017

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this filing is to amend the Division's umbrella rule to: 1) carry out the mandate of H.B. 265, Mental Health Practitioner Amendments, passed during the 2016 General Session, for the Division to make rules to enable a psychiatrist or a psychiatric mental health nurse practitioner to apply for and receive a tax credit certificate from the Division under certain circumstances; 2) clarify the timing and procedure of acting upon an application for entry into a diversion agreement; and 3) make other technical revisions.

SUMMARY OF THE RULE OR CHANGE: Section R156-1-109 provides that the Division's Residence Lien Recovery Fund manager, bureau manager, or program coordinator designated in writing by the director, is the presiding officer for the informal adjudicative proceedings approving or denying an application for a tax credit certificate under Section 58-1-111. The new Section R156-1-111a clarifies certain definitions established in Section 58-1-111 as follows: 1) "Psychiatrist" as defined under Subsection 58-1-111(1)(d) is further defined to include a licensed physician who is board certified for the required psychiatry specialization; and 2) the definition of "volunteer retired psychiatrist" under Subsection 58-1-111(1)(f)(ii) is further defined as a physician or osteopathic physician licensed under the Retired Volunteer Health Practitioner Act, who is previously or currently board certified for a psychiatry specialization recognized by the American Board of Medical Specialties (ABMS) or the American Osteopathic Association's Bureau of Osteopathic Specialists (BOS). The new Section R156-1-111b sets out the requirements for an application to the Division for issuance of a tax credit certificate under Section 58-1-111. The applicant must provide the following: 1) the original application made available on the Division's website, containing the signed attestation of compliance; and 2) any additional documentation required by the division to verify the applicant's representations. In Section R156-1-404d, the filing codifies existing practice and clarifies the timing and procedure of acting upon an application for entry into a diversion agreement.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 58-1-308 and Subsection 58-1-106(1)(a) and Subsection 58-1-501(2)

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. The cost to the state to implement the standards imposed by Section R156-1-109 and the new Sections R156-1-111a and R156-1-111b per H.B. 265 (2016) are addressed in the fiscal note attached to H.B. 265. Any additional costs to the Department of Commerce and to the Division should be absorbed in their current budgets, because implementation and application processing will be handled within regular working hours. The designation of these matters as informal adjudicative proceedings and designating a program manager as the presiding officer will reduce the time and expense incurred by the Division in processing the applications. The amount of the savings cannot be estimated as it will vary depending on the circumstances. The changes to Section R156-1-404d in this filing only codify existing practice for applicants for entry into a diversion program and will not affect or impact the state budget.

◆ **LOCAL GOVERNMENTS:** In Section R156-1-109 and the new Sections R156-1-111a and R156-1-111b, the proposed new amendments apply only to persons licensed as psychiatrists or psychiatric mental health nurse practitioners under the specific requirements of the statute and rule who choose to establish a new practice in Utah or choose to provide volunteer behavioral health treatment in Utah to certain underserved populations. The services provided could possibly benefit a local government by improving the mental health of any population it serves that would otherwise go without needed psychiatric care because of financial reasons or lack of access to health care practitioners; the provided services may save one or more lives. The amount of the savings cannot be estimated as it will vary depending on circumstances. The changes to Section R156-1-404d in this filing only codify existing practice for applicants for entry into a diversion program, and will not affect or impact local governments.

◆ **SMALL BUSINESSES:** In Section R156-1-109 and the new Sections R156-1-111a and R156-1-111b, psychiatrists and psychiatric mental health nurse practitioners who operate small businesses and choose to provide volunteer services will be impacted by the cost of recordkeeping and lost revenue if they substitute time they could be billing for professional services to provide volunteer health care services. However, as described in the fiscal note, these costs will be offset by the available \$10,000 Utah income tax credit provided to the individual practitioner. The designation of these matters as informal adjudicative proceedings and designating a program manager as the presiding officer will reduce the time and expense incurred by small business owners who submit applications. The amount of the costs or savings cannot be estimated as it will vary from business to

business depending on circumstances. The changes to Section R156-1-404d in this filing only codify existing practice for applicants for entry into a diversion program, and will not affect or impact small business.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** In Section R156-1-109 and the new Sections R156-1-111a and R156-1-111b, licensees will bear the cost of the services provided, relative to their time spent providing the services and documenting such services, and then applying to the Division for the tax credit certificate. The designation of these matters as informal adjudicative proceedings and designating a program manager as the presiding officer will reduce the time and expense incurred by persons who submit applications. The services provided could possible benefit numerous persons in Utah by improving the mental health of those who would otherwise go without needed psychiatric care because of financial reasons or lack of access to health care practitioners; these services may save one or more lives. The amount of the cost or savings cannot be estimated as it will vary depending on circumstances. The changes to Section R156-1-404d in this filing only codify existing practice for persons who apply for entry into a diversion program, and will have no additional impact on such persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: In Section R156-1-109 and the new Sections R156-1-111a and R156-1-111b, a licensee will bear the cost of the volunteer services provided, relative to the licensee's time spent providing the services, documenting such services, and applying to the Division for the tax credit certificate. The changes to Section R156-1-404d in this filing will have no compliance cost for an affected person who applies for entry into a diversion program, as it only clarifies and codifies existing practice.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The proposed amendments to Rule R156-1 make the following changes: 1) carry out the mandate of H.B. 265, Mental Health Practitioner Amendments, passed during the 2016 General Session, for the Division to make rules to enable psychiatrists or psychiatric mental health nurse practitioners to apply for and receive a tax credit certificate from the Division under certain circumstances; 2) clarify the timing and procedure of action upon an application for entry into a diversion agreement; and 3) make certain technical revisions. Psychiatrists and psychiatric mental health nurse practitioners who operate small businesses and choose to provide volunteer services will be impacted by the cost of recordkeeping and lost revenue if they substitute time they could be billing for professional services to provide volunteer health care services. However, as described in the fiscal note to H.B. 265 (2016), these costs will be offset by the available \$10,000 Utah income tax credit provided to the individual volunteers. The other changes to the rules will have a negligible fiscal impact.

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
◆ David Taylor by phone at 801-530-6214, by FAX at 801-530-6511, or by Internet E-mail at dbtaylor@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 03/31/2017

THIS RULE MAY BECOME EFFECTIVE ON: 04/07/2017

AUTHORIZED BY: Mark Steinagel, Director

R156. Commerce, Occupational and Professional Licensing.
R156-1. General Rule of the Division of Occupational and Professional Licensing.

R156-1-109. Presiding Officers.

In accordance with Subsection 63G-4-103(1)(h), Sections 58-1-104, 58-1-106, 58-1-109, 58-1-202, 58-1-203, 58-55-103, and 58-55-201, except as otherwise specified in writing by the Director, or for Title 58, Chapter 55, the Construction Services Commission, the designation of presiding officers is clarified or established as follows:

(1) The Division Regulatory and Compliance Officer is designated as the presiding officer for issuance of notices of agency action and for issuance of notices of hearing issued concurrently with a notice of agency action or issued in response to a request for agency action, provided that if the Division Regulatory and Compliance Officer is unable to so serve for any reason, a replacement specified by the Director is designated as the alternate presiding officer.

(2) Subsections 58-1-109(2) and 58-1-109(4) are clarified with regard to defaults as follows. Unless otherwise specified in writing by the Director, or with regard to Title 58, Chapter 55, by the Construction Services Commission, a department administrative law judge is designated as the presiding officer for entering an order of default against a party, for conducting any further proceedings necessary to complete the adjudicative proceeding, and for issuing a recommended order to the Director or Commission, respectively, determining the discipline to be imposed, licensure action to be taken, relief to be granted, etc.

(3) Except as provided in Subsection (4) or otherwise specified in writing by the Director, the presiding officer for adjudicative proceedings before the Division are as follows:

(a) Director. The Director shall be the presiding officer for:

(i) formal adjudicative proceedings described in Subsections R156-46b-201(1)(b), and R156-46b-201(2)(a) through (c), however resolved, including stipulated settlements and hearings; and

(ii) informal adjudicative proceedings described in Subsections R156-46b-202(1)(g), (i), (l), (m), (o), (p), and ([q]r), and R156-46b-202(2)(a), (b)(ii), (c), and (d), however resolved, including memoranda of understanding and stipulated settlements.

(b) Bureau Managers or Program Coordinators. Except for Title 58, Chapter 55, the bureau manager or program coordinator over the occupation or profession or program involved shall be the presiding officer for:

(i) formal adjudicative proceedings described in Subsection R156-46b-201(1)(c), for purposes of determining whether a request for a board of appeal is properly filed as set forth in Subsections R156-15A-210(1) through (4); and

(ii) informal adjudicative proceedings described in Subsections R156-46b-202(1)(a) through (d),(f), (h), (j), (n) and R156-46b-202(2)(b)(iii).

(iii) At the direction of a bureau manager or program coordinator, a licensing technician or program technician may sign an informal order in the name of the licensing technician or program technician provided the wording of the order has been approved in advance by the bureau manager or program coordinator and provided the caption "FOR THE BUREAU MANAGER" or "FOR THE PROGRAM COORDINATOR" immediately precedes the licensing technician's or program technician's signature.

(c) Citation Hearing Officer. The Division Regulatory and Compliance Officer or other citation hearing officer designated in writing by the Director shall be the presiding officer for the adjudicative proceeding described in Subsection R156-46b-202(1)(k).

(d) Uniform Building Code Commission. The Uniform Building Code Commission shall be the presiding officer for the adjudicative proceeding described in Subsection R156-46b-202(1)(e) for convening a board of appeal under Subsection 15A-1-207(3), for serving as fact finder at any evidentiary hearing associated with a board of appeal, and for entering the final order associated with a board of appeal. An administrative law judge shall perform the role specified in Subsection 58-1-109(2).

(e) Residence Lien Recovery Fund Advisory Board. The Residence Lien Recovery Fund Advisory Board shall be the presiding officer to serve as the factfinder for formal adjudicative proceedings involving the Residence Lien Recovery Fund.

(f) Residence Lien Recovery Fund Manager. The Residence Lien Recovery Fund manager, bureau manager, or program coordinator designated in writing by the Director shall be the presiding officer for the informal adjudicative proceeding described in Subsection R156-46b-202(1)(q), for approval or denial of an application for a tax credit certificate.

(4) Unless otherwise specified in writing by the Construction Services Commission, the presiding officers and process for adjudicative proceedings under Title 58, Chapter 55, are established or clarified as follows:

(a) Commission.

(i) The Construction Services Commission shall be the presiding officer for all adjudicative proceedings under Title 58,

Chapter 55, except as otherwise delegated by the Commission in writing or as otherwise provided in this rule; provided, however, that all orders adopted by the Commission as a presiding officer shall require the concurrence of the Director.

(ii) Unless otherwise specified in writing by the Construction Services Commission, the Commission is designated as the presiding officer:

(A) for informal adjudicative proceedings described in Subsections R156-46b-202(1)(l), (m), (o), (p), and (q), and R156-46b-202(2)(b)(i), (c), and (d), however resolved, including memoranda of understanding and stipulated settlements;

(B) to serve as fact finder and adopt orders in formal evidentiary hearings associated with adjudicative proceedings involving persons licensed as or required to be licensed under Title 58, Chapter 55; and

(C) to review recommended orders of a board, an administrative law judge, or other designated presiding officer who acted as the fact finder in an evidentiary hearing involving a person licensed or required to be licensed under Title 58, Chapter 55, and to adopt an order of its own. In adopting its order, the Commission may accept, modify or reject the recommended order.

(iii) If the Construction Services Commission is unable for any reason to act as the presiding officer as specified, it shall designate another presiding officer in writing to so act.

(iv) Orders of the Construction Services Commission shall address all issues before the Commission and shall be based upon the record developed in an adjudicative proceeding conducted by the Commission. In cases in which the Commission has designated another presiding officer to conduct an adjudicative proceeding and submit a recommended order, the record to be reviewed by the Commission shall consist of the findings of fact, conclusions of law, and recommended order submitted to the Commission by the presiding officer based upon the evidence presented in the adjudicative proceeding before the presiding officer.

(v) The Construction Services Commission or its designee shall submit adopted orders to the director for the Director's concurrence or rejection within 30 days after it receives a recommended order or adopts an order, whichever is earlier. An adopted order shall be deemed issued and constitute a final order upon the concurrence of the Director.

(vi) In accordance with Subsection 58-55-103(10), if the Director or the Director's designee refuses to concur in an adopted order of the Construction Services Commission or its designee, the Director or the Director's designee shall return the order to the Commission or its designee with the reasons set forth in writing for refusing to concur. The Commission or its designee shall reconsider and resubmit an adopted order, whether or not modified, within 30 days of the date of the initial or subsequent return. The Director or the Director's designee shall consider the Commission's resubmission of an adopted order and either concur rendering the order final, or refuse to concur and issue a final order, within 90 days of the date of the initial recommended order. Provided the time frames in this subsection are followed, this subsection shall not preclude an informal resolution such as an executive session of the Commission or its designee and the Director or the Director's designee to resolve the reasons for the Director's refusal to concur in an adopted order.

(vii) The record of the adjudicative proceeding shall include recommended orders, adopted orders, refusals to concur in adopted orders, and final orders.

(viii) The final order issued by the Construction Services Commission and concurred in by the Director or the Director's designee, or nonconcurred in by the Director or the Director's designee, and issued by the Director or the Director's designee, may be appealed by filing a request for agency review with the Executive Director or the Director's designee within the Department.

(ix) The content of all orders shall comply with the requirements of Subsection 63G-4-203(1)(i) and Sections 63G-4-208 and 63G-4-209.

(b) Director. The Director or the Director's designee is designated as the presiding officer for the concurrence role, except where the Director or the Director's designee refuses to concur and issues the final order as provided by Subsection (a), on disciplinary proceedings under Subsections R156-46b-202(2)(b)(i), (c), and (d) as required by Subsection 58-55-103(1)(b)(iv).

(c) Administrative Law Judge. Unless otherwise specified in writing by the Construction Services Commission, a Department administrative law judge is designated as the presiding officer to conduct formal adjudicative proceedings before the Commission and its advisory boards, as specified in Subsection 58-1-109(2).

(d) Bureau Manager. Unless otherwise specified in writing by the Construction Services Commission, the responsible bureau manager is designated as the presiding officer for conducting informal adjudicative proceedings specified in Subsections R156-46b-202(1)(a) through (d), (h), and (n).

(e) At the direction of a bureau manager, a licensing technician may sign an informal order in the name of the licensing technician provided the wording of the order has been approved in advance by the bureau manager and provided the caption "FOR THE BUREAU MANAGER" immediately precedes the licensing technician's signature.

(f) Plumbers Licensing Board. Except as set forth in Subsection (c) or as otherwise specified in writing by the commission, the Plumbers Licensing Board is designated as the presiding officer to serve as the fact finder and to issue recommended orders to the Construction Services Commission in formal evidentiary hearings associated with adjudicative proceedings involving persons licensed as or required to be licensed as plumbers.

(g) Electricians Licensing Board. Except as set forth in Subsection (c) or as otherwise specified in writing by the commission, the Electricians Licensing Board is designated as the presiding officer to serve as the fact finder and to issue recommended orders to the Construction Services Commission in formal evidentiary hearings associated with adjudicative proceedings involving persons licensed as or required to be licensed as electricians.

(h) Alarm System Security and Licensing Board. Except as set forth in Subsection (c) or as otherwise specified in writing by the Commission, the Alarm System Security and Licensing Board is designated as the presiding officer to serve as the fact finder and to issue recommended orders to the Construction Services Commission in formal evidentiary hearings associated with

adjudicative proceedings involving persons licensed as or required to be licensed as alarm companies or agents.

R156-1-111a. Qualifications for Tax Certificate - Definitions.

In addition to the definitions in Title 58, Chapter 1, as used in Title 58, Chapter 1, or in this rule:

(1) "Psychiatrist", as defined under Subsection 58-1-111(1)(d), is further defined to include a licensed physician who is board certified for a psychiatry specialization recognized by the American Board of Medical Specialties (ABMS) or the American Osteopathic Association's Bureau of Osteopathic Specialists (BOS).

(2) Under Subsection 58-1-111(1)(f)(ii), the definition of a "volunteer retired psychiatrist" is further defined to mean a physician or osteopathic physician licensed under Title 58, Chapter 81, Retired Volunteer Health Practitioner Act, who is previously or currently board certified for a psychiatry specialization recognized by the American Board of Medical Specialties (ABMS) or the American Osteopathic Association's Bureau of Osteopathic Specialists (BOS).

R156-1-111b. Qualifications for Tax Certificate - Application Requirements.

An applicant for a tax credit certificate under Section 58-1-111 shall provide to the Division:

(1) the original application made available on the Division's website, containing the signed attestation of compliance; and

(2) any additional documentation that may be required by the Division to verify the applicant's representations made in the application.

R156-1-404d. Diversion - Procedures.

(1) [Diversion committees shall complete the duties described in Subsections R156-1-404b(1) and (2) no]No later than 60 days following the referral of a licensee to the diversion committee for possible diversion, diversion committees shall complete the duties described in Subsection R156-1-404b(1) and (2).

(2) [The director shall accept or reject the diversion committee's recommendation no later than 30 days following receipt of the recommendation.

(3) [If the director finds that a licensee meets the qualifications for diversion and should be diverted,]Following the completion of diversion committee duties, the Division shall prepare and serve upon the licensee a proposed diversion agreement. The licensee shall have a period of time determined by the [diversion committee]Division not to exceed 30 days from the service of the proposed diversion agreement, to negotiate a final diversion agreement with the director. The final diversion agreement shall comply with Subsection[s] 58-1-404.

([4]3) If a final diversion agreement is not reached with the director within 30 days from service of the proposed diversion agreement, or if the director finds that the licensee does not meet the qualifications for diversion, the Division shall pursue appropriate disciplinary action against the licensee in accordance with Section 58-1-108.

([5]4) In accordance with Subsection 58-1-404(5), a licensee may be represented, at the licensee's discretion and

expense, by legal counsel during negotiations for diversion, at the time of execution of the diversion agreement, and at any hearing before the director relating to a diversion program.

KEY: diversion programs, licensing, supervision, evidentiary restrictions

Date of Enactment or Last Substantive Amendment: ~~July 11, 2016~~ 2017

Notice of Continuation: December 6, 2016

Authorizing, and Implemented or Interpreted Law: 58-1-106(1)(a); 58-1-308; 58-1-501(2)

**Commerce, Occupational and
Professional Licensing
R156-55c
Plumber Licensing Act Rule**

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 41298

FILED: 02/09/2017

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: With regards to amendments to Section R156-55c-102, this filing is recommended by the Plumbers Licensing Board (Board) and the Construction Services Commission (Commission). Its intent is to address issues the Board and Commission believe are needed to bring this rule into better alignment with the Utah Code, and to better protect public health, safety, and welfare. The first purpose of this filing is to clarify and further define certain plumbing terms, thereby ensuring consistency and proper enforcement of this rule. The second purpose of this filing is to make clear the scope of minor incidental plumbing work that may be performed by unlicensed individuals under Subsection 58-55-305(1)(k)(i). These amendments are due to Board and Commission concerns that the interpretation of what is "minor" and "incidental" has grown beyond the intent of the initial legislative exemption granted in the Utah Code. The particulars of this filing were decided after multiple meetings and revisions involving the Board, the Commission, the Division, and various individuals representing the interests of the plumbing industry. In March of 2016, the Plumbers Licensing Board discussed changes that were being proposed to "minor plumbing work that is incidental," as defined in Subsection R156-55c-102(2). The Board agreed with the proposed changes and placed the item on the Commission's agenda for the Commission to consider. In April of 2016, during the Commission meeting, discussion regarding these issues took place, and a motion was made to adopt the Incidental Plumbing Rule, as recommended by the Board. However, that motion was amended to leave the monetary amount allowed for minor plumbing work at the existing \$300 value in lieu of replacing it with the requested

\$100 amount. In August of 2016, after extensive consideration, the Division's Director issued a letter to the Commission in response to these proposed Incidental Plumbing Rule changes. The Director stated that he believed Utah would be best served by leaving the rule as it is, and that should the Commission desire to modify the rule, he would welcome additional discussion. In October of 2016, association representatives met with the Division wherein the concerns relating to the proposed changes were resolved. It was ultimately determined that the Division needed to be provided with a more complete definition of "minor plumbing work that is incidental." This decision was made to assist the Division with better enforcement and regulation of those activities classified as plumbing work. A revised definition of the minor incidental plumbing rule was agreed upon and prepared for the Commission's consideration. In November of 2016, the Commission discussed the issues and the revised proposal in detail, and after weighing input received from the Division, consideration of the facts, and applicable law, and input from various industry representatives, a motion was made to proceed with the proposed changes to the definition of "minor plumbing work that is incidental." Finally, in December of 2016, the Commission again reviewed and discussed the recommended changes to Section R156-55c-102 and voted to accept the proposed language as reflected in this filing.

SUMMARY OF THE RULE OR CHANGE: Subsection R156-55c-102(2) is modified to revise the definition of "minor plumbing work that is incidental" to include installation, as well as repair or replacement, of the plumbing appliances listed in Subsection R156-55c-102(2)(a). Further, Subsection R156-55c-102(2)(b) is modified to include only the repair or replacement of certain listed residential type plumbing appurtenances, fixtures, and systems, where the cost of the repair or replacement, including all labor and material and changes or additions to the agreed-upon work, does not exceed \$300. Finally, the terms plumbing appliances, appurtenances, fixtures, and systems, in Subsection R156-55c-102(4), are clarified to have the same meaning and interpretation as defined by Title 15A, State Construction and Fire Codes Act. In Section R156-55c-302b, the rule citation reference was updated in Subsection R156-55c-302b(2)(a). The rule citation reference was updated in Subsection R156-55c-302b(3).

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 58-55-101 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. Any costs incurred will be absorbed in the Division's current budget.
- ◆ **LOCAL GOVERNMENTS:** The proposed amendments do not apply to local governments. The amendments only apply to individuals who are licensed as plumbers, individuals who

may apply for licensure as a plumber, and individuals exempt from licensure under Subsection 58-55-305(1)(k)(i).

◆ **SMALL BUSINESSES:** The proposed amendments may apply to small business. First, the amendments may have a negative revenue impact for individuals exempt from licensure under Subsection 58-55-305(1)(k)(i) who are operating small businesses, as their ability to perform minor incidental plumbing work as defined in Subsection R156-55c-102(2) will be limited to projects in the approved list where the repair or replacement of plumbing appurtenances, fixtures and systems does not exceed \$300 in total value. This decrease in small business revenue may be slightly offset by the expansion to the scope of work allowing exempt individuals to install as well as repair and replace the plumbing appliances listed in Subsection R156-55c-102(2)(a). Similarly, small businesses who employ the services of an individual exempt from licensure under Subsection 58-55-305(1)(k)(i) may experience increased costs and a decrease in revenue if they previously could hire an individual exempt from licensure under Subsection 58-55-305(1)(k)(i) to perform any minor incidental plumbing under \$300 but now will be required to pay the costs associated with hiring a licensed plumber for minor incidental plumbing that is under \$300 not included in the approved list. This cost and any decrease in small business revenue may be slightly offset by the slight increase allowed in the scope of work, where exempt individuals may now install as well as repair and replace the plumbing appliances listed in Subsection R156-55c-102 (2) (a). Conversely, these proposed amendments may cause a corresponding increase in work and potential revenue for service plumbers that operate as small businesses, because they will be hired to do all of the plumbing work that will now fall outside of the scope of minor incidental plumbing. The aggregate impact on small business cannot be estimated as it will vary from business to business depending on circumstances.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** The proposed amendments will impact the following persons: 1) individuals exempt from licensure under Subsection 58-55-305(1)(k)(i); 2) individuals licensed as plumbers; 3) individuals who may apply for licensure as a plumber; and 4) consumers, including individual consumers as well as large companies who employ the services of a "handyman" individual exempt from licensure under Subsection 58-55-305(1)(k)(i). First, the amendments may have a negative revenue impact for individuals exempt from licensure under Subsection 58-55-305(1)(k)(i), as their ability to perform minor incidental plumbing work as defined in Subsection R156-55c-102(2) will be limited to projects in the approved list where the repair or replacement of plumbing appurtenances, fixtures and systems does not exceed \$300 in total value. This decrease in revenue may be slightly offset by a slight increase in their scope of work where exempt individuals will be allowed to install as well as repair and replace the plumbing appliances listed in Subsection R156-55c-102(2)(a).

Second, the amendments may cause licensed plumbers to experience a corresponding increase in work and potential revenue, because they will be hired to do all of the plumbing work that will now fall outside of the revised scope of minor incidental plumbing. Third, persons exempt from licensure who will now be prohibited from doing the type of minor incidental plumbing work that they have in the past, may either decide to apply to become licensed plumbers, or else stop doing exempt "handyman" work entirely. Finally, the proposed amendments may negatively affect consumers who previously could hire an individual exempt from licensure under Subsection 58-55-305(1)(k)(i), to perform any minor incidental plumbing under \$300. The consumer will now be required to pay the costs associated with hiring a licensed plumber for minor incidental plumbing that is under \$300 not included in the approved list. This negative impact may similarly be experienced by large companies employing the services of an individual exempt from licensure to perform minor incidental plumbing, as that individual's ability to perform such work will now be reduced, and the company will be required to hire a licensed plumber. Again, these costs may be slightly offset by the expanded scope of work that will allow exempt individuals to install as well as repair and replace the plumbing appliances listed in Subsection R156-55c-102(2)(a). The aggregate costs or savings for these persons cannot be estimated as it will vary from person to person depending on circumstances.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The proposed amendments will have a negative impact on revenue for an individual exempt from licensure under Subsection 58-55-305(1)(k)(i), who cannot perform certain minor incidental plumbing work as now defined. Additionally, these amendments may result in additional costs for a company, and for any individual consumer, who will now be required to employ a licensed plumber as opposed to an exempt "handyman" for certain minor incidental plumbing work. The Division is not able to estimate these individual impacts as they will vary from person to person depending on circumstances.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The proposed rule clarifies and further defines certain plumbing terms, making more clear the scope of "minor incidental plumbing work" that may be performed by unlicensed individuals under Subsection 58-55-305(1)(k)(i). This scope is reduced by adding a specific list of services that would qualify as minor incidental plumbing work, and the scope is expanded by adding original installation to the previous definition that included only repair or replacement. The income of both licensed plumbers and unlicensed persons are affected by these two changes to the definitions, benefiting one and restricting income of another, depending on the circumstances and the nature of the work to be performed. No specific impact to small business may be determined.

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:

◆ Steve Duncombe by phone at 801-530-6235, by FAX at 801-530-6511, or by Internet E-mail at sduncombe@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 03/31/2017

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:

◆ 03/29/2017 09:00 AM, Heber Wells Bldg, 160 E 300 S, Conference Room 474, Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 04/07/2017

AUTHORIZED BY: Mark Steinagel, Director

R156. Commerce, Occupational and Professional Licensing.

R156-55c. Plumber Licensing Act Rule.

R156-55c-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 55, as used in Title 58, Chapters 1 and 55 or this rule:

(1) "Immediate supervision", as used in Subsections 58-55-102(5) and 58-55-102(23) and this rule, means the apprentice and the supervising plumber are physically present on the same project or job site but are not required to be within sight of one another.

(2) "Minor plumbing work that is incidental", as used in Subsection 58-55-305(1)(k)(i) and this rule, means:

(a) installation, repair or replacement of the following residential type Plumbing Appliances~~[appliances]~~:

- (i) dishwashers;
- (ii) refrigerators;
- (iii) freezers;
- (iv) ice makers;
- (v) stoves;
- (vi) ranges;
- (vii) clothes washers;~~[and]~~
- (viii) clothes dryers; and

(b) repair or replacement of ~~[other plumbing fixtures and appliances inside the occupied space of a structure]~~the following residential type Plumbing Appurtenances, Fixtures and Systems, when the cost of the repair or replacement does not exceed \$300 in total value, including all labor and materials, and including all changes or additions to the contracted or agreed upon work~~[-]~~:

- ~~(i) tub or shower trim;~~
- ~~(ii) tub or shower valve;~~

~~(iii) toilet flush valve;~~

~~(iv) toilet removal and reset;~~

~~(v) garbage disposal;~~

~~(vi) kitchen or lavatory sink P-trap;~~

~~(vii) kitchen or lavatory faucet rebuild and install;~~

~~(viii) supply line replacement after the fixture valve; and~~

(3) "Minor plumbing work that is incidental", as used in Subsection 58-55-305(1)(k)(i), does not include installation or replacement of a water heater, or work to include the initial installation of Plumbing Appurtenances, Fixtures and Systems.

(4) Plumbing Appliances, Appurtenances, Fixtures, and Systems, as used in this rule, shall have the same meaning as defined by Title 15A, State Construction and Fire Codes Act.

([4]5) "Unprofessional conduct" as defined in Title 58, Chapters 1 and 55, is further defined in accordance with Subsection 58-1-203(1)(e), in Subsection R156-55c-501.

R156-55c-302b. Qualifications for Licensure - Examination Requirements.

In accordance with Subsections 58-1-203(2) and 58-1-301(3), the examination requirements for licensure in Subsection 58-55-302(1)(c)(i) are as follows:

(1) The applicant shall obtain a minimum score of 70% on the Utah Plumbers Licensing Examination that shall consist of a written section and practical section.

(2) Admission to the examinations is permitted after:

(a) the applicant has completed all requirements for licensure set forth in this section and in Sections R156-55c-302a and R156-55c-302[b]g; or

(b) the applicant has completed:

(i) the first semester of the fourth year of the apprentice education program set forth in Subsection R156-55c-302a(1)(a)(ii); and

(ii) not less than 6,000 hours of the experience required under Subsection R156-55c-302a(1)(a)(i).

(3) (a) If an applicant fails any section of the examination, the applicant shall retake that section.

(b) An applicant shall wait at least 25 days for the first two retakes, and thereafter shall wait 120 days between retakes.

(4) If an applicant passes any section of the examination but does not pass the entire examination, the passing score for that section shall be valid for one year from the pass date. After one year the applicant shall retake any previously passed section to support any subsequent application for licensure.

R156-55c-302c. Qualifications for Licensure - Master Supervisory Experience and Education Requirements.

In accordance with Subsections 58-55-302(3)(a)(i)(A) and 58-55-302(3)(b)(i), the minimum supervisory experience qualifications for licensure as a master plumber and residential master plumber are established as follows:

(1) An applicant shall demonstrate successful completion of 4000 hours of supervisory experience that includes each of the following categories and minimum number of hours:

- (a) supervising employees: 700 hours;
- (b) supervising construction projects: 700 hours;
- (c) cost/price management: 300 hours; and

(d) miscellaneous construction experience: 300 hours in any one or more of the following: accounting/financial principles, contract negotiations, conflict resolutions, marketing, human resources and government regulation pertaining to business and the construction trades.

(2) The following, or the substantial equivalent thereof, as determined by the Board in collaboration with the Commission, shall apply to the minimum supervisory experience qualifications established in Subsection (1):

(a) supervisory experience shall be obtained while licensed in the proper license classification as either a journeyman plumber or a residential journeyman plumber;

(b) supervisory experience shall be obtained as an employee of a licensed plumbing contractor, whose employer covers the applicant with workers compensation and unemployment insurances and deducts federal and state taxes from the applicant's compensation;

(c) all supervisory experience shall be under the immediate supervision of the applicant's employer; and

(d) no more than 2000 hours of experience may be earned during any 12-month period.

(3) An associate of applied science or similar or higher educational degree, in accordance with Subsection 58-55-302(3)(a)(i)(B), shall fulfill 2000 hours of the 4000 hour supervisory experience requirement. Such an applicant shall complete the remaining minimum 2000 hour supervisory experience listed above in Subsection R156-55c-302[d]c(1).

(a) The degree shall be accredited by one of the following:

- (i) Middle States Association of Colleges and Schools;
- (ii) New England Association of Colleges and Schools;
- (iii) North Central Association of Colleges and Schools;
- (iv) Northwest Commission on Colleges and Universities;

- (v) Southern Association of Colleges and Schools; or
- (vi) Western Association of Schools and Colleges.

(b) The degree shall be in one of the following courses of study:

- (i) accounting;
- (ii) apprenticeship;
- (iii) business management;
- (iv) communications;
- (v) computer systems and computer information systems;
- (vi) construction management;
- (vii) engineering;
- (viii) environmental technology;
- (ix) finance;
- (x) human resources; or
- (xi) marketing.

KEY: occupational licensing, licensing, plumbers, plumbing
Date of Enactment or Last Substantive Amendment:
~~[December 22, 2016]~~2017
Notice of Continuation: August 8, 2016
Authorizing, and Implemented or Interpreted Law: 58-1-106(1)
(a); 58-1-202(1)(a); 58-55-101

Education, Administration **R277-519** Educator Inservice Procedures and Credit

NOTICE OF PROPOSED RULE (Amendment)

DAR FILE NO.: 41318
 FILED: 02/14/2017

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Rule R277-519 is amended to provide technical and conforming changes consistent with the Utah Administrative Rulemaking Act and the Rulewriting Manual for Utah.

SUMMARY OF THE RULE OR CHANGE: The amendments to Rule R277-519 remove outdated definitions and terminology and makes technical and conforming changes consistent with the Utah Administrative Rulemaking Act and the Rulewriting Manual for Utah.

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

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** The amendments to Rule R277-519 remove outdated definitions and provide technical and conforming changes throughout the rule, which likely will not result in a cost or savings to the state budget.

◆ **LOCAL GOVERNMENTS:** The amendments to Rule R277-519 remove outdated definitions and provide technical and conforming changes throughout the rule, which likely will not result in a cost or savings to local government.

◆ **SMALL BUSINESSES:** The amendments to Rule R277-519 remove outdated definitions and provide technical and conforming changes throughout the rule, 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 R277-519 remove outdated definitions and provide technical and conforming changes throughout the rule, 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 R277-519 remove outdated definitions and provide technical and conforming changes throughout the rule, 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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 03/31/2017

THIS RULE MAY BECOME EFFECTIVE ON: 04/07/2017

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

R277. Education, Administration.

R277-519. Educator ~~[Inservice]~~ Professional Learning Procedures and Credit.

R277-519-~~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)~~ Subsection 53A-1-402(1)(a), which allows the Board to make rules regarding the qualifications of personnel providing direct student services and the certification of educators~~[-]~~; and

~~(c)~~ 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.

~~[B-](2)~~ The purpose of this rule is to establish definitions and standards for ~~[inservice instruction]~~ awarding credit for professional learning, especially as it relates to teacher certification.

R277-519-~~1~~2. Definitions.

~~[A-~~ "USOE" means the Utah State Office of Education.

~~B-~~ "Inservice" means training in which current teachers or individuals who have previously received a standard or basic teaching certificate may participate to renew a certificate, teach in another subject area or teach at another grade level.

~~C-~~ "Courses" or "workshops" means an academic experience led and evaluated by an instructor. Courses are scheduled over several weeks duration; workshops are completed within a week. Courses and workshops require outside readings or completion of other assignments or both.

~~D-~~ "Independent study" means an educational experience outside of courses or workshops. Independent study requires prior approval of the state or district professional development or inservice coordinator and a determination by that person of the requirements and credit warranted.

~~E-~~ "Conference" means an educational event with a varied agenda offering a choice of sessions."Professional learning" has the same meaning as provided in Subsection 53A-3-701(1).

R277-519-3. ~~[General Inservice]~~ Professional Learning Requirements for Course Submission.

~~[A-](1)~~ An LEA shall approve ~~p[P]~~ proposals for ~~[inservice classes]~~ professional learning. ~~[shall be approved at the district level and]~~

~~(2)~~ A professional learning proposal shall include:

~~(a)~~ a description of how the proposal provides fidelity to the professional learning standards as provided in Section 53A-3-701;

~~([+])b)~~ a descriptive outline of the ~~[class]~~ professional learning;

~~([2])c)~~ a schedule of meeting dates and times; and

~~([3])d)~~ ~~[a-]~~ professional ~~[vita]~~ qualifications of ~~[the]~~ each instructor~~[(s)]~~.

~~[B-](2)~~ An LEA or other organization approved by the Superintendent shall request ~~[A-]~~ approval ~~[of inservice]~~ for professional learning credit ~~[may be sought by:~~

~~(1)~~ written request from a private provider to the appropriate USOE subject specialist or school district at least two weeks prior to the beginning date of the scheduled inservice, or

~~(2)~~ a request ~~]~~ through the ~~[computerized inservice program]~~ online professional learning system connected to the ~~[USOE-]~~ online Board certification system.

~~(a)~~ The computerized process is available in most Utah school districts and area technology centers;

~~(b)~~ Such requests shall be

~~(3)~~ An LEA or other organization approved by the Superintendent shall make a request under Subsection (2)~~[made]~~ at least one week prior to the beginning of the scheduled ~~[inservice]~~ professional learning.

R277-519-4. ~~[Inservice]~~ Professional Learning Credit.

~~[A-~~ Credit is available in half-credit units, beginning with one half credit and up to three credits per educational experience.]

~~[B-](1)~~ ~~[Upon completion of the inservice experience,]~~ The Superintendent shall award credit ~~[shall be awarded]~~ upon completion of professional learning as follows:

~~(1)~~ Sponsor submits an alphabetized list of participants' names and social security numbers to a school district, the subject specific USOE section, or designated educational agency;

~~(2)~~ Subject specific USOE sections, district inservice coordinators, or designated educational agencies shall enter the names and social security numbers of the inservice participant on the computer listing screen. This information shall then be transferred by the USOE Certification Section to the individuals' certification files.

~~(3)~~ Certificates of Completion may be issued by individual school districts for teacher use, but such certificates shall not be honored by the USOE Certification Section as verification of inservice completion.

~~C. Credit for Specific Inservice Experiences]~~
~~(1)a [Courses and workshops: On the semester system,]one-half credit for seven to thirteen contact hours [equals one-half credit,]plus a two hour assigned learning task or reflection;~~
~~(b) one credit for fourteen to twenty contact[classroom] hours [equal one credit,]plus a four hour assigned learning task or reflection;~~
~~(2) Total credit for a professional learning course may not exceed 3 credits.~~
~~(2) Independent study: forty two hours equal one credit.~~
~~(3) Conferences: no specific credit awarded unless a conference could also satisfy the criteria for a workshop or independent study. If so, credit may be issued upon prior approval by the USOE Certification Section of the experience.~~
~~(4) Consistent with R277-519-4A, inservice credit is available in half-credit units.]~~

KEY: teacher certification, professional competency
Date of Enactment or Last Substantive Amendment: ~~[March 22, 1999]~~2017
Notice of Continuation: February 14, 2017
Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53A-1-402(1)(a); 53A-1-401(3)

Education, Administration
R277-916
Career and Technical Education
Introduction and Work-Based Learning
Programs

NOTICE OF PROPOSED RULE
 (Amendment)

DAR FILE NO.: 41319
 FILED: 02/14/2017

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Rule R277-916 is amended to provide updates to terminology; change references from "Career and Technical Education (CTE)" to "College and Career Awareness;" remove provisions regarding work-based learning out of this rule and into Rule R277-915; and provide technical and conforming changes consistent with the Utah Administrative Rulemaking Act and the Rulewriting Manual for Utah.

SUMMARY OF THE RULE OR CHANGE: The amendments to Rule R277-916 remove outdated definitions and terminology throughout the rule and provide technical and conforming changes consistent with the Utah Administrative Rulemaking Act and the Rulewriting Manual for Utah throughout the rule.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Art X, Sec 3 and Section 53A-1-401 and Section 53A-15-202 and Section 53A-17a-113

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** The amendments to Rule R277-916 remove outdated definitions and terminology and provide technical and conforming changes throughout the rule, which likely will not result in a cost or savings to the state budget.
- ◆ **LOCAL GOVERNMENTS:** The amendments to Rule R277-916 remove outdated definitions and terminology and provide technical and conforming changes throughout the rule, which likely will not result in a cost or savings to local government.
- ◆ **SMALL BUSINESSES:** The amendments to Rule R277-916 remove outdated definitions and terminology and provide technical and conforming changes throughout the rule, 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 R277-916 remove outdated definitions and terminology and provide technical and conforming changes throughout the rule, 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 R277-916 remove outdated definitions and terminology and provide technical and conforming changes throughout the rule, 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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 03/31/2017

THIS RULE MAY BECOME EFFECTIVE ON: 04/07/2017

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

R277. Education, Administration.**~~R277-916. [Career and Technical Education Introduction and Work-Based Learning Programs]College and Career Awareness.~~****R277-916-[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 the]over public education[system] in the Board[;];[by]

(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;

(c) Section 53A-15-202, which allows the Board to establish minimum standards for career and technical education programs in the public education system[;]; and

(d) Section 53A-17a-113, which directs the Board to distribute specific [amounts of]funds to LEAs.

[B-](2) The purpose of [F]this rule is to establish[es] standards and procedures for LEAs seeking to qualify for [Career and Technical Education Introduction and WBL]College and Career Awareness Program[s] funds administered by the Board.

R277-916-[4]2. Definitions.

[A-] "Board" means the Utah State Board of Education[.]

[B-](1)(a) "[~~CTE Intro~~]College and Career Awareness" means [~~Career and Technical Education Introduction which is~~] a 7th grade core [~~curriculum~~] course comprised of activities encouraging students to explore college and career opportunities [~~in Agriculture, Business, Family and Consumer Sciences, Health Science, Information Technology, Marketing, Economics, and Technology and Engineering Education. Career development activities are integrated throughout the curriculum~~].

(b) [~~The CTE Intro course~~] "College and Career Awareness" is coordinated with the Comprehensive Counseling and Guidance program.

[C-] "Cone" means a group of schools whose students feed a high school and schools and agencies which interact with the high school.

[D-] "Geographical Region" means one of the eight Career and Technical Education planning units: Bear River, Wasatch Front North, Wasatch Front South, Mountainland, Uintah Basin, Central, Southeast, and Southwest.

[E-] "LEA" means a local education agency which includes school boards/public school districts, and charter schools.

[F-] "USOE" means the Utah State Office of Education[.]

[G-](2) "Weighted Pupil Unit" or "[{WPU}]" means the unit of measure that is computed in accordance with [the]Title 53A, Chapter 17a, Minimum School Program Act, for the purpose of determining the costs of a program on a uniform basis for each LEA.

[H-](3) "Work-Based Learning" or "[{WBL}]" means [activities that involve teaching students a variety of skills used in business and industry through experiential career development experiences.]a continuum of awareness, exploration, preparation, and training activities that combine structured learning and authentic work experiences implemented through industry and education partnerships.

~~R277-916-3. Disbursement of Funds[--- Career and Technical Introduction].~~

[A-](1)(a) [~~CTE Intro~~]An LEA shall utilize College and Career Awareness funds [shall be utilized]to [update the CTE Intro curriculum,]purchase and maintain needed equipment and supplies[~~, field test new CTE Intro program modifications, and~~]for the course, subject to the following:

(i) LEA expenditures shall be reasonable and necessary to sustain the College and Career Awareness program;

(ii) LEA expenditures shall be adequately documented;

(iii) an LEA may not use funds to cover the cost of goods and services for personal use;

(iv) an LEA may not use funds for costs associated with:

(A) entertainment;

(B) amusement;

(C) diversion; and

(D) social activities; and

(v) an LEA may only use funds for costs that will directly achieve program outcomes for students.

(b) Notwithstanding, Subsection (1)(a), an LEA may use up to 15% of available funds[~~provide ongoing professional development~~] for teachers, counselors, and administrators to participate in on-going professional development sponsored by the Board.

[B-](2) An LEA[s] shall meet all [~~CTE Intro~~] requirements of this R277-916 in order to receive College and Career Awareness funding.

[C-](3) College and Career Awareness[~~CTE Intro~~] funds shall be allocated to an LEA[s] for an approved school[s] using a base amount per school.

[D-](4) The Superintendent shall distribute [F]funds remaining after funds are distributed under Subsection [R277-916-3C](3), [~~above, shall be distributed~~]based on enrollment in grade 7 to approved schools based on the prior year's October 1 enrollment report for the previous year.

[E-](5) An LEA[s] shall annually complete a funding application with assurances of each school meeting [~~CTE Intro~~]College and Career Awareness standards.

[F-](6) The Superintendent shall annually provide training to [P]personnel from each [~~selected~~]school receiving funds under this Subsection (3). [~~shall participate in USOE training.~~]

[G-](7) The Superintendent shall allocate continued funding to an LEA[s] [~~shall receive continued USOE support and funding~~]based on the LEA's success in meeting established standards.

[H-] LEAs shall apply for funding annually[.]

~~R277-916-4. [Career and Technical Education Introduction ---] Standards.~~

[A-] The Career and Technical Education Introduction funds may be used to:

(1) update the CTE Intro curriculum;

(2) update and maintain equipment and supplies, including consumables for the CTE Intro course;

(3) implement new CTE Intro program modifications; and

(4) provide support for USOE sponsored professional development activities for teachers, counselors, and administrators[.]

~~(B)(1) An LEA[s] may qualify for [Career and Technical Education Introduction]College and Career Awareness funds consistent with the following:~~

~~(1)a [CTE Intro]College and Career Awareness program funds [shall]may not be used for personnel costs;~~

~~(2)b a [S]school[s] shall teach 180 days of [CTE Intro core curriculum]College and Career Awareness as a stand alone course with distinct credit, incorporating each element set forth in Subsection R277-916-2(1);[which includes the components and objectives of Agriculture, Business, Family and Consumer Sciences, Information Technology, Health Science, Marketing, Economics, Technology and Engineering Education, and Career Guidance and Development];~~

~~(3)c [All CTE Intro]College and Career Awareness teachers and counselors [at the schools]shall have appropriate licenses and endorsements;~~

~~(4) All CTE Intro team members shall agree to assist in the development and implementation of new CTE Intro activities and materials;~~

~~(5)d a [S]school[s] shall utilize the services of [the]a WBL coordinator, where available, to integrate grade level appropriate [work-based learning]WBL activities into [CTE Intro]College and Career Awareness.~~

~~(e) if a [Where] WBL [C]coordinator[s] [are]is not available, the [CTE Intro]College and Career Awareness team shall plan and provide[the] WBL activities;~~

~~(6)f a [S]school[s] shall integrate [grade level appropriate]career development [content]applications into the [CTE Intro activities]College and Career Awareness program and use the services of [the]a counselor in the program;~~

~~(7)g [The LEA shall utilize the full allocation of funds as provided under R277-916-4. The]an LEA shall support staff development activities [necessary]relevant to the [C]core [CTE Intro]College and Career Awareness content [as]adopted by the Board;[and]~~

~~(8)h [All CTE Intro related]College and Career Awareness personnel in [the]a school shall fully participate [fully] in:~~

~~(i) evaluating the current program[;];~~

~~(ii) recommending changes or modifications[;]; and~~

~~(iii) pilot testing and implementing new activities, materials, and resources[-]; and~~

~~(9) All CTE Intro related personnel in the school shall participate in annual planning and accountability for these funds.;~~

~~(10)i [All CTE Intro related]College and Career Awareness personnel shall [be part of]participate in the CTE Program Approval evaluation every [six]three years.~~

~~[R277-916-5. Work-Based Learning – Disbursement of Funds.~~

~~A. All public elementary, secondary, and postsecondary/adult schools shall be aligned by cone and grouped within the LEA.~~

~~B. The proportion of total WBL funding allocated for each participating LEA shall remain the same as the previous year unless the LEA discontinues the program or LEA proportions are adjusted by the Board.~~

~~C. State appropriated WBL funds require an equal match of funds provided by participating LEAs.~~

~~R277-916-6. Work-Based Learning – Standards.~~

~~A. WBL shall be integrated into all levels of the educational delivery system and shall be coordinated within the cones of the LEA and among regions.~~

~~B. To be eligible for WBL funds, LEAs shall:~~

~~(1) have the program approved by the local board.~~

~~(2) employ licensed WBL coordination personnel with salaries/benefits matched by the local recipient of funds.~~

~~(3) document that a WBL committee representing all schools within the cone has been created, is functioning effectively and regularly addresses WBL issues.~~

~~(4) conduct WBL activities utilizing information from business and industry, administrators, teachers, counselors, parents and students.~~

~~(5) develop work-based preparation, participation, and evaluation activities for students and teachers involved in all WBL cone activities.~~

~~(6) maintain evidence that WBL components have been integrated and coordinated with elementary career awareness, secondary career exploration, integrated core curriculum activities, CTE Intro and comprehensive guidance and counseling.~~

~~(7) maintain evidence of WBL activities developed in coordination with IEP/SEP/SEOP/504 requirements in each cone and all WBL assurances.~~

~~(8) require the inclusion of all student groups within the cone in career development and preparation.~~

~~(9) demonstrate WBL coordination with employers and with other school/community development activities.~~

~~(10) verify sufficient budget for a WBL coordinator, facilities, materials, equipment, and support staff is available.~~

~~(11) participate in initial state-sponsored WBL coordination professional development and in periodic ongoing coordination and professional development activities.~~

~~(12) require that the WBL team utilize a database system developed by the LEA for the LEA's specific needs.~~

~~(13) participate in the CTE Program Approval evaluation every six years.;~~

KEY: public schools, [work-based learning programs*]college and career awareness

Date of Enactment or Last Substantive Amendment: [May 8, 2012]2017

Notice of Continuation: February 14, 2017

Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53A-1-401; 53A-15-202; 53A-17a-113

Environmental Quality, Air Quality

R307-304

Industrial Solvent Use

NOTICE OF PROPOSED RULE

(New Rule)

DAR FILE NO.: 41320

FILED: 02/15/2017

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this rule is to create a new rule that regulates industrial solvent cleaning operations and general solvent use. These activities are currently regulated under Rule R307-335. This new rule is being proposed to achieve further volatile organic compound (VOC) emissions reductions that are required by the Clean Air Act and the serious area PM2.5 State Implementation Plan.

SUMMARY OF THE RULE OR CHANGE: The proposed rule will move the industrial solvent cleaning requirements in Rule R307-335 to this rule, Rule R307-304. Applicability of this rule will also lower the threshold for gallons of solvent used to 55 gallons or more per year under Section R307-304-2. (Editor's Note: The proposed amendment to Rule R307-335 is under Filing No. 41300 in this issue, March 1, 2017, of the Bulletin.)

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 19-2-104(1)

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** There are no anticipated costs or saving to the state budget because the rule is regulating solvent cleaning operations that use 55 gallons or more of VOC containing solvent products a year. This does not describe the state.

◆ **LOCAL GOVERNMENTS:** There are no anticipated costs or saving to local governments because the rule is regulating solvent cleaning operations that use 55 gallons or more of VOC containing solvent products a year. This does not describe the local governments.

◆ **SMALL BUSINESSES:** There are no anticipated costs or saving to small businesses. Small businesses that use VOC containing solvent products for solvent cleaning operations and general solvent usage are likely already regulated under Rule R307-335. The content limits have not changed. Due to the lower threshold for applicability, more people may be regulated by this rule than are currently regulated under Rule R307-335. The cost per ton of emissions reduced for these additional sources will be about \$4.36 per ton of VOCs removed.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There will likely be no costs or savings to "other persons" because the applicability threshold is set at a level that is meant to exclude all hobbyists that are not part of a business or governmental entity.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The compliance costs will be the same as they were when these requirements were originally included in Rule R307-335. The cost per ton of emissions reduced as a result of this rule will be about \$4.36 per ton of VOCs removed. A greater amount of product will result in a greater total cost.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There will likely be no fiscal impact on most businesses. Most of the businesses that will be regulated under this rule are already regulated under Rule R307-335. The content limits will not change. If there are additional businesses that will be regulated under this rule, the cost per ton of emissions reduced for these additional sources will be about \$4.36 per ton of VOCs removed.

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

ENVIRONMENTAL QUALITY
AIR QUALITY
FOURTH FLOOR
195 N 1950 W
SALT LAKE CITY, UT 84116-3085
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Ryan Stephens by phone at 801-536-4419, by FAX at 801-536-0085, or by Internet E-mail at rstephens@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 03/31/2017

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:

◆ 03/16/2017 10:30 AM, Utah Division of Air Quality, 195 N 1950 W, Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 04/07/2017

AUTHORIZED BY: Bryce Bird, Director

R307. Environmental Quality, Air Quality.**R307-304. Industrial Solvent Use.****R307-304-1. Purpose.**

The purpose of R307-304 is to limit volatile organic compound (VOC) emissions from industrial solvent cleaning operations and general solvent usage.

R307-304-2. Applicability.

R307-304 applies to an owner or operator using 55 gallons or more a year of VOC containing solvent products for solvent cleaning operations and general solvent usage that are located in Box Elder, Cache, Davis, Salt Lake, Tooele, Utah and Weber counties.

R307-304-3. Definitions.

The following additional definitions apply to R307-304:
"General solvent usage" means the use of solvents containing any VOC, or combinations of VOCs that are not otherwise used for "industrial solvent cleaning."

"Industrial solvent cleaning" means operations performed using a liquid that contains any VOC, or combination of VOCs, which is used to clean parts, tools, machinery, equipment and work areas. Cleaning operations include, but are not limited to, spraying, wiping, flushing, and purging.

R307-304-4. Exemptions.

(1) The requirements of R307-304 do not apply to the coating operations that are regulated under R307-343 through R307-355.

(2) The following operations are exempt from the requirements of R307-304: shipbuilding and repair and fiberglass boat manufacturing materials.

(3) Operations that are exclusively covered by Department of Defense military technical data and performed by a Department of Defense contractor and/or on site at installations owned and/or operated by the United States Armed Forces are exempt from the requirements of R307-304.

(4) Janitorial cleaning, including graffiti removal, is exempt from the requirements of R307-304.

R307-304-5. VOC Content Limits.

No owner or operator shall use solvent products with a VOC content in excess of the amounts specified in Table 1, unless the owner or operator uses an add-on control device as specified in R307-304-7.

TABLE 1

Solvent Cleaning VOC Limits (excluding water and exempt solvents from the definition of volatile organic compounds found in R307-101-2)

Solvent Cleaning Category	VOC Limit (lb/gal) (g/L)	
Coatings, adhesives and ink manufacturing	4.2	500
Electronic parts and components	4.2	500
General miscellaneous cleaning and solvent use	2.5	300
Medical devices and pharmaceutical		
Tools, equipment and machinery	6.7	800
General surface cleaning	5.0	600
Screening printing operations	4.2	500
Semiconductor tools, maintenance and equipment cleaning	6.7	800

R307-304-6. Work Practices.

(1) An owner or operator shall:

(a) cover open containers of solvent products; and

(b) store used applicators and shop towels in closed fireproof containers.

R307-304-7. Add-on Emission Control Systems Operations.

(1) The add-on control device must have an emission control system designed to have an overall capture and control efficiency of at least 85%. Determination of overall capture and control efficiency shall be determined using EPA approved methods, as follows:

(a) The capture efficiency of a VOC emission control system's VOC collection device shall be determined according to EPA's "Guidelines for Determining Capture Efficiency," January 9, 1995 and 40 CFR Part 51, Appendix M, Methods 204-204F, as applicable.

(b) The control efficiency of a VOC emission control system's VOC control device shall be determined using test methods in Appendices A-1, A-6, and A-7 to 40 CFR Part 60, for measuring flow rates, total gaseous organic concentrations, or emissions of exempt compounds, as applicable.

(c) An alternative test method may be substituted for the preceding test methods after review and approval by the EPA Administrator.

R307-304-8. Recordkeeping.

(1) The owner or operator shall maintain, for a minimum of two years, records of the following:

(a) the VOC content of the solvent product applied; and

(b) if an add-on control device is used, key system parameters necessary to ensure compliance with R307-304-7. Key system parameters shall include, but are not limited to, temperature, pressure, flow rates, and an inspection schedule. Key inspection parameters shall be in accordance with the manufacturer's recommendations, and as required to demonstrate operations are providing continuous emission reduction from the source during all periods that the operations cause emissions from the source.

(2) Records shall be available to the director upon request.

KEY: air pollution, solvent cleaning, solvent use
Date of Enactment or Last Substantive Amendment: 2017
Authorizing, and Implemented or Interpreted Law: 19-2-104(1)
(a)

Environmental Quality, Air Quality
R307-335
 Degreasing and Solvent Cleaning
 Operations

NOTICE OF PROPOSED RULE
 (Amendment)
 DAR FILE NO.: 41300
 FILED: 02/10/2017

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of the rule change is to remove the sections related to industrial solvent cleaning. These sections are being removed because a new rule is being proposed to regulate solvent cleaning.

SUMMARY OF THE RULE OR CHANGE: The changes include the removal of everything in the rule related to industrial solvent cleaning. This includes the removal of Sections R307-335-7 through R307-335-8 to new Rule R307-304. (Editor's Note: The proposed new Rule R307-304 is under Filing No. 41320 in this issue, March 1, 2017, of the Bulletin.)

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 19-2-104(1)

ANTICIPATED COST OR SAVINGS TO:

- ◆ THE STATE BUDGET: There are no anticipated costs or savings to the state budget because the rule is removing requirements related to solvent cleaning operations. It is not adding any new, affirmative requirements.
- ◆ LOCAL GOVERNMENTS: There are no anticipated costs or savings to local governments because the rule is removing requirements related to solvent cleaning operations. It is not adding any new, affirmative requirements.
- ◆ SMALL BUSINESSES: There are no anticipated costs or savings to small businesses because the rule is removing requirements related to solvent cleaning operations. It is not adding any new, affirmative requirements.
- ◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: There are no anticipated costs or savings to "other persons" because the rule is removing requirements related to solvent cleaning operations. It is not adding any new, affirmative requirements.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs because the rule is removing requirements related to solvent cleaning operations. It is not adding any affirmative requirements.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There will be no fiscal impact on businesses as a result of this rule change because the rule is removing requirements related to solvent cleaning operations. It is not adding any new, affirmative requirements.

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

ENVIRONMENTAL QUALITY
AIR QUALITY
FOURTH FLOOR
195 N 1950 W
SALT LAKE CITY, UT 84116-3085
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ Ryan Stephens by phone at 801-536-4419, by FAX at 801-536-0085, or by Internet E-mail at rstephens@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 03/31/2017

THIS RULE MAY BECOME EFFECTIVE ON: 04/07/2017

AUTHORIZED BY: Bryce Bird, Director

R307. Environmental Quality, Air Quality.

R307-335. Degreasing ~~and Solvent Cleaning Operations~~.

R307-335-1. Purpose.

The purpose of this rule is to limit volatile organic compound (VOC) emission from degreasing ~~and solvent cleaning~~ operations.

R307-335-2. Applicability.

R307-335 applies to ~~all~~ degreasing ~~or solvent cleaning~~ operations that use VOCs and that are located in ~~PM10 and PM2.5 nonattainment and maintenance plan areas as defined in 40 CFR 81.345 (July 1, 2011)~~ Box Elder, Cache, Davis, Salt Lake, Tooele, Utah, or Weber counties.

R307-335-3. Definitions.

The following additional definitions apply to R307-335:

"Batch open top vapor degreasing" means the batch process of cleaning and removing grease and soils from metal surfaces by condensing hot solvent vapor on the colder metal parts.

"Cold cleaning" means the batch process of cleaning and removing soils from metal surfaces by spraying, brushing, flushing or immersing while maintaining the solvent below its boiling point.

"Conveyorized degreasing" means the continuous process of cleaning and removing greases and soils from metal surfaces by using either cold or vaporized solvents.

~~"Department of Defense military technical data" means a specification that specifies design requirements, such as materials to be used, how a requirement is to be achieved, or how an item is to be fabricated or constructed.~~

"Freeboard ratio" means the freeboard height (distance between solvent line and top of container) divided by the width of the degreaser.

~~"Industrial solvent cleaning" means operations performed using a liquid that contains any VOC, or combination of VOCs, which is used to clean parts, tools, machinery, equipment and work areas. Cleaning operations include, but are not limited to, spraying, wiping, flushing, and purging.~~

"Open top vapor degreaser" means the batch process of cleaning and removing soils from metal surfaces by condensing low solvent vapor on the colder metal parts.

~~"Separation operation" means any process that separates a mixture of compounds and solvents into two or more components. Specific mechanisms include extraction, centrifugation, filtration, and crystallization.~~

~~"Solvent metal cleaning" means the process of cleaning soils from metal surfaces by cold cleaning, open top vapor degreasers, or conveyorized degreasing.~~

R307-335-4. Cold Cleaning Facilities.

No owner or operator shall operate a degreasing or solvent cleaning operation unless conditions in R307-335-4(1) through (7) are met.

(1) A cover shall be installed which shall remain closed except during actual loading, unloading or handling of parts in cleaner. The cover shall be designed so that it can be easily operated with one hand if:

- (a) The volatility of the solvent is greater than 2 kPa (15 mm Hg or 0.3 psi) measured at 38 degrees C (100 degrees F),
 - (b) The solvent is agitated, or
 - (c) The solvent is heated.
- (2) An internal draining rack for cleaned parts shall be installed on which parts shall be drained until all dripping ceases. If the volatility of the solvent is greater than 4.3 kPa (32 mm Hg at 38 degrees C (100 degrees F)), the drainage facility must be internal, so that parts are enclosed under the cover while draining. The drainage facility may be external for applications where an internal type cannot fit into the cleaning system.
- (3) Waste or used solvent shall be stored in covered containers.
- (4) Tanks, containers and all associated equipment shall be maintained in good operating condition, and leaks shall be repaired immediately or the degreaser shall be shutdown.
- (5) Written procedures for the operation and maintenance of the degreasing or solvent cleaning equipment shall be permanently posted in an accessible and conspicuous location near the equipment.
- (6) If the solvent volatility is greater than 4.3 kPa (33 mm Hg or 0.6 psi) measured at 38 degrees C (100 degrees F), or if solvent is heated above 50 degrees C (120 degrees F), then one of the following control devices shall be used:
- (a) Freeboard that gives a freeboard ratio greater than 0.7;
 - (b) Water cover if the solvent is insoluble in and heavier than water); or
 - (c) Other systems of equivalent control, such as a refrigerated chiller or carbon adsorption.
- (7) If used, the solvent spray shall be a solid fluid stream at a pressure that does not cause excessive splashing and may not be a fine, atomized or shower type spray.

R307-335-5. Open Top Vapor Degreasers.

- Owners or operators of open top vapor degreasers shall, in addition to meeting the requirements of R307-335-4(3), (4) and (5),
- (1) Equip the vapor degreaser with a cover that can be opened and closed without disturbing the vapor zone. The cover shall be closed except when processing work loads through the degreaser;
 - (2) Install one of the following control devices:
 - (a) Equipment necessary to sustain:
 - (i) A freeboard ratio greater than or equal to 0.75, and
 - (ii) A powered cover if the degreaser opening is greater than 1 square meter (10.8 square feet),
 - (b) Refrigerated chiller,
 - (c) Enclosed design (cover or door opens only when the dry part is actually entering or exiting the degreaser),
 - (d) Carbon adsorption system, with ventilation greater than or equal to 15 cubic meters per minute per square meter (50 cubic feet per minute per square foot) of air/vapor area when cover is open and exhausting less than 25 parts per million of solvent averaged over one complete adsorption cycle;
 - (3) Minimize solvent carryout by:
 - (a) Racking parts to allow complete drainage,
 - (b) Moving parts in and out of the degreaser at less than 3.3 meters per minute (11 feet per minute),

- (c) Holding the parts in the vapor zone at least 30 seconds or until condensation ceases,
 - (d) Tipping out any pool of solvent on the cleaned parts before removal, and
 - (e) Allowing the parts to dry within the degreaser for at least 15 seconds or until visibly dry.
- (4) Spray parts only in or below the vapor level;
 - (5) Not use ventilation fans near the degreaser opening, nor provide exhaust ventilation exceeding 20 cubic meters per minute per square meter (65 cubic feet per minute per square foot) in degreaser open area, unless necessary to meet state and federal occupational, health, and safety requirements.
 - (6) Not degrease porous or absorbent materials, such as cloth, leather, wood or rope;
 - (7) Not allow work loads to occupy more than half of the degreaser's open top area;
 - (8) Ensure that solvent is not visually detectable in water exiting the water separator;
 - (9) Install safety switches on the following:
 - (a) Condenser flow switch and thermostat (shuts off sump heat if condenser coolant is either not circulating or too warm); and
 - (b) Spray switch (shuts off spray pump if the vapor level drops excessively, i.e., greater than 10 cm (4 inches)).
 - (10) Open top vapor degreasers with an open area smaller than one square meter (10.8 square feet) are exempt from R307-335-5(2)(b) and (d).

R307-335-6. ConveyORIZED Degreasers.

- Owners and operators of conveyORIZED degreasers shall, in addition to meeting the requirements of R307-335-4(3), (4) and (5) and R307-335-5(5):
- (1) Install one of the following control devices for conveyORIZED degreasers with an air/vapor interface equal to or greater than two square meters (21.5 square feet):
 - (a) Refrigerated chiller; or
 - (b) Carbon adsorption system, with ventilation greater than or equal to 15 cubic meters per minute per square meter (50 cubic feet per minute per square foot) of air/vapor area when downtime covers are open, and exhausting less than 25 parts per million of solvent, by volume, averaged over a complete adsorption cycle.
 - (2) Equip the cleaner with equipment, such as a drying tunnel or rotating (tumbling) basket, sufficient to prevent cleaned parts from carrying out solvent liquid or vapor.
 - (3) Provide downtime covers for closing off the entrance and exit during shutdown hours. Ensure that down-time cover is placed over entrances and exits of conveyORIZED degreasers immediately after the conveyor and exhaust are shut down and is removed just before they are started up.
 - (4) Minimize carryout emissions by racking parts for best drainage and maintaining the vertical conveyor speed at less than 3.3 meters per minute (11 feet per minute).
 - (5) Minimize openings: Entrances and exits should silhouette work loads so that the average clearance (between parts and the edge of the degreaser opening) is either less than 10 cm (4 inches) or less than 10% of the width of the opening.

- (6) Install safety switches on the following:
 - (a) Condenser flow switch and thermostat - shuts off sump heat if coolant is either not circulating or too warm;
 - (b) Spray switch - shuts off spray pump or conveyor if the vapor level drops excessively, i.e., greater than 10 cm or (4 inches); and
 - (c) Vapor level control thermostat - shuts off sump level if vapor level rises too high.
- (7) Ensure that solvent is not visibly detectable in the water exiting the water separator.

[R307-335-7. Industrial Solvent Cleaning.

- ~~(1) Exemptions. The requirements of R307-335-7 do not apply to aerospace, wood furniture, shipbuilding and repair, flat wood paneling, large appliance, metal furniture, paper film and foil, plastic parts, miscellaneous metal parts coatings and light autobody and truck assembly coatings, flexible packaging, lithographic and letterpress printing materials, fiberglass boat manufacturing materials, and operations that are exclusively covered by Department of Defense military technical data and performed by a Department of Defense contractor and/or on site at installations owned and/or operated by the United States Armed Forces.~~
- ~~(2) Operators of industrial solvent cleaning that emit 15 pounds of VOCs or more per day from industrial solvent cleaning operations, shall reduce VOC emissions from the use, handling, storage, and disposal of cleaning solvents and shop towels by implementing the following work practices:

 - ~~(a) Covering open containers; and~~
 - ~~(b) Storing used applicators and shop towels in closed fire proof containers, and~~
 - ~~(c) Limiting VOC emissions by either:

 - ~~(i) Using solvents (excluding water and solvents exempt from the definition of volatile organic compounds found in R307-101-2) with a VOC limit in Table 1; or~~
 - ~~(ii) Installing an emission control system designed to have an overall capture and control efficiency of at least 85%.~~~~~~

TABLE 1

Solvent Cleaning VOC Limits

Solvent Cleaning Category	VOC Limit (lb/gal)
Coatings, adhesives and ink manufacturing	4.2
Electronic parts and components	4.2
General miscellaneous cleaning	2.5
Medical devices and pharmaceutical	
Tools, equipment and machinery	6.7
General surface cleaning	5.0
Screening printing operations	4.2
Semiconductor tools, maintenance and equipment	
Cleaning	6.7

R307-335-8. Add-on Emission Control Systems Operations.

- ~~(1) Determination of overall capture and control efficiency shall be determined using EPA approved methods, as follows:

 - ~~(a) The capture efficiency of a VOC emission control system's VOC collection device shall be determined according to EPA's "Guidelines for Determining Capture Efficiency," January 9, 1995 and 40 CFR Part 51, Appendix M, Methods 204-204F, as applicable.~~~~

- ~~(b) The control efficiency of a VOC emission control system's VOC control device shall be determined using test methods in Appendices A-1, A-6, and A-7 to 40 CFR Part 60, for measuring flow rates, total gaseous organic concentrations, or emissions of exempt compounds, as applicable.~~
- ~~(c) An alternative test method may be substituted for the preceding test methods after review and approval by the EPA Administrator.~~
- ~~(2) The owner or operator of a control system shall provide documentation that the emission control system will attain the requirements of R307-335-7(2)(c)(ii).~~
- ~~(3) The owner or operator shall maintain records of key system parameters necessary to ensure compliance with R307-335-7. Key system parameters may include, but are not limited to, temperature, pressure and flow rates. Operator inspection schedule, monitoring, recordkeeping, and key parameters shall be in accordance with the manufacturer's recommendations, and as required to demonstrate operations are providing continuous emission reduction from the source during all periods that the operations cause emissions from the source.~~
- ~~(4) The owner or operator shall maintain for a minimum of two years records of operating and maintenance sufficient to demonstrate that the equipment is being operated and maintained in accordance with the manufacturer recommendations.]~~

R307-335-[9]7. Recordkeeping.

The owner or operator shall maintain, for a minimum of two years, appropriate records [of the solvent VOC content applied and the physical characteristics that] to demonstrate compliance with R307-335[-7(2)].

KEY: air pollution, degreasing[, solvent cleaning]

Date of Enactment or Last Substantive Amendment: [December 1, 2014]2017

Notice of Continuation: January 27, 2017

Authorizing, and Implemented or Interpreted Law: 19-2-104(1) (a)

Health, Health Care Financing,
Coverage and Reimbursement Policy
R414-61-2
Incorporation by Reference

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 41290
FILED: 02/07/2017

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is to incorporate by reference changes to the Physical Disabilities Waiver effective 07/01/2016.

SUMMARY OF THE RULE OR CHANGE: This amendment incorporates by reference changes to the Physical Disabilities Waiver effective 07/01/2016. These changes implement new quality assurance standards that revise all performance measures within these waivers to further safeguard waiver participants.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 1915(c) of the Social Security Act and Section 26-1-5 and Section 26-18-3

MATERIALS INCORPORATED BY REFERENCE:

- ◆ Updates Physical Disabilities Waiver, published by Centers for Medicare and Medicaid Services, 07/01/2016

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** There is no impact to the state budget because waiver services remain unaffected by this update.
- ◆ **LOCAL GOVERNMENTS:** There is no impact to local governments because they do not fund or provide waiver services for Medicaid recipients.
- ◆ **SMALL BUSINESSES:** There is no impact to small businesses because waiver services remain unaffected by this update.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There is no impact to Medicaid providers and to Medicaid recipients because waiver services remain unaffected by this update.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs to a single Medicaid provider or to a Medicaid recipient because waiver services remain unaffected by this update.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There is no fiscal impact on business because waiver services are not affected by the update.

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 by 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 03/31/2017

THIS RULE MAY BECOME EFFECTIVE ON: 04/07/2017

AUTHORIZED BY: Joseph Miner, MD, Executive Director

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

R414-61. Home and Community-Based Services Waivers.

R414-61-2. Incorporation by Reference.

The Department incorporates by reference the following home and community-based services waivers:

- (1) Waiver for Technology Dependent/Medically Fragile Individuals, effective July 1, 2013;
 - (2) Waiver for Individuals Age 65 or Older, effective July 1, 2015;
 - (3) Waiver for Individuals with Acquired Brain Injuries, effective July 1, 2014;
 - (4) Waiver for Individuals with Physical Disabilities, effective July 1, 201[+]~~6~~;
 - (5) Community Supports Waiver for Individuals with Intellectual Disabilities and Other Related Conditions, effective July 1, 2015;
 - (6) New Choices Waiver, effective July 1, 2015;
 - (7) Medicaid Autism Waiver, effective October 1, 2015;
- and
- (8) Medically Complex Children's Waiver, effective October 1, 2015.

These documents are available for public inspection during business hours at the Utah Department of Health, Division of Medicaid and Health Financing, located at 288 North 1460 West, Salt Lake City, UT, 84114-3102.

KEY: Medicaid

Date of Enactment or Last Substantive Amendment: [~~November 25, 2015~~]**2017**

Notice of Continuation: October 30, 2014

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

Health, Family Health and
Preparedness, Licensing
R432-100
General Hospital Standards

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 41324

FILED: 02/15/2017

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this rule amendment is to add requirements to allow for a registered dietitian to write diet orders in a hospital setting. As well as to amend incorrect references and wording. The Health Facility Committee reviewed and approved these rule amendments on 09/14/2016 and then again on 02/08/2017.

SUMMARY OF THE RULE OR CHANGE: The rule amendment is to add requirements to allow for a registered dietitian to write diet orders in a hospital setting as authorized by facility medical staff and in accordance with facility policy. This amendment also corrects many outdated references and corrects errors. A previous rule amendment was opened for public comment, and the Utah Medical Association and the Utah Academy of Nutrition and Dietetics both requested a modification of the wording in the amendment. The Division did not make the rule effective and has completed this second amendment that was reviewed and approved by the Health Facility Committee on 02/08/2017. Representatives from both the Utah Medical Association and the Utah Academy of Nutrition and Dietetics attended and participated in the discussion.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Title 26, Chapter 21

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** There is no impact to the state budget because there will be no change in current practice.
- ◆ **LOCAL GOVERNMENTS:** There is no impact to the local government budget because there will be no change in current practice.
- ◆ **SMALL BUSINESSES:** There is no impact to the small businesses budget because there will be no change in current practice.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There is no impact to businesses, individuals, local governments, and persons that are not small businesses because there will be no change in current practice.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There is no impact to affected persons because there will be no change in current practice.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There is no fiscal impact to business because there will be no change in current practice.

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

HEALTH
FAMILY HEALTH AND PREPAREDNESS,
LICENSING
3760 S HIGHLAND DR
SALT LAKE CITY, UT 84106

or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ Carmen Richins by phone at 801-273-2802, by FAX at 801-274-0658, or by Internet E-mail at carmenrichins@utah.gov
- ◆ Joel Hoffman by phone at 801-273-2804, by FAX at 801-274-0658, or by Internet E-mail at jhoffman@utah.gov or by mail at PO Box 142003, Salt Lake City, UT 84114-2003

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 03/31/2017

THIS RULE MAY BECOME EFFECTIVE ON: 04/07/2017

AUTHORIZED BY: Joseph Miner, MD, Executive Director

R432. Health, Family Health and Preparedness, Licensing.**R432-100. General Hospital Standards.****R432-100-14. Critical Care Unit.**

(1) Hospitals that provide critical care units shall comply with the requirements of R432-100-1[3]4. Medical direction for the unit(s) shall be according to the scope of services provided as delineated in hospital policy and approved by the board.

(2) Critical care unit nursing direction shall be provided by a designated, qualified registered nurse manager who has relevant education, training and experience in critical care. The supervising nurse shall coordinate the care provided by all nursing service personnel in the critical care unit. The registered nurse manager shall have administrative responsibility for the critical care unit, assuring that a registered nurse who has advanced life support certification is on duty and in the unit at all times.

(3) Each critical care unit shall be designed and equipped to facilitate the safe and effective care of the patient population served. Equipment and supplies shall be available to the unit as determined by hospital policy in accordance with the needs of the patients.

(4) An emergency cart must be readily available to the unit and contain appropriate drugs and equipment according to hospital policy. The cart, or the cart locking mechanism, must be checked every shift and after each use to assure that all items required for immediate patient care are in place in the cart and in usable condition.

(5) The following support services shall be immediately available to the critical care unit on a 24-hour basis:

- (a) blood bank or supply;
- (b) clinical laboratory; and
- (c) radiology services.

(6) If the hospital provides dialysis services, the dialysis services shall comply with R432-650 End Stage Renal Disease Facility Rules, sections R432-650-7, Required Staffing; and R432-650-12, Water Quality.

R432-100-15. Surgical Services.

(1) Surgical services provided by the hospital shall be integrated with other departments or services of the hospital. The relationship, objective, and scope of all surgical services shall be specified in writing.

(a) Administrative direction of surgical services shall be provided by a person appointed and authorized by the administrator.

(b) Medical direction of surgical services shall be provided by a member of the medical staff.

(c) Qualified registered nurses shall supervise the provision of surgical nursing care.

(d) The operating room suites shall be directed and supervised by a qualified registered nurse. The supervisor shall have authority and responsibility for:

(i) assuring that the planned procedure is within the scope of privileges granted to the physician.

(ii) maintaining the operating room register; and

(iii) other administrative functions, including serving on patient care committees.

(e) The hospital shall establish a policy governing the use of obstetrical delivery and operating rooms to ensure that any patient with parturition imminent, or with an obstetrical emergency requiring immediate medical intervention to preserve the health and life of the mother or her infant, is given priority over other obstetrical and non-emergent surgical procedures.

(f) Qualified surgical assistants shall be used as needed in operations in accordance with hospital by-laws.

(g) Surgical technicians and licensed practical nurses may serve as scrub nurses under the direct supervision of a registered nurse, but may not function as circulation nurses in the operating rooms, unless the scrub nurse is a registered nurse.

(h) Outpatient surgical patients shall not be routinely admitted to the hospital as inpatients. A systematic review process shall evaluate patients who require hospitalization after outpatient surgery.

(2) A safe operating room environment shall be established, controlled and consistently monitored.

(a) Surgical equipment including suction facilities and instruments in good repair shall be provided to assure safe and aseptic treatment of all surgical cases.

(b) Traffic in and out of the operating room shall be controlled. There shall be no through traffic.

(c) There shall be a scavenging system for evacuation of anesthetic waste gases.

(d) The following equipment shall be available to the operating suite:

(i) a call-in system;

(ii) a cardiac monitor;

(iii) a ventilation support system;

(iv) a defibrillator;

(v) an aspirator; and

(vi) equipment for cardiopulmonary resuscitation.

(3) The administration of anesthetics shall conform to the requirements of Anesthesia Services, R432-100-1[5]6.

(4) Removal of surgical specimens shall conform with the requirements of Laboratory and Pathology Services, R432-100-22.

R432-100-18. Perinatal Services.

(1) Each hospital shall comply with the requirements of this section and shall designate its capability to provide perinatal (antepartum, labor, delivery, postpartum and nursery) care in accordance with Level I basic, Level II specialty, or Level III sub-specialty or tertiary care as described in the Guidelines for Perinatal Care, Sixth Edition and the Guidelines for Design and Construction

of Health Care Facilities, 2010 Edition, which are incorporated by reference.

(a) A qualified member of the hospital staff shall provide administrative, medical and nursing direction and oversight for perinatal services according to each hospital's designated level of care, Level I, IIA, IIB, IIIA, IIIB or IIIC.

(b) A qualified registered nurse shall be immediately available at all hours of the day and as well as sufficient numbers of trained competent staff to meet the designated level.

(c) Support personnel shall be available to the perinatal care service according to each hospital's designated level of care.

(2) Each hospital shall establish and implement security protocols for perinatal patients.

(3) The perinatal department shall include facilities and equipment for antepartum, labor and delivery, nursery, postpartum, and optional birthing rooms.

(a) Perinatal areas shall be located and arranged to avoid non-related traffic to and from other areas.

(b) The hospital shall isolate patients with infections or other communicable conditions. The use of maternity rooms for patients other than maternity patients shall be restricted according to hospital policy.

(c) Each hospital shall have at least one surgical suite for operative delivery.

(d) Equipment and supplies shall be immediately available and maintained for the mother and newborn, including:

(i) furnishings suitable for labor, birth, and recovery;

(ii) oxygen with flow meters and masks or equivalent;

(iii) mechanical suction and bulb suction;

(iv) resuscitation equipment;

(v) emergency medications, intravenous fluids, and related supplies and equipment;

(vi) a device to assess fetal heart rate;

(vii) equipment to monitor and maintain the optimum body temperature of the newborn;

(viii) a clock capable of showing seconds;

(ix) an adjustable examination light; and

(x) a newborn warming unit with temperature controls that comply with Underwriters' Laboratories requirements. The unit must be capable of administering oxygen and suctioning.

(e) The hospital shall maintain a delivery room record keeping system for cross referencing information with other departments.

(4) If birthing rooms are provided, they shall be equipped in accordance with 100-1[7]8(3(d)).

(5) The nursery shall include facilities and equipment according to its designated level of care: Level I - Basic Newborn Care; Level II - Specialty Continuing Care; and Level III - Sub-specialty or Tertiary Newborn Intensive Care including an individual bassinets for each infant; with space between bassinets as follows:

(a) Level I Basic: Full Term or Well Baby Nursery 24 inches between bassinets;

(b) Level II Specialty: Continuous Care Nursery four feet between bassinets for Continuing Care nurseries;

(c) Level III Sub-specialty: Newborn Intensive Care Nursery four feet between bassinets.

(d) accurate scales; and

(e) a wall thermometer;

(6) The following equipment and supplies shall be available:

(a) an individual thermometer, or one with disposable tips, for each infant;

(b) a supply of medication shall be immediately available for emergencies;

(c) a covered soiled-diaper container with removable lining;

(d) a linen hamper with removable bag for soiled linen other than diapers;

(e) a newborn warming unit with temperature controls that comply with Underwriters' Laboratories requirements;

(f) oxygen, oxygen equipment, and suction equipment; and

(g) an oxygen concentration monitoring device.

(7) Temperature shall be maintained between 70-80 degrees Fahrenheit in the nursery area.

(8) Infant formula storage space shall be available that conforms to the manufacturer's recommendations. Only single-use bottles shall be used for newborn feeding.

(9) A suspect nursery or isolation area shall be available. Equipment and supplies shall be provided for the isolation area.

(a) Isolation facilities shall be used for any infant who:

(i) has a communicable disease;

(ii) is delivered of an ill mother infected with a communicable disease;

(iii) is readmitted after discharge from a hospital; or

(iv) is delivered outside the hospital.

(b) There shall be separate hand washing facilities for the isolation area.

(10) Each hospital shall comply with the following provisions:

(a) No attempt shall be made to delay the imminent, normal birth of a child;

(b) A prophylactic solution in accordance with R386-702-[9] shall be instilled in the eyes of the infant within three hours of birth;

(c) [Metabolic]Disease screening including phenylketonuria (PKU) shall be performed in accordance with Section 26-10-6 and R398-1; and

(d) A newborn hearing screening shall be performed in accordance with R398-2.

R432-100-25. Pharmacy Services.

(1) The pharmacy of a hospital currently accredited and conforming to the standards of JCAHO shall be determined to be in compliance with these rules.

(a) If a hospital is not accredited by JCAHO, then the pharmacy of such hospital shall comply with rules in this section.

(b) The pharmacy department and service shall be directed by a licensed pharmacist.

(i) Competent personnel shall be employed in keeping with the size and activity of the department and service. If the hospital uses only a drug room and the size of the hospital does not warrant a full-time pharmacist, a consultant pharmacist may be employed.

(ii) The pharmacist shall be responsible for developing, supervising, and coordinating all the activities of the pharmacy.

(iii) Provision shall be made for access to emergency pharmaceutical services.

(iv) The pharmacist shall be trained in the specific functions and scope of the hospital pharmacy.

(2) Facilities shall be provided for the safe storage, preparation, safeguarding, and dispensing of drugs.

(a) All floor-stocks shall be kept in secure areas in the patient care units.

(b) Double-locked storage shall be provided for controlled substances. Electronically controlled storage of narcotics may be permitted if automated dispensing technology is utilized by the hospital.

(c) Medications stored at room temperatures shall be maintained within 59 and 80 degrees F.

(d) Refrigerated medications shall be maintained within 36 and 46 degrees F.

(e) A current toxicology reference, and other references as needed for effective pharmacy operation and professional information shall be available.

(3) Records shall be kept of the transactions of the pharmacy and medication storage unit and coordinated with other hospital records.

(a) There shall be a recorded and signed floor-stock controlled substance count once per shift or the facility must use automated dispensing technology in accordance with R156-17b-6[+9]05.

(b) Hospitals that utilize automated dispensing technology must implement a system for accounting of controlled substances dispensed by the automated dispensing system.

(c) The record shall list the name of the patient receiving the controlled substance, the date, type of substance, dosage, and signature of the person administering the substance.

(4) Written policies and procedures that pertain to the intra-hospital drug distribution system and the safe administration of drugs shall be developed by the director of the pharmaceutical department or service in concert with the medical staff.

(a) Drugs that are provided to floor units shall be administered in accordance with hospital policies and procedures.

(b) The medical staff in conjunction with the pharmacist shall establish standard stop orders for all medications not specifically prescribed as to time or number of doses.

(c) The pharmacist shall have full responsibility for dispensing of all drugs.

(d) There shall be a policy stating who may have access to the pharmacy or drug room when the pharmacist is not available.

(e) There shall be a documentation system for the accounting and replacement of drugs, including narcotics, to the emergency department.

(f) Medication errors and adverse drug reactions shall be reported immediately in accordance with written procedures including notification of the practitioner who ordered the drug.

R432-100-30. Respite Services.

(1) A remote-rural general acute hospital with a federal swing bed designation may provide respite services to provide intermittent, time-limited care to give primary caretakers relief from the demands of caring for an individual.

(a) The hospital may provide respite care services and need comply only with the requirements of this section.

(b) If, however, the hospital provides respite care to an individual for longer than 14 consecutive days, the hospital must admit the individual as an inpatient subject to the requirements of this rule applicable to non-respite inpatient admissions.

(2) Respite services may be provided at an hourly rate or daily rate.

(3) The hospital shall coordinate the delivery of respite services with the recipient of services, case manager, if one exists, and the family member or primary caretaker.

(4) The hospital shall document the individual's response to the respite placement and coordinate with all provider agencies to ensure an uninterrupted service delivery program.

(5) The hospital must complete the following:

(a) a Level 1 Pre-admission Screening upon the person's admission for respite services; and

(b) a service agreement which will serve as the plan of care. The service agreement shall identify the prescribed medications, physician treatment orders, need for assistance for activities of daily living and diet orders.

(6) The hospital shall have written policies and procedures available to staff regarding the respite care patients which include:

(a) medication administration;

(b) notification of a responsible party in the case of an emergency;

(c) service agreement and admission criteria;

(d) behavior management interventions;

(e) philosophy of respite services;

(f) post-service summary;

(g) training and in-service requirement for employees;

and

(h) handling patient funds.

(7) The facility shall provide a copy of the Resident Rights to the patient upon admission.

(8) The facility shall maintain a record for each patient who receives respite services which includes:

(a) a service agreement;

(b) demographic information and patient identification

data;

(c) nursing notes;

(d) physician treatment orders;

(e) records made by staff regarding daily care of the patient in service;

(f) accident and injury reports; and

(g) a post-service summary.

(9) If a patient has an advanced directive, the facility shall file a copy of the directive in the record and inform staff.

(10) Retention and storage of records shall comply with R432-100-33.

(11) The hospital shall provide for confidentiality and release of information in accordance with R432-100-3[3]4.

R432-100-32. Dietary Service.

(1) There shall be an organized dietary department under the supervision of a certified dietitian or a qualified individual who, by education or specialized training and experience, is knowledgeable in food service management. If the latter is head of the department, there must be a registered dietitian on a full-time, regular part-time, or consulting basis.

(a) Direction of the dietary service shall be provided by a person whose qualifications, authority, responsibilities and duties are approved by the administrator. The director shall have the administrative responsibility for the dietary service.

(b) If the services of a certified dietitian are used on less than a full-time basis, the time commitment shall permit performance of all necessary functions to meet the dietary needs of the patients.

(c) There shall be food service personnel to perform all necessary functions.

(2) If dietetic services are provided by an outside provider, the outside provider shall comply with the standards of this section.

(3) A current diet manual approved by the dietary department and the medical staff shall be available to dietary, medical, and nursing personnel.

(a) The food and nutritional needs of patients, including therapeutic diets, shall be met in accordance with the [physician's-] orders of the physician responsible for the care of the patient, or if delegated by the physician, the orders of a qualified registered dietitian in consultation with the physician, as authorized by the medical staff and in accordance with facility policy.

(b) Regular menus and modifications for basic therapeutic diets shall be written at least one week in advance and posted in the kitchen.

(c) The menus shall provide for a variety of foods served in adequate amounts at each meal.

(d) At least three meals shall be served daily with not more than a 14-hour span between the evening meal and breakfast. If a substantial evening snack is offered, a 16-hour time span is permitted.

(e) A source of non-neutral exchanged water shall be provided for use in preparation of no sodium meals, snacks, and beverages.

(4) The dietary department shall comply with the Utah Department of Health Food Service Sanitation Rule R392-100.

(a) The dietary facilities and equipment shall be in compliance with federal, state, and local sanitation and safety laws and rules.

(b) Traffic of unauthorized individuals through food preparation areas shall be controlled.

(5) Written reports of inspections by state or local health departments shall be on file at the hospital and available for Department review.

(6) The dietitian or authorized designee is responsible for documenting nutritional information in the patient's medical record.

(7) Dietary orders shall be [ordered by a member of the medical staff and] transmitted in writing to the dietary department.

R432-100-34. Medical Records.

(1) The hospital shall establish a medical records department or service that is responsible for the administration, custody and maintenance of medical records.

(a) The administrative direction of the department shall be established by the hospital administrator and correspond to the organizational structure and policies of the hospital.

(b) The medical records department shall retain the technical services of either a Registered Health Information Administrator or a Registered Health Information Technician

through employment or consultation. If retained by consultation, visits shall be at least quarterly and documented through written reports to the hospital administrator.

(2) The medical records department shall provide secure storage, controlled access, prompt retrieval, and equipment and facilities to review medical records.

(a) Medical records shall be available for use or review by members of the medical and professional staff; authorized hospital personnel and agents; persons authorized by the patient through a consent form; and Department representatives to determine compliance with licensing rules.

(b) Medical records may be stored in multiple locations providing the record is able to be retrieved or accessed in a reasonable time period.

(c) If computer terminals are utilized for patient charting, the hospital shall have policies governing access and identification codes, security, and information retention.

(d) The hospital medical record shall be indexed according to diagnosis, procedure, demographic information and physician or licensed health practitioner. The indexes shall be current within six months following discharge of the patient.

(e) Original medical records are the property of the hospital and shall not be removed from the control of the hospital or the hospital's agent as defined by policy except by court order or subpoena.

(f) Medical records for persons who have received or requested admission to alcohol or drug programs shall comply with 42 CFR Part 2, "Confidentiality of Alcohol and Drug Abuse Patient Records."

(3) All medical record entries shall be legible, complete, authenticated, and dated by the person responsible for ordering the service, providing or evaluating the service, or making the entry. Prepared transcriptions of dictated reports, evaluations and consultations must be reviewed by the author before authentication.

(a) The authentication may include written signatures, computer key, or other methods approved by the governing body and medical staff to identify the name and discipline of the person making the entry.

(b) Use of computer key or other methods to identify the author of a medical record entry is not assignable or to be delegated to another person.

(c) There shall be a current list of persons approved to use these methods of authentication. Hospital policies shall include appropriate sanctions for the unauthorized or improper use of computer codes.

(d) Verbal orders for the care and treatment of the patient shall be accepted and transcribed by qualified personnel and authenticated within 30 days of the patient's discharge.

(4) Patient records shall be organized according to hospital policy.

(a) Medical records shall be reviewed at least quarterly for completeness, accuracy, and adherence to hospital policy.

(b) Records of discharged patients shall be collected, assembled, reviewed for completeness, and authenticated within 30 days of the patient's discharge.

(c) Medical records shall be retained for at least seven years. Medical records of minors shall be kept until the age of eighteen plus four years, but in no case less than seven years.

(d) The Hospital may destroy medical records after retaining them for the minimum time period. Prior to destroying medical records, the hospital must notify the public by publishing a notice in a newspaper of statewide distribution a minimum of once a week for three consecutive weeks to allow a former patient to access the patient's records.

(e) The hospital shall permanently retain a master patient/person index that shall include:

- (i) the patient name;
- (ii) the medical record number;
- (iii) the date of birth;
- (iv) the admission and discharge dates; and
- (v) the name of each attending physician.

(f) If a hospital ceases operation, the hospital shall make provision for secure, safe storage and prompt retrieval of all medical records, patient indexes and discharges for the period specified in R432-100-3[3]4(4)(c). The hospital may arrange for storage of medical records with another hospital, or an approved medical record storage facility, or may return patient medical records to the attending physician if the physician is still in the community.

(5) A complete medical record shall be established and maintained for each patient admitted to, or who receives hospital services. Emergency and outpatient records shall document the service rendered, and shall contain other pertinent information in accordance with hospital policy.

(a) Each medical record shall contain patient identification and demographic information to include at least the patient's name, address, date of birth, sex, and emergency contact information.

(b) Each medical record shall contain initial or admitting medical history, physical and other examinations or evaluations. Recent histories and examinations may be substituted if updated to include changes that reflect the patient's current status.

(c) Each medical record shall contain admitting, secondary and principal diagnoses.

(d) Each medical record shall contain results of consultive evaluations and findings by persons involved in the care of the patient.

(e) Each medical record shall contain documentation of complications, hospital acquired infections, and unfavorable reactions to medications, treatments, and anesthesia.

(f) Each medical record shall contain properly executed informed consent documents for all procedures and treatments ordered for, and received by, the patient.

(g) Each medical record shall document that the facility requested of each admitted person whether the person has initiated an advanced directive as defined in the Advance Health Care Directive Act, UCA 75-2a.

(h) Each medical record shall contain all practitioner orders, nursing notes, reports of treatment, medication records, laboratory and radiological reports, vital signs and other information that documents the patient condition and status.

(i) Each medical record shall contain a discharge summary including outcome of hospitalization, disposition of case with an autopsy report when indicated, or provisions for follow-up.

(j) Medical records of deceased patients shall contain a completed Inquiry of Anatomical Gift form or a modified hospital

death form which has been approved by the Utah Department of Health as required by Section 26-28[-6], UCA.

(k) Medical records of surgical patients shall contain a pre-operative history and physical examination; surgeon's diagnosis; an operative report describing a description of findings; an anesthesia report including dosage and duration of all anesthetic agents and all pertinent events during the induction, maintenance, and emergence from anesthesia; the technical procedures used; the specimen removed; the post-operative diagnosis; and the name of the primary surgeon and any assistants written or dictated by the surgeon within 24 hours after the operation.

(l) Medical records of obstetrical patients shall contain a relevant family history, a pre-natal examination, the length of labor and type of delivery with related notes, the anesthesia or analgesia record, the Rh status and immune globulin administration when indicated, a serological test for syphilis, and a discharge summary for complicated deliveries or final progress note for uncomplicated deliveries.

(m) Medical records of newborn infants shall contain the following documentation in addition to the requirements for obstetrical medical records:

(i) Documentation must include a copy of the mother's delivery room record. In adoption cases where the identity of the mother is confidential, inclusion and access to the mother's delivery room record shall be according to hospital policy.

(ii) Documentation must include the date and hour of birth, period of gestation, sex, reactions after birth, delivery room care, temperature, weight, time of first urination, and number, character, and consistency of stools.

(iii) Documentation must include a record of the physical examination completed at birth and discharge, record of ophthalmic prophylaxis, and the identification number of the newborn screening kit, referred to in R398-1.

(iv) If the infant is discharged to any person other than the infant's parents, the hospital shall record the authorization by the parents, state agency, or court authority.

(v) Documentation of the record and results of the newborn hearing screening according to Section 26-10-6, UCA and R398-2-6.

(n) Emergency department patient medical records shall be integrated into the hospital medical record and include time and means of arrival, emergency care given to the patient prior to arrival, history and physical findings, lab and x-ray reports, diagnosis, record of treatment, and disposition and discharge instructions.

(o) Patient medical social services records shall include a medical-social or psycho-social study of referred inpatients and outpatients; the financial status of the patient, social therapy and rehabilitation of patients, environmental investigations for attending physicians, and cooperative activities with community agencies.

(p) Medical records of patients receiving rehabilitation therapy shall include a written plan of care appropriate to the diagnosis and condition, a problem list, and short and long term goals.

(6) The medical records department shall maintain records, reports and documentation of admissions, discharges, and the number of autopsies performed.

(7) The medical records department shall maintain vital statistic registries for births, deaths, and the number of operations performed. The medical records department shall report vital statistics data in accordance with the Vital Statistics Act, Utah Health Code, (26-2, UCA).

R432-100-40. Penalties.

Any person who violates any provision of this rule may be subject to the penalties enumerated in 26-21-11 and R432-3[-6] and be punished for violation of a class A misdemeanor as provided in 26-21-16.

KEY: health care facilities

Date of Enactment or Last Substantive Amendment: ~~February 10, 2016~~ 2017

Notice of Continuation: November 5, 2015

Authorizing, and Implemented or Interpreted Law: 26-21-5; 26-21-2.1; 26-21-20

Health, Family Health and
Preparedness, Licensing
R432-150
Nursing Care Facility

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 41325

FILED: 02/15/2017

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this rule amendment is to add requirements to allow for a registered dietitian to write diet orders in a nursing care setting, as well as to amend incorrect references and delete unnecessary requirements. The Health Facility Committee reviewed and approved these rule amendments on 09/14/2016 and then again on 02/08/2017.

SUMMARY OF THE RULE OR CHANGE: The rule amendment is to add requirements to allow for a registered dietitian to write diet orders in a nursing care setting in accordance with facility policy. This amendment also corrects many outdated references and deletes requirements already required in the Utah Indoor Clean Air Act. A previous rule amendment was opened for public comment and the Utah Medical Association and the Utah Academy of Nutrition and Dietetics both requested a modification of the wording in the amendment. The Division did not make the rule effective and has completed this second amendment that was reviewed and approved by the Health Facility Committee on 02/08/2017. Representatives from both the Utah Medical Association and the Utah Academy of Nutrition and Dietetics attended and participated in the discussion.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Title 26, Chapter 21

ANTICIPATED COST OR SAVINGS TO:

- ◆ THE STATE BUDGET: There is no impact to the state budget because there will be no change in current practice.
- ◆ LOCAL GOVERNMENTS: There is no impact to local government budgets because there will be no change in current practice.
- ◆ SMALL BUSINESSES: There is no impact to small business budgets because there will be no change in current practice.
- ◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: There is no impact to businesses, individuals, local governments, and persons that are not small businesses because there will be no change in current practice.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There is no impact to affected persons because there will be no change in current practice.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There is no fiscal impact to business because there will be no change in current practice.

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

HEALTH
FAMILY HEALTH AND PREPAREDNESS,
LICENSING
3760 S HIGHLAND DR
SALT LAKE CITY, UT 84106
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ Carmen Richins by phone at 801-273-2802, by FAX at 801-274-0658, or by Internet E-mail at carmenrichins@utah.gov
- ◆ Joel Hoffman by phone at 801-273-2804, by FAX at 801-274-0658, or by Internet E-mail at jhoffman@utah.gov or by mail at PO Box 142003, Salt Lake City, UT 84114-2003

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 03/31/2017

THIS RULE MAY BECOME EFFECTIVE ON: 04/07/2017

AUTHORIZED BY: Joseph Miner, MD, Executive Director

R432. Health, Family Health and Preparedness, Licensing.

R432-150. Nursing Care Facility.

R432-150-4. Definitions.

- (1) The definitions found in R432-1-3 apply to this rule.
- (2) The following definitions apply to nursing care facilities.

(a) "Skilled Nursing Care" means a level of care that provides 24 hour inpatient care to residents who need licensed nursing supervision. The complexity of the prescribed services must be performed by or under the close supervision of licensed health care personnel.

(b) "Intermediate Care" means a level of care that provides 24-hour inpatient care to residents who need licensed supervision and supportive care, but do not require continuous nursing care.

(c) "Medically-related Social Services" means assistance provided by the facility licensed social worker to maintain or improve each resident's ability to control everyday physical, mental and psycho-social needs.

(d) "Nurse's Aide" means any individual, other than an individual licensed in another category, providing nursing or nurse related services to residents in a facility. This definition does not include an individual who volunteers to provide such services without pay.

(e) "Unnecessary Drug" means any drug when used in excessive dose, for excessive duration, without adequate monitoring, without adequate indications for its use, in the presence of adverse consequences which indicate the dose should be reduced or discontinued, or any combinations of these reasons.

(f) "Chemical Restraint" means any medication administered to a resident to control or restrict the resident's physical, emotional, or behavioral functioning for the convenience of staff, for punishment or discipline, or as a substitute for direct resident care.

(g) "Physical Restraint" means any physical method or physical or mechanical device, material, or equipment attached or adjacent to the resident's body that the resident cannot remove easily which restricts the resident's freedom of movement or normal access to his own body.

(h) "Significant Change" means a major change in a resident's status that impacts on more than one area of the resident's health status.

(i) "Therapeutic Leave" means leave pertaining to medical treatment planned and implemented to attain an objective that is specified in the individual plan of care.

(j) "Licensed Practitioner" means a health care practitioner whose license allows assessment, treatment, or prescribing practices within the scope of the license and established protocols.

(k) "Governing Body" means the board of trustees, owner, person or persons designated by the owner with the legal authority and ultimate responsibility for the management, control, conduct and functioning of the health care facility or agency.

(l) "Nursing Staff" means nurses aides that are in the process of becoming certified, certified nurses aides, and those individuals that are licensed (e.g. licensed practical nurses and registered nurses) to provide nursing care in the State of Utah.

(m) "Licensed Practical Nurse" as defined in the Nurse Practice Act, Title 58, Chapter 31[~~Section 2(11)~~].

(n) "Registered Nurse" as defined in the Nurse Practice Act, Title 58, Chapter 31[~~Section 2(12)~~].

(o) "Palatable" means food that has a pleasant and agreeable taste and is acceptable to eat.

(p) "Dining Assistant" means an individual unrelated to a resident or patient who meets the training requirements defined in this rule to assist nursing care residents with eating and drinking.

R432-150-10. Staff and Personnel.

(1) The administrator shall employ personnel who are able and competent to perform their respective duties, services, and functions.

(a) The administrator, director of nursing or health services supervisor, and department supervisors shall develop job descriptions for each position including job title, job summary, responsibilities, qualifications, required skills and licenses, and physical requirements.

(b) All personnel must have access to facility policy and procedure manuals and other information necessary to effectively perform duties and carry out responsibilities.

(c) All personnel must be licensed, certified or registered as required by the Utah Department of Commerce. A copy of the license, certification or registration shall be maintained for Department review.

(2) The facility shall maintain staffing records, including employee performance evaluations, for the preceding 12 months.

(3) The facility shall establish a personnel health program through written personnel health policies and procedures.

(4) The facility shall complete a health evaluation and inventory for each employee upon hire.

(a) The health inventory shall obtain at least the employee's history of the following:

(i) conditions that predispose the employee to acquiring or transmitting infectious diseases; and

(ii) conditions which may prevent the employee from performing certain assigned duties satisfactorily.

(b) The health inventory shall include health screening and immunization components of the employee's personnel health program.

(c) Infection control shall include staff immunization as necessary to prevent the spread of disease.

(d) Employee skin testing by the Mantoux method or other FDA approved in-vitro serologic test and follow up for tuberculosis shall be done in accordance with R388-804, Special Measures for the Control of Tuberculosis.

(i) The licensee shall ensure that all employees are skin-tested for tuberculosis within two weeks of:

(A) initial hiring;

(B) suspected exposure to a person with active tuberculosis; and

(C) development of symptoms of tuberculosis.

(ii) Skin testing shall be exempted for all employees with known positive reaction to skin tests.

(e) All infections and communicable diseases reportable by law shall be reported by the facility to the local health department in accordance with R386-702-[2]3.

(5) The facility shall plan and document in-service training for all personnel.

(a) The following topics shall be addressed at least annually:

(i) fire prevention;

(ii) review and drill of emergency procedures and evacuation plan;

(iii) the reporting of resident abuse, neglect or exploitation to the proper authorities;

(iv) prevention and control of infections;

(v) accident prevention and safety procedures including instruction in body mechanics for all employees required to lift, turn, position, or ambulate residents; and proper safety precautions when floors are wet or waxed;

(vi) training in Cardiopulmonary Resuscitation (CPR) for licensed nursing personnel and others as appropriate;

(vii) proper use and documentation of restraints;

(viii) resident rights;

(ix) A basic understanding of the various types of mental illness, including symptoms, expected behaviors and intervention approaches; and

(x) confidentiality of resident information.

(6) Any person who provides nursing care, including nurse aides and orderlies, must work under the supervision of an RN or LPN and shall demonstrate competency and dependability in resident care.

(a) A facility may not have an employee working in the facility as a nurse aide for more than four months, on full-time, temporary, per diem, or other basis, unless that individual has successfully completed a State Department of Education-approved training and testing program.

(b) The facility shall verify through the nurse aide registry prior to employment that nurse aide applicants do not have a verified report of abuse, neglect, or exploitation. If such a verified report exists, the facility may not hire the applicant.

(c) If an individual has not performed paid nursing or nursing related services for a continuous period of 24 consecutive months since the most recent completion of a training and competency evaluation program, the facility shall require the individual to complete a new training and competency evaluation program.

(d) The facility shall conduct regular performance reviews and regular in-service education to ensure that individuals used as nurse aides are competent to perform services as nurse aides.

(7) The facility may utilize volunteers in the daily activities of the facility provided that volunteers are not included in the facility's staffing plan in lieu of facility employees.

(a) Volunteers shall be supervised and familiar with resident's rights and the facility's policies and procedures.

(b) Volunteers who provide personal care to residents shall be screened according to facility policy and under the direct supervision of a qualified employee.

(8) An employee who reports suspected abuse, neglect, or exploitation shall not be subject to retaliation, disciplinary action, or termination by the facility for making the report.

R432-150-12. Resident Rights.

(1) The facility shall establish written residents' rights.

(2) The facility shall post resident rights in areas accessible to residents. A copy of the residents' rights document shall be available to the residents, the residents' guardian or responsible person, and to the public and the Department upon request.

(3) The facility shall ensure that each resident admitted to the facility has the right to:

(a) be informed, prior to or at the time of admission and for the duration of stay, of resident rights and of all rules and regulations governing resident conduct.

(b) be informed, prior to or at the time of admission and for the duration of stay, of services available in the facility and of related charges, including any charges for services not covered by the facility's basic per diem rate or not covered under Titles XVIII or XIX of the Social Security Act.

(c) be informed by a licensed practitioner of current total health status, including current medical condition, unless medically contraindicated, the right to refuse treatment, and the right to formulate an advance directive in accordance with UCA Section 75-2-1101;

(d) be transferred or discharged only for medical reasons, for personal welfare or that of other residents, or for nonpayment for the stay, and to be given reasonable advance notice to ensure orderly transfer or discharge;

(e) be encouraged and assisted throughout the period of stay to exercise all rights as a resident and as a citizen, and to voice grievances and recommend changes in policies and services to facility staff and outside representatives of personal choice, free from restraint, interference, coercion, discrimination, or reprisal;

(f) manage personal financial affairs or to be given at least a quarterly accounting of financial transactions made on his behalf should the facility accept his written delegation of this responsibility;

(g) be free from mental and physical abuse, and from chemical and physical restraints;

(h) be assured confidential treatment of personal and medical records, including photographs, and to approve or refuse their release to any individual outside the facility, except in the case of transfer to another health facility, or as required by law or third party payment contract;

(i) be treated with consideration, respect, and full recognition of dignity and individuality, including privacy in treatment and in care for personal needs;

(j) not be required to perform services for the facility that are not included for therapeutic purposes in the plan of care;

(k) associate and communicate privately with persons of the resident's choice, and to send and receive personal mail unopened;

(l) meet with social, religious, and community groups and participate in activities provided that the activities do not interfere with the rights of other residents in the facility;

(m) retain and use personal clothing and possessions as space permits, unless to do so would infringe upon rights of other residents;

(n) if married, to be assured privacy for visits by the spouse; and if both are residents in the facility, to be permitted to share a room;

(o) have members of the clergy admitted at the request of the resident or responsible person at any time;

(p) allow relatives or responsible persons to visit critically ill residents at any time;

(q) be allowed privacy for visits with family, friends, clergy, social workers or for professional or business purposes;

(r) have confidential access to telephones for both free local calls and for accommodation of long distance calls according to facility policy;

(s) have access to the State Long Term Care Ombudsman Program or representatives of the Long Term Care Ombudsman Program;

(t) choose activities, schedules, and health care consistent with individual interests, assessments and care plan;

(u) interact with members of the community both inside and outside the facility; and

(v) make choices about all aspects of life in the facility that are significant to the resident.

(4) A resident has the right to organize and participate in resident and family groups in the facility.

(a) A resident's family has the right to meet in the facility with the families of other residents in the facility.

(b) The facility shall provide a resident or family group, if one exists, with private space.

(c) Staff or visitors may attend meetings at the group's invitation.

(d) The facility shall designate a staff person responsible for providing assistance and responding to written requests that result from group meetings.

(e) If a resident or family group exists, the facility shall listen to the views and act upon the grievances and recommendations of residents and families concerning proposed policy and operational decisions affecting resident care and life in the facility.

(5) The facility must accommodate resident needs and preferences, except when the health and safety of the individual or other residents may be endangered. A resident must be given at least a 24-hour notice before an involuntary room move is made in the facility.

(a) In an emergency when there is actual or threatened harm to others, property or self, the 24 hour notice requirement for an involuntary room move may be waived. The circumstances requiring the emergency room change must be documented for Department review.

(b) The facility must make and document efforts to accommodate the resident's adjustment and choices regarding room and roommate changes.

(6) If a facility is entrusted with residents' monies or valuables, the facility shall comply with the following:

(a) The licensee or facility staff may not use residents' monies or valuables as his own or mingle them with his own. Residents' monies and valuables shall be separate, intact and free from any liability that the licensee incurs in the use of his own or the institution's funds and valuables.

(b) The facility shall maintain adequate safeguards and accurate records of residents' monies and valuables entrusted to the licensee's care.

(i) Records of residents' monies which are maintained as a drawing account must include a control account for all receipts and expenditures, an account for each resident, and supporting vouchers filed in chronological order.

(ii) Each account shall be kept current with columns for debits, credits, and balance.

(iii) Records of residents' monies and other valuables entrusted to the licensee for safekeeping must include a copy of the receipt furnished to the resident or to the person responsible for the resident.

(c) The facility must deposit residents' monies not kept in the facility within five days of receipt of such funds in an interest-bearing account in a local bank or savings and loan association authorized to do business in Utah, the deposits of which shall be insured.

(d) A person, firm, partnership, association or corporation which is licensed to operate more than one health facility shall maintain a separate account for each such facility and shall not commingle resident funds from one facility with another.

(e) If the amount of residents' money entrusted to a licensee exceeds \$100, the facility must deposit all money in excess of \$100 in an interest-bearing account.

(f) Upon license renewal, the facility shall provide evidence of the purchase a surety bond or other equivalent assurance to secure all resident funds.

(g) When a resident is discharged, all money and valuables of that resident which have been entrusted to the licensee must be surrendered to the resident in exchange for a signed receipt. Money and valuables kept within the facility shall be surrendered upon demand and those kept in an interest-bearing account shall be made available within three working days.

(h) Within 30 days following the death of a resident, except in a medical examiner case, the facility must surrender all money and valuables of that resident which have been entrusted to the licensee to the person responsible for the resident or to the executor or the administrator of the estate in exchange for a signed receipt. If a resident dies without a representative or known heirs, the facility must immediately notify in writing the local probate court and the Department.

~~Facility smoking policies must comply with the Utah Indoor Clean Air Act, R392-510, 1995 and the rules adopted there under and Section 31-4.4 of the 1994 Life Safety Code.]~~

R432-150-16. Physician Services.

(1) A physician must personally approve in writing a recommendation that an individual be admitted to a nursing care facility.

(a) Each resident must remain under the care of a physician licensed in Utah to deliver the scope of services required by the resident.

(b) Nurse practitioners or physician assistants, working under the direction of a licensed physician may initiate admission to a nursing care facility pending personal review by the physician.

(2) The facility must provide supervision to ensure that the medical care of each resident is supervised by a physician. When a resident's attending physician is unavailable, another qualified physician must supervise the medical care of the resident.

(3) The physician must:

(a) review the resident's total program of care, including medications and treatments, at each visit;

(b) write, sign, and date progress notes at each visit;

(c) indicate, in writing, direction and supervision of health care provided to residents by nurse practitioners or physician assistants; and

(d) sign all orders.

(4) Physician visits must conform to the following:

(a) The physician shall notify the facility of the name of the nurse practitioner or physician assistant who is providing care to the resident at the facility.

(b) Each resident must be seen by a physician at least once every 30 days for the first 90 days after admission, and at least every 60 days thereafter.

(c) Physician visits must be completed within ten days of the date the visit is required.

(d) Except as required by R432-150-16(4)(f)g, all required physician visits must be made by the physician.

(e) At the option of the physician, required visits after the initial visit may alternate between personal visits by the physician and visits by a physician assistant or nurse practitioner.

(5) The facility must provide or arrange for the provision of physician services 24 hours a day in case of an emergency.

R432-150-19. Pharmacy Services.

(1) The facility must provide or obtain by contract routine and emergency drugs, biologicals, and pharmaceutical services to meet resident needs.

(2) The facility must employ or obtain the services of a licensed pharmacist who:

(a) provides consultation on all aspects of pharmacy services in the facility;

(b) establishes a system of records of receipt and disposition of all controlled substances which documents an accurate reconciliation; and

(c) determines that drug records are in order and that an account of all controlled substances is maintained and reconciled monthly.

(3) The drug regimen of each resident must be reviewed at least once a month by a licensed pharmacist.

(a) The pharmacist must report any irregularities to the attending physician and the director of nursing or health services supervisor.

(b) The physician and the director of Nursing or health services supervisor must indicate acceptance or rejection of the report and document any action taken.

(4) Pharmacy personnel must ensure that labels on drugs and biologicals are in accordance with currently accepted professional principles, and include the appropriate accessory and cautionary instructions, and the expiration date.

(5) The facility must store all drugs and biologicals in locked compartments under proper temperature controls according to R432-150-19 (f)g(e), and permit only authorized personnel to have access to the keys.

(a) The facility must provide separately locked, permanently affixed compartments for storage of controlled substances listed in Schedule II of the Comprehensive Drug Abuse Prevention and Control Act of 1976 and other drugs subject to abuse, except when the facility uses single unit dose package drug distribution systems in which the quantity stored is minimal and a missing dose can be readily detected.

(b) Non-medication materials that are poisonous or caustic may not be stored with medications.

(c) Containers must be clearly labeled.

(d) Medication intended for internal use shall be stored separately from medication intended for external use.

(e) Medications stored at room temperature shall be maintained within 59 and 80 degrees F.

(f) Refrigerated medications shall be maintained within 36 and 46 degrees F.

- (6) The facility must maintain an emergency drug supply.
- (a) Emergency drug containers shall be sealed to prevent unauthorized use.
- (b) Contents of the emergency drug supply must be listed on the outside of the container and the use of contents shall be documented by the nursing staff.
- (c) The emergency drug supply shall be stored and located for access by the nursing staff.
- (d) The pharmacist must inventory the emergency drug supply monthly.
- (e) Used or outdated items shall be replaced within 72 hours by the pharmacist.
- (7) The pharmacy must dispense and the facility must ensure that necessary drugs and biologicals are provided on a timely basis.
- (8) The facility must limit the duration of a drug order in the absence of the prescriber's specific instructions.
- (9) Drug references must be available for all drugs used in the facility. References shall include generic and brand names, available strength and dosage forms, indications and side effects, and other pharmacological data.
- (10) Drugs may be sent with the resident upon discharge if so ordered by the discharging physician provided that:
- ~~_____ (a) such drugs are released in compliance R156-17a-619; and~~
- ~~_____ (b)]~~ a record of the drugs sent with the resident is documented in the resident's health record.
- (11) Disposal of controlled substances must be in accordance with the Pharmacy Practice Act.

R432-150-22. Admission, Transfer, and Discharge.

- (1) Each facility must develop written admission, transfer and discharge policies and make these policies available to the public upon request. The facility must permit each resident to remain in the facility, and not transfer or discharge the resident from the facility unless:
- (a) The transfer or discharge is necessary for the resident's welfare and the resident's needs cannot be met in the facility;
- (b) The transfer or discharge is appropriate because the resident's health has improved sufficiently so the resident no longer needs the services provided by the facility;
- (c) The safety of individuals in the facility is endangered;
- (d) The health of individuals in the facility is endangered;
- (e) The resident has failed, after reasonable and appropriate notice, to pay for a stay at the facility; or
- (f) The facility ceases to operate.
- (2) The facility must document resident transfers or discharges under any of the circumstances specified in R432-150-22(1)(a) through (f), in the resident's medical record. The transfer or discharge documentation must be made by:
- (a) the resident's physician if transfer or discharge is necessary under R432-150-22(1)(a) and (b);
- (b) a physician if transfer or discharge is necessary under R432-150-22(1)(c) and (d).
- (3) Prior to the transfer or discharge of a resident, the facility must:
- (a) provide written notification of the transfer or discharge and the reasons for the transfer or discharge to the

- resident, in a language and manner the resident understands, and, if known, to a family member or legal representative of the resident;
- (b) record the reasons in the resident's clinical record; and
- (c) include in the notice the items described in R432-150-22([5])~~6~~.
- (4) Except when specified in R432-150-22(4)(a), the notice of transfer or discharge required under R432-150-22([2])~~3~~, must be made by the facility at least 30 days before the resident is transferred or discharged.
- (5) Notice may be made as soon as practicable before transfer or discharge if:
- (a) the safety or health of individuals in the facility would be endangered if the resident is not transferred or discharged sooner;
- (b) the resident's health improves sufficiently to allow a more immediate transfer or discharge;
- (c) an immediate transfer or discharge is required by the resident's urgent medical needs; or
- (d) a resident has not resided in the facility for 30 days.
- (6) The contents of the written transfer or discharge notice must include the following:
- (a) the reason for transfer or discharge;
- (b) the effective date of transfer or discharge;
- (c) the location to which the resident is transferred or discharged; and
- (d) the name, address, and telephone number of the State and local Long Term Care Ombudsman programs.
- (e) For nursing facility residents with developmental disabilities, the notice must contain the mailing address and telephone number of the agency responsible for the protection and advocacy of developmentally disabled individuals established under part C of the Developmental Disabilities Assistance and Bill of Rights Act.
- (f) For nursing facility residents who are mentally ill, the notice must contain the mailing address and telephone number of the agency responsible for the protection and advocacy of mentally ill individuals established under the Protection and Advocacy for Mentally Ill Individuals Act.
- (7) The facility must provide discharge planning to prepare and orient a resident to ensure safe and orderly transfer or discharge from the facility.
- (8) Notice of resident bed-hold policy, transfer and re-admission must be documented in the resident file.
- (a) Before a facility transfers a resident to a hospital or allows a resident to go on therapeutic leave, the facility must provide written notification and information to the resident and a family member or legal representative that specifies:
- (i) the facility's policies regarding bed-hold periods permitting a resident to return; and
- (ii) the duration of the bed-hold policy, if any, during which the resident is permitted to return and resume residence in the facility.
- (b) At the time of transfer of a resident to a hospital or for therapeutic leave, the facility must provide written notice to the resident and a family member or legal representative, which specifies the duration of the bed-hold policy.
- (c) If transfers necessitated by medical emergencies preclude notification at the time of transfer, notification shall take place as soon as possible after transfer.

(d) The facility must establish and follow a written policy under which a resident whose hospitalization or therapeutic leave exceeds the bed-hold period is readmitted to the facility.

(9) The facility must establish and maintain identical policies and practices regarding transfer, discharge, and the provision of services for all individuals regardless of pay source.

(10) The facility must have in effect a written transfer agreement with one or more hospitals to ensure that:

(a) residents are transferred from the facility to the hospital and ensured of timely admission to the hospital when transfer is medically necessary as determined by the attending physician;

(b) medical and other information needed for care and treatment of residents is exchanged between facilities including documentation of reasons for a less expensive setting; and

(c) security and accountability of personal property of the individual transferred is maintained.

R432-150-23. Ancillary Health Services.

(1) If the nursing care facility provides its own radiology services, these facility must comply with R432-100-2[+]2, Radiology Services, in the General Acute Hospital Rule.

(2) A facility that provides specialized rehabilitative services may offer these services either directly or through agreements with outside agencies or qualified therapists. If provided, these services must meet the needs of the residents.

(a) The facility must provide space and equipment for specialized rehabilitative services in accordance with the needs of the residents.

(b) Specialized rehabilitative services may only be provided by therapists licensed in accordance with Utah law.

(c) All therapy assistants must work under the direct supervision of the licensed therapist at all times.

(d) Speech pathologists must have a "Certificate of Clinical Compliance" from the American Speech and Hearing Association.

(e) Specialized rehabilitative services may be provided only if ordered by the attending physician.

(i) The plan of treatment must be initiated by an attending physician and developed by the therapist in consultation with the nursing staff.

(ii) An initial progress report must be submitted to the attending physician two weeks after treatment is begun or as specified by the physician.

(iii) The physician and therapist must review and evaluate the plan of treatment monthly unless the physician recommends an alternate schedule in writing.

(f) The facility must document the delivery of rehabilitative services in the resident record.

(3) The facility must provide or arrange for regular and emergency dental care for residents.

(a) Dental care provisions shall include:

(b) development of oral hygiene policies and procedures with input from dentists;

(c) presentation of oral hygiene in-service programs by knowledgeable persons;

(d) development of referral service for those residents who do not have a personal dentist; and

(e) arrangement for transportation to and from the dentist's office.

R432-150-24. Food Services.

(1) The facility must provide each resident with a safe, palatable, well-balanced diet that meets the daily nutritional and special dietary needs of each resident.

(2) There must be adequate staff employed by the facility to meet the dietary needs of the residents.

(a) The facility must employ a dietitian either full-time, part-time, or on a consultant basis.

(b) The dietitian must be certified in accordance with Title 58, Chapter 49, Dietitian Certification Act.

(c) If a dietitian is not employed full-time, the administrator must designate a full-time person to serve as the dietetic supervisor.

(d) If the dietetic supervisor is not a certified dietitian, the facility must document at least monthly consultation by a certified dietitian according to the needs of the residents.

(e) The dietetic supervisor shall be available when the consulting dietitian visits the facility.

(3) The facility must develop menus that meet the nutritional needs of residents to the extent medically possible.

(a) Menus shall be:

(i) prepared in advance;

(ii) followed;

(iii) different each day;

(iv) posted for each day of the week;

(v) approved and signed by a certified dietician and;

(vi) cycled no less than every three weeks.

(b) The facility must retain documentation for at least three months of all served substitutions to the menu.

(4) The facility must make available for Department review all food sanitation inspection reports of State or local health department inspections.

(5) ~~[The attending physician must prescribe in writing a]~~All therapeutic diets must be ordered in writing by the attending physician or by a qualified registered dietitian in consultation with the physician, if allowed by facility policy.

(6) There must be no more than a 14-hour interval between the evening meal and breakfast, unless a substantial snack is served in the evening.

(7) The facility must provide special eating equipment and assistive devices for residents who need them.

(8) The facility's food service must comply with the Utah Department of Health Food Service Sanitation Regulations R392-100.

(9) The facility must maintain a one-week supply of nonperishable staple foods and a three-day supply of perishable foods to complete the established menu for three meals per day, per resident.

(10) A nursing care facility may use trained dining assistants to aid residents in eating and drinking if:

(a) a licensed practical nurse-geriatric care manager, registered nurse, advance practice registered nurse, speech pathologist, occupational therapist, or dietitian has assessed that the resident does not have complicated feeding problems, such as recurrent lung aspirations, behaviors which interfere with eating, difficulty swallowing, or tube or parenteral feeding; and

(b) The service plan or plan of care documents that the resident needs assistance with eating and drinking and defines who is qualified to offer the assistance.

(11) If the nursing care facility uses a dining assistant, the facility must assure that the dining assistant:

(a) has completed a training course from a Department-approved training program;

(b) has completed a background screening pursuant to R432-35; and

(c) performs duties only for those residents who do not have complicated feeding problems.

(12) A long-term care facility, employee organization, person, governmental entity, or private organization must submit the following to the Department to become Department-approved training program:

(a) a copy of the curriculum to be implemented that meets the requirements of subsection (13); and

(b) the names and credentials of the trainers.

(13) The training course for the dining assistant shall provide eight hours of instruction and one hour of observation by the trainer to ensure competency. The course shall include the following topics:

(a) feeding techniques;

(b) assistance with eating and drinking;

(c) communication and interpersonal skills;

(d) safety and emergency procedures including the Heimlich maneuver;

(e) infection control;

(f) resident rights;

(g) recognizing resident changes inconsistent with their normal behavior and the importance in reporting those changes to the supervisory nurse;

(h) special diets;

(i) documentation of type and amount of food and hydration intake;

(j) appropriate response to resident behaviors, and

(k) use of adaptive equipment.

(14) The training program shall issue a certificate of completion and maintain a list of the dining assistants. The certificate shall include the training program provider and provider's telephone number at which a long-term care facility may verify the training, and the dining assistant's name and address.

(15) To provide dining assistant training in a Department-approved program, a trainer must hold a current valid license to practice as:

(a) a registered nurse, advanced practice registered nurse or licensed practical nurse-geriatric care manager pursuant to Title 58, Chapter 31b;

(b) a registered dietitian, pursuant to Title 58, Chapter 49;

(c) a speech-language pathologist, pursuant to Title 58, Chapter 41; or

(d) an occupational therapist, pursuant to Title 58, Chapter 42a.

(16) The Department may suspend a training program if the program's courses do not meet the requirements of this rule.

(17) The Department may suspend a training program operated by a nursing care facility if:

(a) a federal or state survey reveals failure to comply with federal regulations or state rules regarding feeding or dining assistant programs;

(b) the facility fails to provide sufficient, competent staff to respond to emergencies;

(c) the Department sanctions the facility for any reason; or

(d) the Department determines that the facility is in continuous or chronic non-compliance under state rule or that the facility has provided sub-standard quality of care under federal regulation.

R432-150-30. Penalties.

Any person who violates any provision of this rule may be subject to the penalties enumerated in Section 26-21-11 and R432-3-[6]7 and be punished for violation of a class A misdemeanor as provided in Section 26-21-16.

KEY: health care facilities

Date of Enactment or Last Substantive Amendment: [~~April 11, 2011~~]2017

Notice of Continuation: March 28, 2012

Authorizing, and Implemented or Interpreted Law: 26-21-5; 26-21-16

Health, Family Health and Preparedness, Licensing **R432-700** Home Health Agency Rule

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 41325

FILED: 02/15/2017

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this rule amendment is to add requirements to allow for a Licensed Health Care Professional to delegate medication administration to unlicensed personnel in accordance with the Nurse Practice Act and Section R156-31B-701, as well as to amend incorrect references and wording. The Health Facility Committee reviewed and approved these rule amendments on 02/08/2017.

SUMMARY OF THE RULE OR CHANGE: The rule amendment is to add requirements to allow for a licensed health care professional working for a home health agency to delegate medication administration to unlicensed personnel in accordance with the Nurse Practice Act and Section R156-31B-701, as well as to amend incorrect references and wording.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Title 26, Chapter 21

ANTICIPATED COST OR SAVINGS TO:

- ◆ THE STATE BUDGET: There is no impact to the state budget because there will be no change in current practice.
- ◆ LOCAL GOVERNMENTS: There is no impact to local government budgets because there will be no change in current practice.
- ◆ SMALL BUSINESSES: There is no impact to small business budgets because there will be no change in current practice.
- ◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: There is no impact to businesses, individuals, local governments, and persons that are not small businesses because there will be no change in current practice.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There is no impact to affected persons because there will be no change in current practice.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There is no fiscal impact to business because the amendment does not change current practice as allowed by law.

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

HEALTH
FAMILY HEALTH AND PREPAREDNESS,
LICENSING
3760 S HIGHLAND DR
SALT LAKE CITY, UT 84106
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ Carmen Richins by phone at 801-273-2802, by FAX at 801-274-0658, or by Internet E-mail at carmenrichins@utah.gov
- ◆ Joel Hoffman by phone at 801-273-2804, by FAX at 801-274-0658, or by Internet E-mail at jhoffman@utah.gov or by mail at PO Box 142003, Salt Lake City, UT 84114-2003

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 03/31/2017

THIS RULE MAY BECOME EFFECTIVE ON: 04/07/2017

AUTHORIZED BY: Joseph Miner, MD, Executive Director

R432. Health, Family Health and Preparedness, Licensing.

R432-700. Home Health Agency Rule.

R432-700-4. Definitions.

- (1) See common definitions rule R432-1-3.
- (2) Special definitions:

(a) "Branch Office" means a location from which a home health agency provides services within a portion of the total geographic area served by the parent agency. The branch office is a part of the parent home health agency and shares administration and services.

(b) "Licensed health care professional" means a registered nurse, physician assistant, advanced practice registered nurse, or physician licensed by the Utah Department of Commerce who has education and experience to assess and evaluate the health care needs of the resident.

(c) "Parent Home Health Agency" means the agency that has administrative control of branch offices.

([e]d) "Service Agreement" means a written agreement for services between the client and the personal care provider which outlines how the services are to be provided according to the requirements of R432-700-[30]24.

R432-700-8. Governing Body and Policies.

(1) The home health agency shall be organized under a governing body that assumes full legal responsibility for the conduct of the agency.

(2) The administrative structure of the agency must be shown by an organization chart.

(3) The governing body shall assume responsibility to:

(a) Comply with all federal regulations, state rules, and local laws;

(b) Adopt policies and procedures which describe functions or services of the home health agency and protect patient rights;

(c) Adopt a statement that there is no discrimination because of race, color, sex, religion, ancestry, or national origin[~~(Sections 13-7-1 through 4)~~];

(d) Develop and implement bylaws which shall include at least:

(i) A statement of purpose;

(ii) A statement of qualifications for membership and methods to select members of the governing board;

(iii) A provision for the establishment, selection, and term of office for committee members and officers;

(iv) A description of functions and duties of the governing body, officers, and committees;

(v) A statement of the authority and responsibility delegated to the administrator;

(vi) A policy statement relating to conflict of interest of members of the governing body or employees who may influence agency decisions;

(vii) Meet as stated in bylaws, at least annually;

(viii) Appoint by name and in writing a qualified administrator who is responsible for the agency's overall functions.

(4) ~~[Notify the licensing agency the name of a new administrator in writing no later than five days after hire.~~

~~(5)~~ Review the written annual evaluation report from the administrator and make recommendations as necessary. Documentation of this review shall be available to the Department.

([6]5) Make provision for resources and equipment to provide a safe working environment for personnel.

([7]6) Establish a system of financial management and accountability.

R432-700-10. Personnel.

(1) The administrator shall employ qualified personnel who are competent to perform their respective duties, services, and functions.

(2) The agency shall develop written policies and procedures that address at least the following:

(a) Job descriptions, qualifications, validation of licensure or certificates of completion for each position held;

(b) Orientation for direct and contract employees;

(c) Criteria for, and frequency of, performance evaluations;

(d) Work schedules; method and period of payment; fringe benefits such as sick leave, vacation, insurance, etc.;

(e) Frequency and documentation of in-service training;

(f) Contents of personnel files.

(3) Each employee shall be licensed, certified or registered as required by the Utah Department of Commerce, Division of Occupational and Professional Licensing.

(4) Failure to ensure that all staff are licensed, certified or registered may result in sanctions to the agency license.

(5) ~~[Copies shall be maintained for Department review that all staff have a current license, certificate, or registration. New employees shall have 45 days to present the original document.~~

~~_____~~(6) An annual in-service shall be documented that staff have been trained in the reporting requirements for suspected abuse, neglect and exploitation.

R432-700-11. Health Surveillance.

(1) The agency shall establish and implement a policy and procedure for health screening of all agency health care workers (persons with direct patient contact) to identify any situation which would prevent the employee from performing assigned duties in a satisfactory manner.

(2) Employee health screening and immunization components of personnel health programs shall be developed in accordance with R386-702, Communicable Disease Rules.

(3) Employee skin testing by the Mantoux Method or other FDA approved in-vitro serologic test and follow up for tuberculosis shall be done in accordance with R388-804, Special Measures for Control of Tuberculosis.

(a) The licensee shall ensure that all employees are skin-tested for tuberculosis within two weeks of:

(i) initial hiring;

(ii) suspected exposure to a person with active tuberculosis; and

(iii) development of symptoms of tuberculosis.

(b) Skin testing shall be exempted for all employees with known positive reaction to skin tests.

(4) All infections and communicable diseases reportable by law shall be reported by the facility to the local health department in accordance with R386-702-[2]3.

R432-700-21. Nursing Services.

(1) Nursing services provided through a home health agency shall be under the supervision of a director of nursing services.

(2) Nursing services shall be provided by or under the supervision of a registered nurse and according to the plan of care.

(3) When an agency provides or contracts for services, the service shall be provided according to the plan of care and supervised by designated, qualified personnel.

(4) Nursing staff shall observe, report, and record written clinical notes.

(5) Nursing services should recognize and use opportunities to teach health concepts to the patient and family.

(6) All registered nurses or licensed practical nurses employed by, or on contract with, the agency shall have a valid license from the Utah Department of Commerce, Title 58, Chapter 31b.

(7) Licensed nurses shall have the following responsibilities:

(a) Administer prescribed medications and treatments according to law and as permitted within the scope of the individual's license;

(b) Perform nursing care according to the needs of the patient and as indicated in the written plan of care;

(c) Inform the physician and other personnel of changes in the patient's condition and needs;

(d) Write clinical notes in the individual patient record for each visit or contact;

(e) Teach self-care techniques to the patient or family, or both;

(f) Develop plans of care;

(g) Participate in in-service programs.

(8) The director of nursing services shall be responsible for and shall be accountable for the following functions:

(a) Designate a registered nurse to act as director of nursing services during his absence;

(b) Assume responsibility for the quality of nursing services provided by the agency;

(c) Develop nursing service policies and procedures that must be reviewed annually and revised as necessary;

(d) Establish work schedules for nursing personnel according to patient needs;

(e) Assist in development of job descriptions for nursing personnel;

(f) Complete performance evaluations for nursing personnel according to agency policy;

(g) Direct in-service programs for all nursing personnel.

(9) In addition to the general responsibilities, a registered nurse shall have the following responsibilities:

(a) Make the initial nursing evaluation visit;

(b) Re-evaluate nursing needs based on the patient's status and condition;

(c) Initiate the plan of care and make necessary revisions;

(d) Provide services which require specialized nursing skill;

(e) Initiate appropriate preventive and rehabilitative nursing procedures;

(f) Supervise staff assignments based on specific patient needs, family capabilities, staff training and experience, and degree of supervision needed;

(g) Assist in coordinating all services provided;

(h) Prepare termination of services statements;

(i) Supervise and consult with licensed practical nurses as necessary;

- (j) Provide written instructions for certified nursing aide to ensure provision of required services written in the plan of care;
- (k) Supervise certified nursing aide in the patient's home as necessary, and be readily available for consultation by telephone;
- (l) Make supervisory visits with or without the certified nursing aide's presence as follows:
 - (i) Initial assessment;
 - (ii) Every two weeks to patients who receive skilled services;
 - (iii) Every three months to patients who require long-term maintenance services;
 - (iv) Any time there is a question of change in the patient's condition.
- (10) The licensed practical nurse shall have the following responsibilities:
 - (a) Work under the supervision of a registered nurse;
 - (b) Observe, record, and report to the immediate supervisor the general physical or mental condition of the patient;
 - (c) Assist the registered nurse in performing specialized procedures;
 - (d) Assist in development of the plan of care.

R432-700-22. Certified Nursing Aide.

- (1) ~~The e~~Certified nursing aides ~~shall~~may have the following responsibilities:
- (~~1~~)a Provide only those services written in the plan of care and received as written instructions from the registered nurse supervisor. If the service is an extension of therapy, the instructions shall be written by the licensed therapist;
 - (~~2~~)b Perform normal household services essential to health care at home;
 - (~~3~~)c Make occupied or unoccupied beds;
 - (~~4~~)d ~~The certified nursing aide may~~ ~~s~~supervise the patient's self-administration of medication by:
 - (~~a~~)i Reminding the patient it is time to take medications;
 - (~~b~~)ii Opening the bottle cap;
 - (~~e~~)iii Reading the medication label to patients;
 - (~~d~~)iv Checking the self-administered dosage against the label of the container;
 - (~~e~~)v Reassuring the patient that ~~he is taking the correct~~the dose being taken is correct;
 - (~~f~~)vi Observing the patient taking ~~his~~the medication.
 - (~~5~~)e ~~Perform simple diagnostic activities~~Observe, record and/or report basic patient status;
 - (~~6~~)f Perform activities of daily living as written in plan of care;
 - (~~7~~)g Give nail care as described in the plan of care;
 - (~~8~~)h Observe and record food and fluid intake when ordered;
 - (~~9~~)i Change dry dressings according to written instructions from the supervisor;
 - (~~10~~)j Administer emergency first aid;
 - (~~11~~)k Provide escort and transportation to doctor's appointments and elsewhere as part of patient-care services;
 - (~~12~~)l Provide social interaction and reassurance to the patient and family in accordance with the plan of care;
 - (~~13~~)m Write clinical notes in individual patient records.

(~~14~~)2 Certified Nursing Aides shall be at least 18 years old.

(~~15~~)3 Certified Nursing Aides shall have received a certificate of completion for the employment position~~:~~

~~(a) The curriculum or the comparable challenge exam shall be offered under the direction of the Utah Board of Education;~~

~~(b) If the employee does not have a certificate of completion for the position at the time of employment, completion of the course of study or challenge exam shall occur] within six months of the date of hire.~~

(4) Certified Nursing Aides must be certified in cardiopulmonary resuscitation and emergency procedures.

R432-700-25. Medication and Treatment.

(1) ~~Medications or s~~Skilled treatments shall be administered only by licensed personnel to comply with signed orders from a person lawfully authorized to give the order. This order may be remotely given~~over the telephone~~ but shall be subsequently signed by the person giving the order within 31 days.

(2) Medications shall be administered according to signed orders from a person lawfully authorized to give the order. This order may be remotely given but shall be subsequently signed by the person giving the order within 31 days.

~~(3) All~~~~telephone~~ orders remotely given shall be received and verified only by licensed personnel lawfully authorized to accept the order. ~~Telephone~~Remotely given orders shall be recorded in the patient's record.

(~~3~~)4 If medications are administered by agency personnel, the orders and subsequent changes in orders, shall be signed by the physician and included in the patient's record.

(5) Unlicensed staff may administer medications only after delegation by a licensed health care professional under the professional scope of practice.

(i) If a licensed health care professional delegates the task of medication administration to unlicensed assistive personnel, the delegation shall be in accordance with the Nurse Practice Act and R156-31B-701;

(ii) The medications must be administered according to the prescribing order;

(iii) The delegating authority must provide and document supervision, evaluation, and training of unlicensed assistive personnel assisting with medication administration;

(iv) The delegating authority or another registered nurse shall be readily available either in person or by telecommunication; and

(v) Delegation to unlicensed staff shall not include delegating medication set up for subsequent medication administration.

(~~4~~)6 Orders for therapy services shall include the procedures to be used, the frequency of therapy, and the duration of therapy.

(~~5~~)7 Orders for skilled services shall be reviewed or renewed by the attending physician at intervals not to exceed 63 days. Physician's signature and date shall be evidence of this review or renewal.

(~~6~~)8 Physician orders may be transmitted by facsimile machine. The agency must be able to obtain the original signature, upon request, if verification of the signature is requested.

R432-700-27. Medical Supplies and Equipment.

(1) The agency shall develop and follow written policies and procedures which describe:

([1]a) Agency provision of or use of durable medical equipment, and disposable and semi-disposable medical supplies;

([2]b) Categories of medical supplies and equipment available through the home health agency;

([3]c) Charges and reimbursement for medical supplies and equipment;

([4]d) Processes for billing medical supplies and equipment to the patient, insurance carrier, or other payment source.

R432-700-30. Penalties.

Any person who violates any provision of this rule may be subject to the penalties enumerated in 26-21-11 and R432-3-[6]7 and be punished for violation of a class A misdemeanor as provided in 26-21-16.

KEY: health care facilities

Date of Enactment or Last Substantive Amendment: [~~October 1, 2011~~2017]

Notice of Continuation: September 15, 2016

Authorizing, and Implemented or Interpreted Law: 26-21-5; 26-21-2.1

Insurance, Administration
R590-206
 Privacy of Consumer Financial and
 Health Information Rule

NOTICE OF PROPOSED RULE
 (Amendment)

DAR FILE NO.: 41296
 FILED: 02/08/2017

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The changes to this rule are a result of amendments to the federal Annual Privacy Notice Requirement under the Gramm-Leach-Bliley Act (Regulation P).

SUMMARY OF THE RULE OR CHANGE: The changes remove additional notice requirements that insurers must provide to a policyholder after the initial notice if such notice is placed on an insurer's website.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: 15 U.S.C. 6805 and Subsection 31A-2-201(2) and Subsection 31A-2-201(3)(a) and Subsection 31A-2-202(1) and Subsection 31A-23a-417(3)

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** There are no anticipated costs or savings to the state budget. The changes to the rule only affect insurers and have no fiscal bearing on any other entities.

◆ **LOCAL GOVERNMENTS:** There are no anticipated costs or savings to the local government. The changes to the rule only affect insurers and have no fiscal bearing on any other entities.

◆ **SMALL BUSINESSES:** Entities in the insurance business will see budgetary savings because they will no longer be required to mail certain notices to their policyholders if those notices are posted online. The extent of the savings cannot be estimated because the magnitude will depend on the business's specific customer base and mailing costs.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Entities in the insurance business will see budgetary savings because they will no longer be required to mail certain notices to their policyholders if those notices are posted online. The extent of the savings cannot be estimated because the magnitude will depend on the business's specific customer base and mailing costs.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for any persons. The change removes requirements for insurers and will result in savings for certain entities, not additional costs.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There will be no negative fiscal impact on businesses. Entities in the insurance business will see budgetary savings because they will no longer be required to mail certain notices to their policyholders if those notices are posted online.

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 03/31/2017

THIS RULE MAY BECOME EFFECTIVE ON: 04/07/2017

AUTHORIZED BY: Steve Gooch, Information Specialist

R590. Insurance, Administration.**R590-206. Privacy of Consumer Financial and Health Information Rule.****R590-206-1. Authority.**

This rule is promulgated pursuant to Subsections 31A-2-202(1), 31A-2-201(2) and 31A-2-201(3)(a) in which the commissioner is empowered to administer and enforce Title 31A, to perform duties imposed by Title 31A and to make administrative rules to implement the provisions of Title 31A. Furthermore, Title V, Section 505 (15 United States Code (U.S.C.) 6805[3]) empowers the Utah Insurance Commissioner to enforce Subtitle A of Title V of the Gramm-Leach-Bliley Act of 1999 (15 U.S.C. 6801 through 6820). Title V, Section 505 (15 U.S.C. 6805(b)(2)) authorizes the commissioner to issue rules to implement the requirements of Title V, Section 501(b) of the federal act. The commissioner is also authorized under Subsection 31A-23a-417(3) to adopt rules implementing the requirements of Title V, Section 501(b) of the federal act.

R590-206-2. Purpose and Scope.

(1) Purpose. This rule governs the treatment of nonpublic personal health information and nonpublic personal financial information about individuals by all licensees of the Utah Insurance Department. This rule:

(a) Requires a licensee to provide notice to individuals about its privacy policies and practices;

(b) Describes the conditions under which a licensee may disclose nonpublic personal health information and nonpublic personal financial information about individuals to affiliates and nonaffiliated third parties; and

(c) Provides methods for individuals to prevent a licensee from disclosing that information.

(2) Scope. This rule applies to:

(a) Nonpublic personal financial information about individuals who obtain or are claimants or beneficiaries of products or services primarily for personal, family or household purposes from licensees. This rule does not apply to information about companies or about individuals who obtain products or services for business, commercial or agricultural purposes; and

(b) All nonpublic personal health information.

(3) Compliance. A licensee domiciled in this state that is in compliance with this rule in a state that has not enacted laws or rules that meet the requirements of Title V of the Gramm-Leach-Bliley Act (PL 102-106) may nonetheless be deemed to be in compliance with Title V of the Gramm-Leach-Bliley Act in such other state.

(4) This rule does not apply to a financial institution, securities broker or dealer, or a credit union that engages in activities or functions that do not require a license from the Utah insurance commissioner.

R590-206-3. Rule of Construction.

The examples in this rule and the sample clauses in Appendix A are not exclusive. Appendix A - Sample Clauses, of the Model Rule entitled, "Privacy of Consumer Financial and Health Information Regulation," adopted September 26, 2000, by the National Association of Insurance Commissioners, is incorporated by reference and available for inspection at the Department of Insurance and the Department of Administrative Rules.

Compliance with an example or use of a sample clause, to the extent applicable, constitutes compliance with this rule.

R590-206-4. Definitions.

As used in this rule, unless the context requires otherwise:

(1) "Affiliate" means any company that controls, is controlled by or is under common control with another company.

(2)(a) "Clear and conspicuous" means that a notice is reasonably understandable and designed to call attention to the nature and significance of the information in the notice.

(b) Examples.

(i) Reasonably understandable. A licensee makes its notice reasonably understandable if it:

(A) Presents the information in the notice in clear, concise sentences, paragraphs, and sections;

(B) Uses short explanatory sentences or bullet lists whenever possible;

(C) Uses definite, concrete, everyday words and active voice whenever possible;

(D) Avoids multiple negatives;

(E) Avoids legal and highly technical business terminology whenever possible; and

(F) Avoids explanations that are imprecise and readily subject to different interpretations.

(ii) Designed to call attention. A licensee designs its notice to call attention to the nature and significance of the information in it if the licensee:

(A) Uses a plain-language heading to call attention to the notice;

(B) Uses a typeface and type size that are easy to read;

(C) Provides wide margins and ample line spacing;

(D) Uses boldface or italics for key words; and

(E) In a form that combines the licensee's notice with other information, uses distinctive type size, style, and graphic devices, such as shading or sidebars.

(iii) Notices on web sites. If a licensee provides a notice on a web page, the licensee designs its notice to call attention to the nature and significance of the information in it if the licensee uses text or visual cues to encourage scrolling down the page if necessary to view the entire notice and ensures that other elements on the web site (such as text, graphics, hyperlinks or sound) do not distract attention from the notice, and the licensee either:

(A) Places the notice on a screen that consumers frequently access, such as a page on which transactions are conducted; or

(B) Places a link on a screen that consumers frequently access, such as a page on which transactions are conducted, that connects directly to the notice and is labeled appropriately to convey the importance, nature and relevance of the notice.

(3) "Collect" means to obtain information that the licensee organizes or can retrieve by the name of an individual or by identifying number, symbol or other identifying particular assigned to the individual, irrespective of the source of the underlying information.

(4) "Commissioner" means the Utah insurance commissioner.

(5) "Company" means a corporation, limited liability company, business trust, general or limited partnership, association, sole proprietorship or similar organization.

(6)(a) "Consumer" means an individual who seeks to obtain, obtains or has obtained an insurance product or service, from a licensee that is to be used primarily for personal, family or household purposes, and about whom the licensee has nonpublic personal information, directly or through a legal representative.

(b) Examples.

(i) An individual who provides nonpublic personal information to a licensee in connection with obtaining or seeking to obtain financial, investment or economic advisory services relating to an insurance product or service is a consumer regardless of whether the licensee establishes an ongoing advisory relationship.

(ii) An applicant for insurance prior to the inception of insurance coverage is a licensee's consumer.

(iii) An individual who is a consumer of another financial institution is not a licensee's consumer solely because the licensee is acting as agent for, or provides processing or other services to, that financial institution.

(iv) An individual is a licensee's consumer if:

(A)(I) the individual is a beneficiary of a life insurance policy underwritten by the licensee;

(II) the individual is a claimant under an insurance policy issued by the licensee;

(III) the individual is an insured or an annuitant under an insurance policy or an annuity, respectively, issued by the licensee; or

(IV) the individual is a mortgagor of a mortgage covered under a mortgage insurance policy; and

(B) the licensee discloses nonpublic personal financial information about the individual to a nonaffiliated third party other than as permitted under Sections 14, 15 and 16 of this rule.

(v) Provided that the licensee provides the initial, annual and revised notices under Sections 5, 6 and 9 of this rule to the plan sponsor, group or blanket insurance policyholder or group annuity contractholder, workers' compensation plan policyholder, and further provided that the licensee does not disclose to a nonaffiliated third party nonpublic personal financial information about such an individual other than as permitted under Sections 14, 15 and 16 of this rule, an individual is not the consumer of the licensee solely because he or she is:

(A) A participant or a beneficiary of an employee benefit plan that the licensee administers or sponsors or for which the licensee acts as a trustee, insurer or fiduciary;

(B) Covered under a group or blanket insurance policy or group annuity contract issued by the licensee; or

(C) A beneficiary in a workers' compensation plan.

(vi)(A) The individuals described in Subsection R590-206-4.(6)(b)(v)(A) through (C) of this Paragraph are consumers of a licensee if the licensee does not meet all the conditions of Subsection R590-206-4.(6)(b)(v).

(B) In no event shall the individuals, solely by virtue of the status described in Subsection R590-206-4.(6)(b)(v)(A) through (C) above, be deemed to be customers for purposes of this rule.

(vii) An individual is not a licensee's consumer solely because he or she is a beneficiary of a trust for which the licensee is a trustee.

(viii) An individual is not a licensee's consumer solely because he or she has designated the licensee as trustee for a trust.

(7) "Consumer reporting agency" has the same meaning as in Section 603(f) of the federal Fair Credit Reporting Act (15 U.S.C. 1681a(f)).

(8) "Control" means:

(a) Ownership, control or power to vote 25% or more of the outstanding shares of any class of voting security of the company, directly or indirectly, or acting through one or more other persons;

(b) Control in any manner over the election of a majority of the directors, trustees or general partners, or individuals exercising similar functions, of the company; or

(c) The power to exercise, directly or indirectly, a controlling influence over the management or policies of the company, as the commissioner determines.

(9) "Customer" means a consumer who has a customer relationship with a licensee.

(10)(a) "Customer relationship" means a continuing relationship between a consumer and a licensee under which the licensee provides one or more insurance products or services to the consumer that are to be used primarily for personal, family or household purposes.

(b) Examples.

(i) A consumer has a continuing relationship with a licensee if:

(A) The consumer is a current policyholder of an insurance product issued by or through the licensee; or

(B) The consumer obtains financial, investment or economic advisory services relating to an insurance product or service from the licensee for a fee.

(ii) A consumer does not have a continuing relationship with a licensee if:

(A) The consumer applies for insurance but does not purchase the insurance;

(B) The licensee sells the consumer airline travel insurance in an isolated transaction;

(C) The individual is no longer a current policyholder of an insurance product or no longer obtains insurance services with or through the licensee;

(D) The consumer is a beneficiary or a claimant under a policy and has submitted a claim under that policy;

(E) The customer's policy is lapsed, expired, or otherwise inactive or dormant under the licensee's business practices, and the licensee has not communicated with the customer about the relationship for a period of 12 consecutive months, other than annual privacy notices, material required by law or rule, communication at the direction of a state or federal authority, or promotional materials;

(F) The individual is an insured or an annuitant under an insurance policy or annuity, respectively, but is not the policyholder or owner of the insurance policy or annuity; or

(G) For the purposes of this rule, the individual's last known address according to the licensee's records is deemed invalid. An address of record is deemed invalid if mail sent to that address by the licensee has been returned by the postal authorities as undeliverable and if subsequent attempts by the licensee to obtain a current valid address for the individual have been unsuccessful.

(11)(a) "Financial institution" means any institution the business of which is engaging in activities that are financial in nature or incidental to such financial activities as described in Section 4(k) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(k)).

(b) Financial institution does not include:

(i) Any person or entity with respect to any financial activity that is subject to the jurisdiction of the Commodity Futures Trading Commission under the Commodity Exchange Act (7 U.S.C. 1 et seq.);

(ii) The Federal Agricultural Mortgage Corporation or any entity charged and operating under the Farm Credit Act of 1971 (12 U.S.C. 2001 et seq.); or

(iii) Institutions chartered by Congress specifically to engage in securitizations, secondary market sales (including sales of servicing rights) or similar transactions related to a transaction of a consumer, as long as the institutions do not sell or transfer nonpublic personal information to a nonaffiliated third party.

(12)(a) "Financial product or service" means any product or service that a financial holding company could offer by engaging in an activity that is financial in nature or incidental to such a financial activity under Section (4)(k) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(k)).

(b) Financial service includes a financial institution's evaluation or brokerage of information that the financial institution collects in connection with a request or an application from a consumer for a financial product or service.

(13) "Health care" means:

(a) Preventive, diagnostic, therapeutic, rehabilitative, maintenance or palliative care, services, procedures, tests or counseling that:

(i) Relates to the physical, mental or behavioral condition of an individual; or

(ii) Affects the structure or function of the human body or any part of the human body, including the banking of blood, sperm, organs or any other tissue; or

(b) Prescribing, dispensing or furnishing to an individual drugs or biologicals, or medical devices or health care equipment and supplies.

(14) "Health care provider" means a physician or other health care practitioner licensed, accredited or certified to perform specified health services consistent with state law, or a health care facility.

(15) "Health information" means any information or data except age or gender, whether oral or recorded in any form or medium, created by or derived from a health care provider or the consumer that relates to:

(a) The past, present or future physical, mental or behavioral health or condition of an individual;

(b) The provision of health care to an individual; or

(c) Payment for the provision of health care to an individual.

(16)(a) "Insurance product or service" means any product or service that is offered by a licensee pursuant to the insurance laws of this state.

(b) Insurance service includes a licensee's evaluation, brokerage or distribution of information that the licensee collects in connection with a request or an application from a consumer for a insurance product or service.

(17)(a) "Licensee" means all licensed insurers, producers and other persons licensed or required to be licensed, or authorized or required to be authorized, or registered or required to be registered pursuant to the insurance laws of this state.

(b) A licensee is not subject to the notice and opt out requirements for nonpublic personal financial information set forth in Sections 1 through 17 of this rule if the licensee is an employee, agent or other representative of another licensee, "the principal," and:

(i) The principal otherwise complies with, and provides the notices required by, the provisions of this rule; and

(ii) The licensee does not disclose any non-public personal financial information or a consumer or customer to any person other than the principal from or through which such consumer or customer seeks to obtain, or has obtained, a product or service or its affiliates in a manner permitted by this rule.

(c)(i) Subject to Subsection R590-206-4.(17)(b)(ii), "licensee" shall also include an unauthorized insurer that accepts business placed through a licensed surplus lines broker in this state, but only in regard to the surplus lines placements placed pursuant to Section 31A-15-103 of this state's laws.

(ii) A surplus lines broker or surplus lines insurer shall be deemed to be in compliance with the notice and opt out requirements for nonpublic personal financial information set forth in Sections 1 through 17 of this rule provided:

(A) The broker or insurer does not disclose nonpublic personal financial information of a consumer or a customer to nonaffiliated third parties for any purpose, including joint servicing or marketing under Section 14 of this rule, except as permitted by Section 15 or 16 of this rule; and

(B) The broker or insurer delivers a notice to the consumer at the time a customer relationship is established on which the following is printed in 16-point type:

PRIVACY NOTICE

"NEITHER THE U.S. BROKERS THAT HANDLED THIS INSURANCE NOR THE INSURERS THAT HAVE UNDERWRITTEN THIS INSURANCE WILL DISCLOSE NONPUBLIC PERSONAL FINANCIAL INFORMATION CONCERNING THE BUYER TO NONAFFILIATES OF THE BROKERS OR INSURERS EXCEPT AS PERMITTED BY LAW.

(18)(a) "Nonaffiliated third party" means any person except:

(i) A licensee's affiliate; or

(ii) A person employed jointly by a licensee and any company that is not the licensee's affiliate (but nonaffiliated third party includes the other company that jointly employs the person).

(b) Nonaffiliated third party includes any company that is an affiliate solely by virtue of the direct or indirect ownership or control of the company by the licensee or its affiliate in conducting merchant banking or investment banking activities of the type described in Subsection R590-206-4.(k)(4)(H) or insurance company investment activities of the type described in Section 4(k)(4)(I) of the federal Bank Holding Company Act (12 U.S.C. 1843(k)(4)(H) and (I)).

(19) "Nonpublic personal information" means nonpublic personal financial information and nonpublic personal health information.

(20)(a) "Nonpublic personal financial information" means:

(i) Personally identifiable financial information; and
 (ii) Any list, description or other grouping of consumers, and publicly available information pertaining to them, that is derived using any personally identifiable financial information that is not publicly available.

(b) Nonpublic personal financial information does not include:

(i) Health information;
 (ii) Publicly available information, except as included on a list described in Subsection R590-206-4.(20)(a)(ii); or

(iii) Any list, description or other grouping of consumers, and publicly available information pertaining to them, that is derived without using any personally identifiable financial information that is not publicly available.

(c) Examples of lists.

(i) Nonpublic personal financial information includes any list of individuals' names and street addresses that is derived in whole or in part using personally identifiable financial information that is not publicly available, such as account numbers.

(ii) Nonpublic personal financial information does not include any list of individuals' names and addresses that contains only publicly available information, is not derived in whole or in part using personally identifiable financial information that is not publicly available, and is not disclosed in a manner that indicates that any of the individuals on the list is a consumer of a financial institution.

(21) "Nonpublic personal health information" means health information:

(a) That identifies an individual who is the subject of the information; or

(b) With respect to which there is a reasonable basis to believe that the information could be used to identify an individual.

(22)(a) "Personally identifiable financial information" means any information:

(i) A consumer provides to a licensee to obtain an insurance product or service from the licensee;

(ii) About a consumer resulting from a transaction involving an insurance product or service between a licensee and a consumer; or

(iii) The licensee otherwise obtains about a consumer in connection with providing an insurance product or service to that consumer.

(b) Examples.

(i) Information included. Personally identifiable financial information includes:

(A) Information a consumer provides to a licensee on an application to obtain an insurance product or service;

(B) Account balance information and payment history;

(C) The fact that an individual is or has been one of the licensee's customers or has obtained an insurance product or service from the licensee;

(D) Any information about the licensee's consumer if it is disclosed in a manner that indicates that the individual is or has been the licensee's consumer;

(E) Any information that a consumer provides to a licensee or that the licensee or its agent otherwise obtains in connection with collecting on a loan or servicing a loan;

(F) Any information the licensee collects through an Internet cookie, an information-collecting device from a web server; and

(G) Information from a consumer report.

(ii) Information not included. Personally identifiable financial information does not include:

(A) Health information;

(B) A list of names and addresses of customers of an entity that is not a financial institution; and

(C) Information that does not identify a consumer, such as aggregate information or blind data that does not contain personal identifiers such as account numbers, names or addresses.

(23)(a) "Publicly available information" means any information that a licensee has a reasonable basis to believe is lawfully made available to the general public from:

(i) Federal, state or local government records;

(ii) Widely distributed media; or

(iii) Disclosures to the general public that are required to be made by federal, state or local law.

(b) Reasonable basis. A licensee has a reasonable basis to believe that information is lawfully made available to the general public if the licensee has taken steps to determine:

(i) That the information is of the type that is available to the general public; and

(ii) Whether an individual can direct that the information not be made available to the general public and, if so, that the licensee's consumer has not done so.

(c) Examples.

(i) Government records. Publicly available information in government records includes information in government real estate records and security interest filings.

(ii) Widely distributed media. Publicly available information from widely distributed media includes information from a telephone book, a television or radio program, a newspaper or a web site that is available to the general public on an unrestricted basis. A web site is not restricted merely because an Internet service provider or a site operator requires a fee or a password, so long as access is available to the general public.

(iii) Reasonable basis.

(A) A licensee has a reasonable basis to believe that mortgage information is lawfully made available to the general public if the licensee has determined that the information is of the type included on the public record in the jurisdiction where the mortgage would be recorded.

(B) A licensee has a reasonable basis to believe that an individual's telephone number is lawfully made available to the general public if the licensee has located the telephone number in the telephone book or the consumer has informed you that the telephone number is not unlisted.

R590-206-5. Initial Privacy Notice to Consumers Required.

(1) Initial notice requirement. A licensee shall provide a clear and conspicuous notice that accurately reflects its privacy policies and practices to:

(a) Customer. An individual who becomes the licensee's customer, not later than when the licensee establishes a customer relationship, except as provided in Subsection R590-206-5.(5) of this section; and

(b) Consumer. A consumer, before the licensee discloses any nonpublic personal financial information about the consumer to any nonaffiliated third party, if the licensee makes a disclosure other than as authorized by Sections 15 and 16.

(2) When initial notice to a consumer is not required. A licensee is not required to provide an initial notice to a consumer under Subsection R590-206-5.(1)(b) of this section if:

(a) The licensee does not disclose any nonpublic personal financial information about the consumer to any nonaffiliated third party, other than as authorized by Sections 15 and 16, and the licensee does not have a customer relationship with the consumer; or

(b) A notice has been provided by an affiliated licensee, as long as the notice clearly identifies all licensees to whom the notice applies and is accurate with respect to the licensee and the other institutions.

(3) When the licensee establishes a customer relationship.

(a) General rule. A licensee establishes a customer relationship at the time the licensee and the consumer enter into a continuing relationship.

(b) Examples of establishing customer relationship. A licensee establishes a customer relationship when the consumer:

(i) Becomes a policyholder of a licensee that is an insurer when the insurer delivers an insurance policy or contract to the consumer, or in the case of a licensee that is an insurance producer or insurance broker, obtains insurance through that licensee; or

(ii) Agrees to obtain financial, economic or investment advisory services relating to insurance products or services for a fee from the licensee.

(4) Existing customers. When an existing customer obtains a new insurance product or service from a licensee that is to be used primarily for personal, family or household purposes, the licensee satisfies the initial notice requirements of Subsection R590-206-5.(1) of this section as follows:

(a) The licensee may provide a revised policy notice, under Section 9, that covers the customer's new insurance product or service; or

(b) If the initial, revised or annual notice that the licensee most recently provided to that customer was accurate with respect to the new insurance product or service, the licensee does not need to provide a new privacy notice under Subsection R590-206-5.(1) of this section.

(5) Exceptions to allow subsequent delivery of notice.

(a) A licensee may provide the initial notice required by Subsection R590-206-5.(1)(a) of this section within a reasonable time after the licensee establishes a customer relationship if:

(i) Establishing the customer relationship is not at the customer's election; or

(ii) Providing notice not later than when the licensee establishes a customer relationship would substantially delay the customer's transaction and the customer agrees to receive the notice at a later time.

(b) Examples of exceptions.

(i) Not at customer's election. Establishing a customer relationship is not at the customer's election if a licensee acquires or is assigned a customer's policy from another financial institution or residual market mechanism and the customer does not have a choice about the licensee's acquisition or assignment.

(ii) Substantial delay of customer's transaction. Providing notice not later than when a licensee establishes a customer relationship would substantially delay the customer's transaction when the licensee and the individual agree over the telephone to enter into a customer relationship involving prompt delivery of the insurance product or service.

(iii) No substantial delay of customer's transaction. Providing notice not later than when a licensee establishes a customer relationship would not substantially delay the customer's transaction when the relationship is initiated in person at the licensee's office or through other means by which the customer may view the notice, such as on a web site.

(6) Delivery. When a licensee is required to deliver an initial privacy notice by this section, the licensee shall deliver it according to Section 10. If the licensee uses a short-form initial notice for non-customers according to Subsection R590-206-7.(4) the licensee may deliver its privacy notice according to Subsection R590-206-7.(4)(c).

R590-206-6. Annual Privacy Notice to Customers Required.

(1)(a) General rule. A licensee shall provide a clear and conspicuous notice to customers that accurately reflects its privacy policies and practices not less than annually during the continuation of the customer relationship. Annually means at least once in any period of 12 consecutive months during which that relationship exists. A licensee may define the 12 consecutive month period, but the licensee shall apply it to the customer on a consistent basis.

(b) Example. A licensee provides a notice annually if it defines the 12 consecutive month period as a calendar year and provides the annual notice to the customer once in each calendar year following the calendar year in which the licensee provided the initial notice. For example, if a customer opens an account on any day of year 1, the licensee shall provide an annual notice to that customer by December 31 of year two.

(2) Exception to General Rule. A licensee that provides nonpublic personal information to nonaffiliated third parties only in accordance with Sections 15, 16, or 17 and has not changed its policies and practices with regard to disclosing nonpublic personal information from the policies and practices that were disclosed in the most recent disclosure sent to consumers in accordance with this section or Section 5 shall not be required to provide an annual disclosure under this section until such time as the licensee fails to comply with any criteria described in this paragraph.

(3)(a) Termination of customer relationship. A licensee is not required to provide an annual notice to a former customer. A former customer is an individual with whom a licensee no longer has a continuing relationship.

(b) Examples.

(i) A licensee no longer has a continuing relationship with an individual if the individual no longer is a current policyholder of an insurance product or no longer obtains insurance services with or through the licensee.

(ii) A licensee no longer has a continuing relationship with an individual if the individual's policy is lapsed, expired or otherwise inactive or dormant under the licensee's business practices, and the licensee has not communicated with the customer about the relationship for a period of twelve 12 consecutive months, other than to provide annual privacy notices, material required by law or rule, or promotional materials.

(iii) For the purposes of this rule, a licensee no longer has a continuing relationship with an individual if the individual's last known address according to the licensee's records is deemed invalid. An address of record is deemed invalid if mail sent to that address by the licensee has been returned by the postal authorities as undeliverable and if subsequent attempts by the licensee to obtain a current valid address for the individual have been unsuccessful.

(iv) A licensee no longer has a continuing relationship with a customer in the case of providing real estate settlement services, at the time the customer completes execution of all documents related to the real estate closing, payment for those services has been received, or the licensee has completed all of its responsibilities with respect to the settlement, including filing documents on the public record, whichever is later.

(~~3~~4) Delivery. When a licensee is required by this section to deliver an annual privacy notice, the licensee shall deliver it according to Section 10.

R590-206-7. Information to be Included in Privacy Notices.

(1) General rule. The initial, annual and revised privacy notices that a licensee provides under Sections 5, 6 and 9 shall include each of the following items of information, in addition to any other information the licensee wishes to provide, that applies to the licensee and to the consumers to whom the licensee sends its privacy notice:

(a) The categories of nonpublic personal financial information that the licensee collects;

(b) The categories of nonpublic personal financial information that the licensee discloses;

(c) The categories of affiliates and nonaffiliated third parties to whom the licensee discloses nonpublic personal financial information, other than those parties to whom the licensee discloses information under Sections 15 and 16;

(d) The categories of nonpublic personal financial information about the licensee's former customers that the licensee discloses and the categories of affiliates and nonaffiliated third parties to whom the licensee discloses nonpublic personal financial information about the licensee's former customers, other than those parties to whom the licensee discloses information under Sections 15 and 16;

(e) If a licensee discloses nonpublic personal financial information to a nonaffiliated third party under Section 14, and no other exception in Sections 15 and 16 applies to that disclosure, a separate description of the categories of information the licensee discloses and the categories of third parties with whom the licensee has contracted;

(f) An explanation of the consumer's right under Subsection R590-206-11.(1) to opt out of the disclosure of nonpublic personal financial information to nonaffiliated third parties, including the methods by which the consumer may exercise that right at that time;

(g) Any disclosures that the licensee makes under Section 603(d)(2)(A)(iii) of the federal Fair Credit Reporting Act (15 U.S.C. 1681a(d)(2)(A)(iii)) (that is, notices regarding the ability to opt out of disclosures of information among affiliates);

(h) The licensee's policies and practices with respect to protecting the confidentiality and security of nonpublic personal financial information; and

(i) Any disclosure that the licensee makes under Subsection R590-206-7.(2).

(2) Description of parties subject to exceptions. If a licensee discloses nonpublic personal financial information as authorized under Sections 15 and 16, the licensee is not required to list those exceptions in the initial or annual privacy notices required by Sections 5 and 6. When describing the categories of parties to whom disclosure is made, the licensee is required to state only that it makes disclosures to other affiliated or nonaffiliated third parties, as applicable, as permitted by law.

(3) Examples.

(a) Categories of nonpublic personal financial information that the licensee collects. A licensee satisfies the requirement to categorize the nonpublic personal financial information it collects if the licensee categorizes it according to the source of the information, as applicable:

(i) Information from the consumer;

(ii) Information about the consumer's transactions with the licensee or its affiliates;

(iii) Information about the consumer's transactions with nonaffiliated third parties; and

(iv) Information from a consumer reporting agency.

(b) Categories of nonpublic personal financial information a licensee discloses.

(i) A licensee satisfies the requirement to categorize nonpublic personal financial information it discloses if the licensee categorizes the information according to source, as described in Subsection R590-206-7.(3)(a), as applicable, and provides a few examples to illustrate the types of information in each category. These might include:

(A) Information from the consumer, including application information, such as assets and income and identifying information, such as name, address and social security number;

(B) Transaction information, such as information about balances, payment history and parties to the transaction; and

(C) Information from consumer reports, such as a consumer's creditworthiness and credit history.

(ii) A licensee does not adequately categorize the information that it discloses if the licensee uses only general terms, such as transaction information about the consumer.

(iii) If a licensee reserves the right to disclose all of the nonpublic personal financial information about consumers that it collects, the licensee may simply state that fact without describing the categories or examples of nonpublic personal financial information that the licensee discloses.

(c) Categories of affiliates and nonaffiliated third parties to whom the licensee discloses.

(i) A licensee satisfies the requirement to categorize the affiliates and nonaffiliated third parties to which the licensee discloses nonpublic personal financial information about consumers if the licensee identifies the types of businesses in which they engage.

(ii) Types of businesses may be described by general terms only if the licensee uses a few illustrative examples of significant lines of business. For example, a licensee may use the term financial products or services if it includes appropriate examples of significant lines of businesses, such as life insurer, automobile insurer, consumer banking or securities brokerage.

(iii) A licensee also may categorize the affiliates and nonaffiliated third parties to which it discloses nonpublic personal financial information about consumers using more detailed categories.

(d) Disclosures under exception for service providers and joint marketers. If a licensee discloses nonpublic personal financial information under the exception in Section 14 to a nonaffiliated third party to market products or services that it offers alone or jointly with another financial institution, the licensee satisfies the disclosure requirement of Subsection R590-206-7.1(e) of this section if it:

(i) Lists the categories of nonpublic personal financial information it discloses, using the same categories and examples the licensee used to meet the requirements of Subsection R590-206-7.1(b) of this section, as applicable; and

(ii) States whether the third party is:

(A) A service provider that performs marketing services on the licensee's behalf or on behalf of the licensee and another financial institution; or

(B) A financial institution with whom the licensee has a joint marketing agreement.

(e) Simplified notices. If a licensee does not disclose, and does not wish to reserve the right to disclose, nonpublic personal financial information about customers or former customers to affiliates or nonaffiliated third parties except as authorized under Sections 15 and 16, the licensee may simply state that fact, in addition to the information it shall provide under Subsections R590-206-7.1(a), 7.1(h), 7.1(i), and 7.2.

(f) Confidentiality and security. A licensee describes its policies and practices with respect to protecting the confidentiality and security of nonpublic personal financial information if it does both of the following:

(i) Describes in general terms who is authorized to have access to the information; and

(ii) States whether the licensee has security practices and procedures in place to ensure the confidentiality of the information in accordance with the licensee's policy. The licensee is not required to describe technical information about the safeguards it uses.

(4) Short-form initial notice with opt out notice for non-customers.

(a) A licensee may satisfy the initial notice requirements in Subsections R590-206-5.1(b) and Subsection R590-206-8.3) for a consumer who is not a customer by providing a short-form initial notice at the same time as the licensee delivers an opt out notice as required in Section 8.

(b) A short-form initial notice shall:

(i) Be clear and conspicuous;

(ii) State that the licensee's privacy notice is available upon request; and

(iii) Explain a reasonable means by which the consumer may obtain that notice.

(c) The licensee shall deliver its short-form initial notice according to Section 10. The licensee is not required to deliver its privacy notice with its short-form initial notice. The licensee instead may simply provide the consumer a reasonable means to obtain its privacy notice. If a consumer who receives the licensee's short-form notice requests the licensee's privacy notice, the licensee shall deliver its privacy notice according to Section 10.

(d) Examples of obtaining privacy notice. The licensee provides a reasonable means by which a consumer may obtain a copy of its privacy notice if the licensee:

(i) Provides a toll-free telephone number that the consumer may call to request the notice; or

(ii) For a consumer who conducts business in person at the licensee's office, maintains copies of the notice on hand that the licensee provides to the consumer immediately upon request.

(5) Future disclosures. The licensee's notice may include:

(a) Categories of nonpublic personal financial information that the licensee reserves the right to disclose in the future, but does not currently disclose; and

(b) Categories of affiliates or nonaffiliated third parties to whom the licensee reserves the right in the future to disclose, but to whom the licensee does not currently disclose, nonpublic personal financial information.

(6) Sample clauses. Sample clauses illustrating some of the notice content required by this section are found in Appendix A - Sample Clauses, of the Model Rule entitled, "Privacy of Consumer Financial and Health Information Regulation," adopted September 26, 2000, by the National Association of Insurance Commissioners. Appendix A is incorporated by reference and available for inspection at the Department of Insurance and the Department of Administrative Rules.

R590-206-8. Form of Opt Out Notice to Consumers and Opt Out Methods.

(1)(a) Form of opt out notice. If a licensee is required to provide an opt out notice under Subsection R590-206-11.1, it shall provide a clear and conspicuous notice to each of its consumers that accurately explains the right to opt out under that section. The notice shall state:

(i) That the licensee discloses or reserves the right to disclose nonpublic personal financial information about its consumer to a nonaffiliated third party;

(ii) That the consumer has the right to opt out of that disclosure; and

(iii) A reasonable means by which the consumer may exercise the opt out right.

(b) Examples.

(i) Adequate opt out notice. A licensee provides adequate notice that the consumer can opt out of the disclosure of nonpublic personal financial information to a nonaffiliated third party if the licensee:

(A) Identifies all of the categories of nonpublic personal financial information that it discloses or reserves the right to disclose, and all of the categories of nonaffiliated third parties to which the licensee discloses the information, as described in Subsections R590-206-7.1(b) and R590-206-7.1(c), and states that the consumer can opt out of the disclosure of that information; and

(B) Identifies the insurance products or services that the consumer obtains from the licensee, either singly or jointly, to which the opt out direction would apply.

(ii) Reasonable opt out means. A licensee provides a reasonable means to exercise an opt out right if it:

(A) Designates check-off boxes in a prominent position on the relevant forms with the opt out notice;

(B) Includes a reply form together with the opt out notice;

(C) Provides an electronic means to opt out, such as a form that can be sent via electronic mail or a process at the licensee's web site, if the consumer agrees to the electronic delivery of information; or

(D) Provides a toll-free telephone number that consumers may call to opt out.

(iii) Unreasonable opt out means. A licensee does not provide a reasonable means of opting out if:

(A) The only means of opting out is for the consumer to write his or her own letter to exercise that opt out right; or

(B) The only means of opting out as described in any notice subsequent to the initial notice is to use a check-off box that the licensee provided with the initial notice but did not include with the subsequent notice.

(iv) Specific opt out means. A licensee may require each consumer to opt out through a specific means, as long as that means is reasonable for that consumer.

(2) Same form as initial notice permitted. A licensee may provide the opt out notice together with or on the same written or electronic form as the initial notice the licensee provides in accordance with Section 5.

(3) Initial notice required when opt out notice delivered subsequent to initial notice. If a licensee provides the opt out notice later than required for the initial notice in accordance with Section 5, the licensee shall also include a copy of the initial notice with the opt out notice in writing or, if the consumer agrees, electronically.

(4) Joint relationships.

(a) If two or more consumers jointly obtain an insurance product or service from a licensee, the licensee may provide a single opt out notice. The licensee's opt out notice shall explain how the licensee will treat an opt out direction by a joint consumer, as explained in Subsection R590-206-8.(4)(e).

(b) Any of the joint consumers may exercise the right to opt out. The licensee may either:

(i) Treat an opt out direction by a joint consumer as applying to all of the associated joint consumers; or

(ii) Permit each joint consumer to opt out separately.

(c) If a licensee permits each joint consumer to opt out separately, the licensee shall permit one of the joint consumers to opt out on behalf of all of the joint consumers.

(d) A licensee may not require all joint consumers to opt out before it implements any opt out direction.

(e) Example. If John and Mary are both named policyholders on a homeowner's insurance policy issued by a licensee and the licensee sends policy statements to John's address, the licensee may do any of the following, but it shall explain in its opt out notice which opt out policy the licensee will follow:

(i) Send a single opt out notice to John's address, but the licensee shall accept an opt out direction from either John or Mary.

(ii) Treat an opt out direction by either John or Mary as applying to the entire policy. If the licensee does so and John opts out, the licensee may not require Mary to opt out as well before implementing John's opt out direction.

(iii) Permit John and Mary to make different opt out directions. If the licensee does so:

(A) It shall permit John and Mary to opt out for each other;

(B) If both opt out, the licensee shall permit both of them to notify it in a single response, such as on a form or through a telephone call; and

(C) If John opts out and Mary does not, the licensee may only disclose nonpublic personal financial information about Mary, but not about John and not about John and Mary jointly.

(5) Time to comply with opt out. A licensee shall comply with a consumer's opt out direction as soon as reasonably practicable after the licensee receives it.

(6) Continuing right to opt out. A consumer may exercise the right to opt out at any time.

(7) Duration of consumer's opt out direction.

(a) A consumer's direction to opt out under this section is effective until the consumer revokes it in writing or, if the consumer agrees, electronically.

(b) When a customer relationship terminates, the customer's opt out direction continues to apply to the nonpublic personal financial information that the licensee collected during or related to that relationship. If the individual subsequently establishes a new customer relationship with the licensee, the opt out direction that applied to the former relationship does not apply to the new relationship.

(8) Delivery. When a licensee is required to deliver an opt out notice by this section, the licensee shall deliver it according to Section 10.

R590-206-9. Revised Privacy Notices.

(1) General rule. Except as otherwise authorized in this rule, a licensee shall not, directly or through an affiliate, disclose any nonpublic personal financial information about a consumer to a nonaffiliated third party other than as described in the initial notice that the licensee provided to that consumer under Section 5, unless:

(a) The licensee has provided to the consumer a clear and conspicuous revised notice that accurately describes its policies and practices;

(b) The licensee has provided to the consumer a new opt out notice;

(c) The licensee has given the consumer a reasonable opportunity, before the licensee discloses the information to the nonaffiliated third party, to opt out of the disclosure; and

(d) The consumer does not opt out.

(2) Examples.

(a) Except as otherwise permitted by Sections 14, 15 and 16, a licensee shall provide a revised notice before it:

(i) Discloses a new category of nonpublic personal financial information to any nonaffiliated third party;

(ii) Discloses nonpublic personal financial information to a new category of nonaffiliated third party; or

(iii) Discloses nonpublic personal financial information about a former customer to a nonaffiliated third party, if that former customer has not had the opportunity to exercise an opt out right regarding that disclosure.

(b) A revised notice is not required if the licensee discloses nonpublic personal financial information to a new nonaffiliated third party that the licensee adequately described in its prior notice.

(3) Delivery. When a licensee is required to deliver a revised privacy notice by this section, the licensee shall deliver it according to Section 10.

R590-206-10. Delivery.

(1) How to provide notices. A licensee shall provide any notices that this rule requires so that each consumer can reasonably be expected to receive actual notice in writing or, if the consumer agrees, electronically.

(2)(a) Examples of reasonable expectation of actual notice. A licensee may reasonably expect that a consumer will receive actual notice if the licensee:

(i) Hand-delivers a printed copy of the notice to the consumer;

(ii) Mails a printed copy of the notice to the last known address of the consumer separately, or in a policy, billing or other written communication;

(iii) For a consumer who conducts transactions electronically, posts the notice on the electronic site and requires the consumer to acknowledge receipt of the notice as a necessary step to obtaining a particular insurance product or service;

(iv) For an isolated transaction with a consumer, such as the licensee providing an insurance quote or selling the consumer travel insurance, posts the notice and requires the consumer to acknowledge receipt of the notice as a necessary step to obtaining the particular insurance product or service.

(b) Examples of unreasonable expectation of actual notice. A licensee may not, however, reasonably expect that a consumer will receive actual notice of its privacy policies and practices if it:

(i) Only posts a sign in its office or generally publishes advertisements of its privacy policies and practices; or

(ii) Sends the notice via electronic mail to a consumer who does not obtain an insurance product or service from the licensee electronically.

(3) Annual notices only. A licensee may reasonably expect that a customer will receive actual notice of the licensee's annual privacy notice if:

(a) The customer uses the licensee's web site to access insurance products and services electronically[~~and agrees to receive notices~~] at the web site[~~and~~], the licensee posts its current privacy notice continuously in a clear and conspicuous manner on the web site, the information included in the privacy notice has not changed since the customer received the previous notice, and, at least once per year, the licensee inserts a clear and conspicuous statement on a notice or disclosure the licensee issues under any other provision of law to announce that the annual privacy notice is available on the licensee's web site and that the annual privacy notice will still be mailed to customers who request it by calling a toll-free telephone number; or

(b) The customer has requested that the licensee refrain from sending any information regarding the customer relationship, and the licensee's current privacy notice remains available to the customer upon request.

(4) Oral description of notice insufficient. A licensee may not provide any notice required by this rule solely by orally explaining the notice, either in person or over the telephone.

(5) Retention or accessibility of notices for customers.

(a) For customers only, a licensee shall provide the initial notice required by Subsection R590-206-5.(1)(a), the annual notice required by Subsection R590-206-6.(1), and the revised notice required by Section 9 so that the customer can retain them or obtain them later in writing or, if the customer agrees, electronically.

(b) Examples of retention or accessibility. A licensee provides a privacy notice to the customer so that the customer can retain it or obtain it later if the licensee:

(i) Hand-delivers a printed copy of the notice to the customer;

(ii) Mails a printed copy of the notice to the last known address of the customer; or

(iii) Makes its current privacy notice available on a web site (or a link to another web site) for the customer who obtains an insurance product or service electronically and agrees to receive the notice at the web site.

(6) Joint notice with other financial institutions. A licensee may provide a joint notice from the licensee and one or more of its affiliates or other financial institutions, as identified in the notice, as long as the notice is accurate with respect to the licensee and the other institutions. A licensee also may provide a notice on behalf of another financial institution.

(7) Joint relationships. If two or more consumers jointly obtain an insurance product or service from a licensee, the licensee may satisfy the initial, annual and revised notice requirements of Subsections R590-206-5.(1), 6.(1) and 9.(1), respectively, by providing one notice to those consumers jointly.

R590-206-11. Limits on Disclosure of Nonpublic Personal Financial Information to Nonaffiliated Third Parties.

(1)(a) Conditions for disclosure. Except as otherwise authorized in this rule, a licensee may not, directly or through any affiliate, disclose any nonpublic personal financial information about a consumer to a nonaffiliated third party unless:

(i) The licensee has provided to the consumer an initial notice as required under Section 5;

(ii) The licensee has provided to the consumer an opt out notice as required in Section 8;

(iii) The licensee has given the consumer a reasonable opportunity, before it discloses the information to the nonaffiliated third party, to opt out of the disclosure; and

(iv) The consumer does not opt out.

(b) Opt out definition. Opt out means a direction by the consumer that the licensee not disclose nonpublic personal financial information about that consumer to a nonaffiliated third party, other than as permitted by Sections 14, 15 and 16.

(c) Examples of reasonable opportunity to opt out. A licensee provides a consumer with a reasonable opportunity to opt out if:

(i) By mail. The licensee mails the notices required in Subsection R590-206-11.(1)(a) to the consumer and allows the consumer to opt out by mailing a form, calling a toll-free telephone number or any other reasonable means within 30 days from the date the licensee mailed the notices.

(ii) By electronic means. A customer opens an on-line account with a licensee and agrees to receive the notices required in Subsection R590-206-11.(1)(a) electronically, and the licensee allows the customer to opt out by any reasonable means within 30 days after the date that the customer acknowledges receipt of the notices in conjunction with opening the account.

(iii) Isolated transaction with consumer. For an isolated transaction such as providing the consumer with an insurance quote, a licensee provides the consumer with a reasonable opportunity to opt out if the licensee provides the notices required in Subsection

R590-206-11.(1)(a) at the time of the transaction and requests that the consumer decide, as a necessary part of the transaction, whether to opt out before completing the transaction.

(2) Application of opt out to all consumers and all nonpublic personal financial information.

(a) A licensee shall comply with this section, regardless of whether the licensee and the consumer have established a customer relationship.

(b) Unless a licensee complies with this section, the licensee may not, directly or through any affiliate, disclose any nonpublic personal financial information about a consumer that the licensee has collected, regardless of whether the licensee collected it before or after receiving the direction to opt out from the consumer.

(3) Partial opt out. A licensee may allow a consumer to select certain nonpublic personal financial information or certain nonaffiliated third parties with respect to which the consumer wishes to opt out.

R590-206-12. Limits on Redisclosure and Reuse of Nonpublic Personal Financial Information.

(1)(a) Information the licensee receives under an exception. If a licensee receives nonpublic personal financial information from a nonaffiliated financial institution under an exception in Sections 15 or 16 of this rule, the licensee's disclosure and use of that information is limited as follows:

(i) The licensee may disclose the information to the affiliates of the financial institution from which the licensee received the information;

(ii) The licensee may disclose the information to its affiliates, but the licensee's affiliates may, in turn, disclose and use the information only to the extent that the licensee may disclose and use the information; and

(iii) The licensee may disclose and use the information pursuant to an exception in Sections 15 or 16 of this rule, in the ordinary course of business to carry out the activity covered by the exception under which the licensee received the information.

(b) Example. If a licensee receives information from a nonaffiliated financial institution for claims settlement purposes, the licensee may disclose the information for fraud prevention, or in response to a properly authorized subpoena. The licensee may not disclose that information to a third party for marketing purposes or use that information for its own marketing purposes.

(2)(a) Information a licensee receives outside of an exception. If a licensee receives nonpublic personal financial information from a nonaffiliated financial institution other than under an exception in Sections 15 or 16 of this rule, the licensee may disclose the information only:

(i) To the affiliates of the financial institution from which the licensee received the information;

(ii) To its affiliates, but its affiliates may, in turn, disclose the information only to the extent that the licensee may disclose the information; and

(iii) To any other person, if the disclosure would be lawful if made directly to that person by the financial institution from which the licensee received the information.

(b) Example. If a licensee obtains a customer list from a nonaffiliated financial institution outside of the exceptions in Sections 15 or 16:

(i) The licensee may use that list for its own purposes; and

(ii) The licensee may disclose that list to another nonaffiliated third party only if the financial institution from which the licensee purchased the list could have lawfully disclosed the list to that third party. That is, the licensee may disclose the list in accordance with the privacy policy of the financial institution from which the licensee received the list, as limited by the opt out direction of each consumer whose nonpublic personal financial information the licensee intends to disclose, and the licensee may disclose the list in accordance with an exception in Sections 15 or 16, such as to the licensee's attorneys or accountants.

(3) Information a licensee discloses under an exception. If a licensee discloses nonpublic personal financial information to a nonaffiliated third party under an exception in Sections 15 or 16 of this rule, the third party may disclose and use that information only as follows:

(a) The third party may disclose the information to the licensee's affiliates;

(b) The third party may disclose the information to its affiliates, but its affiliates may, in turn, disclose and use the information only to the extent that the third party may disclose and use the information; and

(c) The third party may disclose and use the information pursuant to an exception in Sections 15 or 16 in the ordinary course of business to carry out the activity covered by the exception under which it received the information.

(4) Information a licensee discloses outside of an exception. If a licensee discloses nonpublic personal financial information to a nonaffiliated third party other than under an exception in Sections 15 or 16 of this rule, the third party may disclose the information only:

(a) To the licensee's affiliates;

(b) To the third party's affiliates, but the third party's affiliates, in turn, may disclose the information only to the extent the third party can disclose the information; and

(c) To any other person, if the disclosure would be lawful if the licensee made it directly to that person.

R590-206-13. Limits on Sharing Account Number Information for Marketing Purposes.

(1) General prohibition on disclosure of account numbers. A licensee shall not, directly or through an affiliate, disclose, other than to a consumer reporting agency, a policy number or similar form of access number or access code for a consumer's policy or transaction account to any nonaffiliated third party for use in telemarketing, direct mail marketing or other marketing through electronic mail to the consumer.

(2) Exceptions. R590-206-13.(1) does not apply if a licensee discloses a policy number or similar form of access number or access code:

(a) To the licensee's service provider solely in order to perform marketing for the licensee's own products or services, as long as the service provider is not authorized to directly initiate charges to the account;

(b) To a licensee who is a producer solely in order to perform marketing for the licensee's own products or services; or

(c) To a participant in an affinity or similar program where the participants in the program are identified to the customer when the customer enters into the program.

(3) Examples.

(a) Policy number. A policy number, or similar form of access number or access code, does not include a number or code in an encrypted form, as long as the licensee does not provide the recipient with a means to decode the number or code.

(b) Policy or transaction account. For the purposes of this section, a policy or transaction account is an account other than a deposit account or a credit card account. A policy or transaction account does not include an account to which third parties cannot initiate charges.

R590-206-14. Exception to Opt Out Requirements for Disclosure of Nonpublic Personal Financial Information for Service Providers and Joint Marketing.

(1) General rule.

(a) The opt out requirements in Sections 8 and 11 do not apply when a licensee provides nonpublic personal financial information to a nonaffiliated third party to perform services for the licensee or functions on the licensee's behalf, if the licensee:

(i) Provides the initial notice in accordance with Section 5; and

(ii) Enters into a contractual agreement with the third party that prohibits the third party from disclosing or using the information other than to carry out the purposes for which the licensee disclosed the information, including use under an exception in Sections 15 or 16 in the ordinary course of business to carry out those purposes.

(b) Example. If a licensee discloses nonpublic personal financial information under this section to a financial institution with which the licensee performs joint marketing, the licensee's contractual agreement with that institution meets the requirements of Paragraph (1)(b) of this subsection if it prohibits the institution from disclosing or using the nonpublic personal financial information except as necessary to carry out the joint marketing or under an exception in Sections 15 or 16 in the ordinary course of business to carry out that joint marketing.

(2) Service may include joint marketing. The services a nonaffiliated third party performs for a licensee under Subsection R590-206-14.(1) of this section may include marketing of the licensee's own products or services or marketing of financial products or services offered pursuant to joint agreements between the licensee and one or more financial institutions.

(3) Definition of "joint agreement." For purposes of this section, "joint agreement" means a written contract pursuant to which a licensee and one or more financial institutions jointly offer, endorse or sponsor a financial product or service.

R590-206-15. Exceptions to Notice and Opt Out Requirements for Disclosure of Nonpublic Personal Financial Information for Processing and Servicing Transactions.

(1) Exceptions for processing transactions at consumer's request. The requirements for initial notice in Subsection R590-206-5.(1)(b), the opt out in Sections 8 and 11, and service providers and joint marketing provisions in Section 14 do not apply if the licensee discloses nonpublic personal financial information as

necessary to effect, administer or enforce a transaction that a consumer requests or authorizes, or to enforce a contractual obligation or other legal claim against a customer, or in connection with:

(a) Servicing or processing an insurance product or service that a consumer requests or authorizes;

(b) Maintaining or servicing the consumer's account with a licensee, or with another entity as part of a private label credit card program or other extension of credit on behalf of such entity;

(c) A proposed or actual securitization, secondary market sale (including sales of servicing rights) or similar transaction related to a transaction of the consumer; or

(d) Reinsurance or stop loss or excess loss insurance.

(2) "Necessary to effect, administer or enforce a transaction" means that the disclosure is:

(a) Required, or is one of the lawful or appropriate methods, to enforce the licensee's rights or the rights of other persons engaged in carrying out the financial transaction or providing the product or service; or

(b) Required, or is a usual, appropriate or acceptable method:

(i) To carry out the transaction or the product or service business of which the transaction is a part, and record, service or maintain the consumer's account in the ordinary course of providing the insurance product or service;

(ii) To administer or service benefits or claims relating to the transaction or the product or service business of which it is a part;

(iii) To provide a confirmation, statement or other record of the transaction, or information on the status or value of the insurance product or service to the consumer or the consumer's producer;

(iv) To accrue or recognize incentives or bonuses associated with the transaction that is provided by a licensee or any other party;

(v) To underwrite insurance at the consumer's request or for any of the following purposes as they relate to a consumer's insurance: account administration, reporting, investigating or preventing fraud or material misrepresentation, processing premium payments, processing insurance claims, administering insurance benefits, including utilization review activities, participating in research projects or as otherwise required or specifically permitted by federal or state law; or

(vi) In connection with:

(A) The authorization, settlement, billing, processing, clearing, transferring, reconciling or collection of amounts charged, debited or otherwise paid using a debit, credit or other payment card, check or account number, or by other payment means;

(B) The transfer of receivables, accounts or interests therein; or

(C) The audit of debit, credit or other payment information.

R590-206-16. Other Exceptions to Notice and Opt Out Requirements for Disclosure of Nonpublic Personal Financial Information.

(1) Exceptions to opt out requirements. The requirements for initial notice to consumers in Subsection R590-206-5.(1)(b), the

opt out in Sections 8 and 11, and service providers and joint marketing in Section 14 do not apply when a licensee discloses nonpublic personal financial information:

(a) With the consent or at the direction of the consumer, provided that the consumer has not revoked the consent or direction;

(b)(i) To protect the confidentiality or security of a licensee's records pertaining to the consumer, service, product or transaction;

(ii) To protect against or prevent actual or potential fraud or unauthorized transactions;

(iii) For required institutional risk control or for resolving consumer disputes or inquiries;

(iv) To persons holding a legal or beneficial interest relating to the consumer; or

(v) To persons acting in a fiduciary or representative capacity on behalf of the consumer;

(c) To provide information to insurance rate advisory organizations, guaranty funds or agencies, agencies that are rating a licensee, persons that are assessing the licensee's compliance with industry standards, and the licensee's attorneys, accountants and auditors;

(d) To the extent specifically permitted or required under other provisions of law and in accordance with the federal Right to Financial Privacy Act of 1978 (12 U.S.C. 3401 et seq.), to law enforcement agencies (including the Federal Reserve Board, Office of the Comptroller of the Currency, Federal Deposit Insurance Corporation, Office of Thrift Supervision, National Credit Union Administration, the Securities and Exchange Commission, the Secretary of the Treasury, with respect to 31 U.S.C. Chapter 53, Subchapter II (Records and Reports on Monetary Instruments and Transactions) and 12 U.S.C. Chapter 21, Financial Record keeping, a state insurance authority, and the Federal Trade Commission), self-regulatory organizations or for an investigation on a matter related to public safety;

(e)(i) To a consumer reporting agency in accordance with the federal Fair Credit Reporting Act (15 U.S.C. 1681 et seq.); or

(ii) From a consumer report reported by a consumer reporting agency;

(f) In connection with a proposed or actual sale, merger, transfer or exchange of all or a portion of a business or operating unit if the disclosure of nonpublic personal financial information concerns solely consumers of the business or unit;

(g)(i) To comply with federal, state or local laws, rules and other applicable legal requirements;

(ii) To comply with a properly authorized civil, criminal or regulatory investigation, or subpoena or summons by federal, state or local authorities;

(iii) To respond to judicial process or government regulatory authorities having jurisdiction over a licensee for examination, compliance or other purposes as authorized by law; or

(h) For purposes related to the replacement of a group benefit plan, a group health plan, a group welfare plan or a workers' compensation policy.

(2) A licensed or admitted insurer that is the subject of a formal delinquency proceeding under Sections 31A-27-303, 31A-27-307 and 31A-27-310, are not subject to the requirements of R590-206-5.(1)(b), the opt out in Sections (8) and (11), and other notice requirements of R590-206.

(3) Example of revocation of consent. A consumer may revoke consent by subsequently exercising the right to opt out of future disclosures of nonpublic personal financial information as permitted under Subsection R590-206-8.(6).

R590-206-17. When Authorization Required for Disclosure of Nonpublic Personal Health Information.

(1) General Rule. A licensee shall not disclose nonpublic personal health information about a consumer or customer unless an authorization is obtained from the consumer or customer whose nonpublic personal health information is sought to be disclosed.

(2) Exceptions. Nothing in this section shall prohibit, restrict or require an authorization for the disclosure of nonpublic personal health information by a licensee for the performance of the following insurance functions by or on behalf of the licensee or an affiliate of the licensee: claims administration; claims adjustment and management; detection, investigation or reporting of actual or potential fraud, misrepresentation or criminal activity; underwriting; policy placement, issuance or renewal; loss control; ratemaking and guaranty fund functions; reinsurance and excess loss insurance; risk management; case management; disease management; quality assurance; quality improvement; performance evaluation; provider credentialing verification; utilization review; peer review activities; actuarial, scientific, medical or public policy research; grievance procedures; internal administration of compliance, managerial, and information systems; policyholder service functions; auditing; reporting; database security; administration of consumer disputes and inquiries; external accreditation standards; the replacement of a group benefit plan or workers compensation policy or program; activities in connection with a sale, merger, transfer or exchange of all or part of a business or operating unit; any activity that permits disclosure without authorization pursuant to the federal Health Insurance Portability and Accountability Act privacy rules promulgated by the U.S. Department of Health and Human Services; disclosure that is required, or is one of the lawful or appropriate methods, to enforce the licensee's rights or the rights of other persons engaged in carrying out a transaction or providing a product or service that a consumer requests or authorizes; and any activity otherwise permitted by law, required pursuant to governmental reporting authority, or to comply with legal process. Additional insurance functions may be added with the approval of the commissioner to the extent they are necessary for appropriate performance of insurance functions and are fair and reasonable to the interest of consumers.

R590-206-18. Authorizations.

(1) A valid authorization to disclose nonpublic personal health information pursuant to Sections 17 through 21 shall be in written or electronic form and shall contain all of the following:

(a) The identity of the consumer or customer who is the subject of the nonpublic personal health information;

(b) A general description of the types of nonpublic personal health information to be disclosed;

(c) General descriptions of the parties to whom the licensee discloses nonpublic personal health information, the purpose of the disclosure and how the information will be used;

(d) The signature of the consumer or customer who is the subject of the nonpublic personal health information or the

individual who is legally empowered to grant authority and the date signed; and

(e) Notice of the length of time for which the authorization is valid and that the consumer or customer may revoke the authorization at any time and the procedure for making a revocation.

(2) An authorization for the purposes of Sections 17 through 21 shall specify a length of time for which the authorization shall remain valid, which in no event shall be for more than 24 months.

(3) A consumer or customer who is the subject of nonpublic personal health information may revoke an authorization provided pursuant to Sections 17 through 21 at any time, subject to the rights of an individual who acted in reliance on the authorization prior to notice of the revocation.

(4) A licensee shall retain the authorization or a copy thereof in the record of the individual who is the subject of nonpublic personal health information.

R590-206-19. Authorization Request Delivery.

A request for authorization and an authorization form may be delivered to a consumer or a customer as part of an opt-out notice pursuant to Section 10, provided that the request and the authorization form are clear and conspicuous. An authorization form is not required to be delivered to the consumer or customer or included in any other notices unless the licensee intends to disclose protected health information pursuant to Subsection R590-206-17. (1).

R590-206-20. Relationship to Federal Rules.

Irrespective of whether a licensee is subject to the federal Health Insurance Portability and Accountability Act privacy rule as promulgated by the U.S. Department of Health and Human Services, as published in the Federal Register November 3, 1999 (64 Fed. Reg. 59918-60065), the "federal rule", if a licensee complies with all requirements of the federal rule except for its effective date provision, the licensee shall not be subject to Sections 17 through 21.

R590-206-21. Relationship to State Laws.

Nothing in Sections 17 through 21 shall preempt or supersede existing state law related to medical records, health or insurance information privacy.

R590-206-22. Protection of Fair Credit Reporting Act.

Nothing in this rule shall be construed to modify, limit or supersede the operation of the federal Fair Credit Reporting Act (15 U.S.C. 1681 et seq.), and no inference shall be drawn on the basis of the provisions of this rule regarding whether information is transaction or experience information under Section 603 of that Act.

R590-206-23. Nondiscrimination.

(1) A licensee shall not unfairly discriminate against any consumer or customer because that consumer or customer has opted out from the disclosure of his or her nonpublic personal financial information pursuant to the provisions of this rule.

(2) A licensee shall not unfairly discriminate against a consumer or customer because that consumer or customer has not

granted authorization for the disclosure of his or her nonpublic personal health information pursuant to the provisions of this rule.

R590-206-24. Violation.

Pursuant to Section 31A-23a-402, the commissioner finds that the failure to observe the requirements of this rule is misleading to the public and individuals transacting business with licensees of the department or any person or individual who should be licensed by the department. The failure to observe the requirements of this rule is also an unreasonable restraint on competition.

Violation of any provisions of the rule will result in appropriate enforcement action by the department which may include forfeiture, penalties, and revocation of license.

R590-206-25. Severability.

If any section or portion of a section of this rule or its applicability to any person or circumstance is held invalid by a court, the remainder of the rule or the applicability of the provision to other persons or circumstances shall not be affected.

R590-206-26. Effective Date.

(1) Effective date. This rule is effective July 1, 2001.

(2)(a) Notice requirement for consumers who are the licensee's customers on the effective date. By July 1, 2001, a licensee shall provide an initial notice, as required by Section 5, to consumers who are the licensee's customers on July 1, 2001.

(b) Example. A licensee provides an initial notice to consumers who are its customers on July 1, 2001, if, by that date, the licensee has established a system for providing an initial notice to all new customers and has mailed the initial notice to all the licensee's existing customers.

(3) Two-year grandfathering of service agreements. Until July 1, 2002, a contract that a licensee has entered into with a nonaffiliated third party to perform services for the licensee or functions on the licensee's behalf satisfies the provisions of Subsection R590-206-14.(1)(a)(ii) of this rule, even if the contract does not include a requirement that the third party maintain the confidentiality of nonpublic personal financial information, as long as the licensee entered into the agreement on or before July 1, 2000.

KEY: insurance law

Date of Enactment or Last Substantive Amendment: ~~February 12, 2002~~ 2017

Notice of Continuation: June 15, 2016

Authorizing, and Implemented or Interpreted Law: 31A-2-201; 31A-2-202; 31A-25-317; 15 U.S.C. 6805

Insurance, Administration
R590-248-4
Mandatory Fraud Reporting Process

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 41322

FILED: 02/15/2017

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The section is being changed to update the email address that should be used for the mandatory reporting of fraud.

SUMMARY OF THE RULE OR CHANGE: The section is being changed to update the email address that should be used for the mandatory reporting of fraud.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 31A-2-201 and Section 31A-31-110

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** There will be a very minor savings to the state budget. Once the amendment is made effective, the previous email will be shut down, resulting in an annual savings of approximately \$75.
- ◆ **LOCAL GOVERNMENTS:** There is no anticipated cost or savings to local governments because the change is solely being done to update the email address that should be used for the mandatory reporting of fraud.
- ◆ **SMALL BUSINESSES:** There is no anticipated cost or savings to small businesses because the change is solely being done to update the email address that should be used for the mandatory reporting of fraud.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There is no anticipated cost or savings to any other persons because the change is solely being done to update the email address that should be used for the mandatory reporting of fraud.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for any affected persons because the change merely updates the email address that should be used for the mandatory reporting of fraud.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This change is being made to consolidate the vectors of contact the public has with the Utah Insurance Department. Updating this particular email address will save money and improve response times.

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 03/31/2017

THIS RULE MAY BECOME EFFECTIVE ON: 04/07/2017

AUTHORIZED BY: Steve Gooch, Information Specialist

R590. Insurance Administration.**R590-248. Mandatory Fraud Reporting Rule.****R590-248-4. Mandatory Fraud Reporting Process.**

(1) The following persons shall report a fraudulent insurance act to the commissioner if the person has a good faith belief on the basis of a preponderance of the evidence that a fraudulent insurance act is being, will be, or has been committed by:

- (a) a person other than the person making the report;
- (b) an insurer; or
- (c) an auditor that is employed by a title insurer.

(2) An auditor employed by a title insurer shall report a fraudulent act to the title insurer and the title insurer shall report the fraudulent act in accordance with this subsection.

(3) An insurer shall submit mandatory fraud reports electronically.

(4) An insurer shall report a fraudulent insurance act by:

- (a) submitting a report to the commissioner using the National Insurance Crime Bureau (NICB) fraud reporting system; or
- (b) submitting a report directly to the commissioner using email sent to [\[mandatoryreporting\]@utah.gov](mailto:[mandatoryreporting]@utah.gov).

KEY: insurance, mandatory fraud reporting

Date of Enactment or Last Substantive Amendment: ~~December 30, 2008~~ 2017

Notice of Continuation: December 23, 2013

Authorizing, and Implemented or Interpreted Law: 31A-2-201; 31A-31-110

End of the Notices of Proposed Rules Section

NOTICES OF CHANGES IN PROPOSED RULES

After an agency has published a **PROPOSED RULE** in the *Utah State Bulletin*, it may receive 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 March 31, 2017.

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 June 29, 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.

The Changes in Proposed Rules Begin on the Following Page

Insurance, Administration
R590-273
Continuing Care Provider Rule

NOTICE OF CHANGE IN PROPOSED RULE

DAR FILE NO.: 40953
 FILED: 02/10/2017

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: These changes are being made primarily to clean up certain semantic issues and unclear passages. It also adds references to subsections in state code that authorize the promulgation of the rule.

SUMMARY OF THE RULE OR CHANGE: The changes are primarily being done to clarify certain aspects of the rule that were unclear in the initial version. Specifically, it adds two subsections that authorize promulgation of the rule, adds a reference to the location on the UID website where CCR forms are posted, eliminates an unnecessary reference to a document retention schedule, and eliminates a section regarding administrative forfeitures. It also makes several changes to word choice to standardize it with accepted rulewriting principles. (EDITOR'S NOTE: The original proposed new rule upon which this change in proposed rule (CPR) was based was published in the December 1, 2016, issue of the Utah State Bulletin, on page 94. Underlining in the rule below indicates text that has been added since the publication of the proposed new rule mentioned above; strike-out indicates text that has been deleted. You must view the CPR and the proposed new rule 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: Section 31A-2-201 and Section 31A-44-314 and Subsection 31A-44-202(1) and Subsection 31A-44-202(2) and Subsection 31A-44-203(1) and Subsection 31A-44-203(4) and Subsection 31A-44-401(3) and Subsection 31A-44-402(2) and Subsection 31A-44-502(2)(d) and Subsection 31A-44-503(4)(d) and Subsection 31A-44-601(6)(f) and Subsection 31A-44-602(2)(b)

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** There is no anticipated cost or savings to the state budget. The changes in the rule are for clarification purposes and will not require any expenditure or result in any savings.
- ◆ **LOCAL GOVERNMENTS:** There is no anticipated cost or savings to local government. The changes in the rule are for clarification purposes and will not require any expenditure or result in any savings.
- ◆ **SMALL BUSINESSES:** There is no anticipated cost or savings to small businesses. The changes in the rule are for

clarification purposes and will not require any expenditure or result in any savings.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There is no anticipated cost or savings to any other persons. The changes in the rule are for clarification purposes and will not require any expenditure or result in any savings.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs relating to the changes being made. The changes in the rule are for clarification purposes and will not require any expenditure or result in any savings.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The changes that are being made to this rule will have no fiscal impact on businesses. They are being made to clarify the initial version of the rule, and will make it easier to understand. There are no costs of any kind associated with the changes.

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 03/31/2017

THIS RULE MAY BECOME EFFECTIVE ON: 04/07/2017

AUTHORIZED BY: Steve Gooch, Information Specialist

R590. Insurance Administration.

R590-273. Continuing Care Provider Rule.

R590-273-1. Authority.

This rule is promulgated [by the ~~Insurance Commissioner~~ pursuant to:

(1) Section 31A-2-201, which authorizes the commissioner to make rules to implement the provisions of Title 31A;

(2) Subsection 31A-44-202(1) for the establishment of registration fee;

(3) Subsection 31A-44-202(2) for the registration process;

(4) Subsection 31A-44-203(1) for the establishment of a renewal fee;

~~[(3)]~~(5) Subsection 31A-44-203(4) for the annual renewal process;

~~[(4)]~~(6) Section 31A-44-314 for the establishment of ~~[registration and renewal fees]~~ a disclosure fee;

~~[(5)]~~(7) Subsection 31A-44-401(3) to define financial hardship in the case of resident dismissal contract exceptions;

~~[(6)]~~(8) Subsection 31A-44-402(2) to determine when actuarial reserves will be required;

~~[(7)]~~(9) Subsection 31A-44-502(2)(d) to determine market value of land and infrastructure improvements in rehabilitation;

~~[(8)]~~(10) Subsection 31A-44-503(4)(d) to determine market value of land and infrastructure improvements in liquidation;

~~[(9)]~~(11) Subsection 31A-44-601(6)(f) to determine the conditions under which a lien will be superior to a property lease; and

~~[(10)]~~(12) Subsection 31A-44-602(2)(b) to establish financial disclosure and market conduct rules including conditions for enforcement.

R590-273-2. Purpose and Scope.

(1) The purpose of this rule is to outline the ~~[responsibilities]~~ operating requirements of a provider of continuing care where required by Title 31A, Chapter 44.

(2) Pursuant to Subsection 31A-44-104(5), a provider that begins marketing a continuing care facility project:

(a) on or before May 10, 2016, will not be subject to the provisions of this rule until May 10, 2017; or

(b) after May 10, 2016 will be subject to this rule 45 days after the effective date of the rule.

R590-273-3. Definitions.

(1) The definitions in Sections 31A-1-301 and 31A-44-102 apply to this rule.

(2) "Qualified actuary" means a member of the American Academy of Actuaries or the Society of Actuaries or a person recognized by the commissioner as having comparable training or experience.

R590-273-4. Registration.

Thirty days prior to entering into a continuing care contract or reservation agreement, a provider must complete and submit to the commissioner:

(1) the initial registration form, supporting documentation, and attachments, which shall be filed electronically with the commissioner; and

(2) payment of the initial registration fee in accordance with Rule R590-102 through the online payment portal at <https://secure.utah.gov/ips/uidrenewal>.

(3) Registration forms are posted at the department's webpage <https://insurance.utah.gov/agent/agent-other/CCRC.php>.

R590-273-5. Registration Renewal.

(1) A registered provider registration must ~~[complete]~~ be completed and ~~[submit]~~ submitted to the commissioner:

(a) the renewal registration form and attachments, which shall be filed electronically with the commissioner by September 30 of each year; and

(b) payment of the renewal registration fee in accordance with Rule R590-102 through the online payment portal at <https://secure.utah.gov/ips/uidrenewal>.

(2) Registration forms are posted at the department's webpage at <https://insurance.utah.gov/agent/agent-other/CCRC.php>.

R590-273-6. Financial Hardship Refund.

A continuing care facility resident is in a condition of financial hardship for purposes of Subsection 31A-44-401(3) if:

(1) the resident's regular monthly expenses exceed his or her regular monthly income; and

(2) the resident has net assets, over and above his or her entrance fee at the continuing care facility, of less than \$25,000.

R590-273-7. Additional Actuarial Reserve.

(1) Pursuant to Subsection 31A-44-402(2), the commissioner may require the additional reserve fund described in Subsection 31A-44-402(1) if the ~~[department]~~ commissioner determines it is necessary pursuant to Subsection 31A-44-204(1)(a).

(2) The additional reserve fund shall be determined by:

(a) a qualified actuary; or

(b) a person recognized by the commissioner as having comparable training or experience.

(3) The commissioner may require an independent actuarial review to determine the adequacy of the additional actuarial reserve.

(4) The provider will pay the reasonable costs of the actuarial review described in Subsection (3) pursuant to Subsection 31A-44-603(3).

R590-273-8. Market Value of Land and Infrastructure Improvements in Rehabilitation.

In determining the market value of land and infrastructure improvements under an order of rehabilitation pursuant to Section 31A-44-502(2)(d), the commissioner shall:

(1) Consider the most probable price as of a specified date, for which the land and infrastructure improvements owned in fee by the ground lessor should sell:

(a) after reasonable exposure in a competitive market;

(b) under all conditions requisite to a fair sale;

(c) with the buyer and seller each acting prudently, knowledgeably and for self-interest; and

(d) assuming neither buyer or seller is acting under duress.

(2) Disregard the existence or terms of the ground lease.

(3) Determine if a commercial appraisal is required to assign the market value.

R590-273-9. Market Value of Land and Infrastructure Improvements in Liquidation.

In determining the market value of land and infrastructure improvements under an order of liquidation pursuant to Subsection 31A-44-~~[502(2)(d)]~~ 503(4)(d), the commissioner shall:

(1) Consider the most probable price as of a specified date, for which the land and infrastructure improvements owned in fee by the ground lessor should sell:

(a) after reasonable exposure in a competitive market;

(b) under all conditions requisite to a fair sale;

(c) with the buyer and seller each acting prudently, knowledgeably and for self-interest; and

(d) assuming neither buyer or seller is acting under duress.

(2) Disregard the existence or terms of the ground lease.

(3) Determine if a commercial appraisal is required to assign the market value.

R590-273-10. Lien Held by the Commissioner in Favor of a Resident or a Group of Residents.

Pursuant to Subsection 31A-44-601(6)(f), the amount of a lien on a provider's property that is superior to the lien created by Subsection 31A-44-601(1) includes:

(1) all amounts used to pay fees and costs for architectural and engineering for the design of the ~~[Facility]~~ facility;

(2) all amounts paid for engineering, environmental and similar studies, reports and surveys with respect to the facility;

(3) all amounts paid for appraisals, marketing and other reports and surveys in connection with the construction, acquisition or improvement of the facility;

(4) fees and costs paid to contractors, developers, brokers, salespersons and other employees and agents, including affiliates of provider;

(5) all fees, charges, assessments, taxes charged or imposed by any governmental unit, district or similar body having jurisdiction over the facility; and

(6) reimbursements to a provider or other owner of the facility for expenditures that would otherwise qualify under Subsection 31A-44-601(1) or this rule if paid directly from loan proceeds.

R590-273-11. Enforcement.

(1) Pursuant to Subsection 31A-44-602(2)(b) the commissioner may conduct an examination or investigation of a provider to determine compliance with Title 31A, Chapter 44, Part 6:

(a) to determine the financial solvency of a facility;

(b) to determine the adequacy of the additional actuarial reserve under R590-273-7;

(c) to verify a statement contained in a disclosure or actuarial statement;

(d) to act on a complaint against a provider or a facility;

(e) to obtain all documents requested by the commissioner; or

(f) to take any corrective action to enforce compliance.

(2) The commissioner may request corrective actions, including ~~[but not limited to]~~:

(a) ~~[counsel to]~~ suggest ~~[correct behavior]~~ corrective business practices;

(b) restrict or prohibit behavior by the provider that is misleading, unfair or abusive;

(c) ~~[issue a]~~ order that the provider cease and desist from committing any further violation;

(d) suspend, revoke, or ~~[refuse issuance or renewal of the person's]~~ non-renew a provider's registration;

(e) provide transparent information to compare continuing care contracts, providers, or facilities;

(f) disclosure of all terms and conditions of continuing care contracts and agreements;

(g) disclosure of any financial risks;

(h) promote certain communications between the residents and the provider;

(i) employ or hire examiners, hearing officers, clerks, and others to perform the ~~[department's]~~ commissioner's duties in ~~[this chapter]~~ Title 31A, Chapter 44; or

(j) ~~[judicially, foreclose a lien as described in Section 31A-44-601; or~~

~~_____ (k)]~~appoint a receiver.

(3)(a) The commissioner shall have free access to all the books and papers relating to the business and affairs of the provider.

(b) The books and records required under Subsection 31A-44-603(2)(a) shall be available for the inspection by the commissioner during normal business hours from the date of the transaction for no less than three years, plus the current calendar year.

(4) Nothing in this section prohibits the commissioner from billing to the provider, the reasonable costs of any examination or investigation, including the cost of the review by an actuary.

(5) Nothing in this section prohibits the issuance of administrative forfeitures calculated under ~~[R590-273-12]~~.

~~_____ (6) Nothing in this section prohibits the destruction of books and records past the required records and books retention in R590-273-11(3)]~~ Section 31A-44-604.

R590-273-12. Penalties.

~~[(1)]~~ A person found to be in violation of this rule shall be subject to penalties as provided under ~~[Section]~~ Sections 31A-2-308, 31A-44-604 and 31A-44-605. ~~[~~

~~_____ (2) The issuance of administrative forfeitures shall be calculated at an amount not greater than \$1,000 per violation, and with an aggregate maximum of \$30,000 per calendar year.]~~

R590-273-13. Enforcement Date.

The commissioner will begin enforcing this rule 45 days from the rule's effective date.

R590-273-14. 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: insurance, continuing care facility

Date of Enactment or Last Substantive Amendment: 2017

Authorizing, and Implemented or Interpreted Law: 31A-44-202(2); 31A-2-201; 31A-44-314; 31A-44-401(3); 31A-44-402(2); 31A-44-502(2)(d); 31A-44-503(4)(d); 31A-44-601(6)(f); 31A-44-602(2)(b); 31A-44-203(4)

End of the Notices of Changes in Proposed Rules Section

FIVE-YEAR NOTICES OF REVIEW AND STATEMENTS OF CONTINUATION

Within five years of an administrative rule's original enactment or last five-year review, the 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.

Commerce, Occupational and Professional Licensing **R156-16a** Optometry Practice Act Rule

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 41275
FILED: 02/02/2017

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 16a, provides for the licensure and regulation of optometrists. Subsection 58-1-106(1)(a) provides that the Division may adopt and enforce rules to administer Title 58. Subsection 58-16a-201(3) provides that the Optometrist 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 16a, with respect to optometrists.

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 2012, 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 16a, with respect to optometrists. 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:

♦ Larry Marx by phone at 801-530-6254, by FAX at 801-530-6511, or by Internet E-mail at lm Marx@utah.gov

AUTHORIZED BY: Mark Steinagel, Director

EFFECTIVE: 02/02/2017

Commerce, Occupational and Professional Licensing **R156-37** Utah Controlled Substances Act Rule

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 41289
FILED: 02/06/2017

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 37, provides for the regulation of controlled substances. Subsection 58-1-106(1)(a) provides that the Division may adopt and enforce rules to administer Title 58. Subsection 58-37-6(1) provides the Division may adopt rules relating to the licensing and control of the manufacture, distribution, production, prescription, administration, dispensing, conducting of research with, and performing of laboratory analysis upon controlled substances within this state. This was enacted to clarify the provisions of Title 58, Chapter 37, with respect to controlled substances.

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 February 2012, it has been amended four 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 and licensees of the rules relating to controlled substances, as allowed under statutory authority provided in Title 58, Chapter 37. This rule is applicable to occupations and professions involved with controlled substances which are regulated by the Division. The rule should also be continued as it provides information to ensure applicants for licensure are knowledgeable about controlled substance requirements of the Division with respect to items that are not covered separately in each occupational/professional rule.

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 Imarx@utah.gov

AUTHORIZED BY: Mark Steinagel, Director

EFFECTIVE: 02/06/2017

Commerce, Occupational and
Professional Licensing
R156-76
Professional Geologist Licensing Act
Rule

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 41279
FILED: 02/02/2017

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 76, provides for the licensure and regulation of professional geologists. Subsection 58-1-106(1)(a) provides that the Division may adopt and enforce rules to administer Title 58. Subsection 58-76-201(3) provides that the Professional Geologists 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 76, with respect to professional geologists.

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 2012, the Division has received no written comments.

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 76, with respect to professional geologists. 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:

◆ Steve Duncombe by phone at 801-530-6235, by FAX at 801-530-6511, or by Internet E-mail at sduncombe@utah.gov

AUTHORIZED BY: Mark Steinagel, Director

EFFECTIVE: 02/02/2017

**Commerce, Securities
R164-101
Securities Fraud Reporting Program
Act**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**

DAR FILE NO.: 41293
FILED: 02/07/2017

**NOTICE OF REVIEW AND STATEMENT OF
CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule is authorized by Sections 61-1-24, 61-1-103, and 61-1-107. Subsection 61-1-24(1)(a) authorizes the Division to make, amend, or rescind a rule when necessary to carry out the chapter. Section 61-1-103 describes the information required for an individual to be considered for an award under the Securities Fraud Reporting Program Act and requires that the individual provide such information in accordance with procedures to be established by rule made by the Division. Section 61-1-107 sets forth the procedures related to an award to a fraud reporter and requires that the Division adopt rules memorializing those procedures.

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

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE

RULE, IF ANY: The rule sets forth procedures for filing an application for an award under the Securities Fraud Reporting Program Act and the procedures for the making or denial of such an award. It provides an incentive for individuals to report suspected violations of the securities laws to the Division. Therefore, this rule should be continued.

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

COMMERCE
SECURITIES
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:

◆ Charles Lyons by phone at 801-530-6940, by FAX at 801-530-6980, or by Internet E-mail at clyons@utah.gov
◆ Keith Woodwell by phone at 801-530-6606, by FAX at 801-530-6980, or by Internet E-mail at kwoodwell@utah.gov

AUTHORIZED BY: Keith Woodwell, Director

EFFECTIVE: 02/07/2017

**Education, Administration
R277-519
Educator Inservice Procedures and
Credit**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**

DAR FILE NO.: 41316
FILED: 02/14/2017

**NOTICE OF REVIEW AND STATEMENT OF
CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Subsection 53A-1-402(1)(a) allows the Utah State Board of Education (Board) to make rules regarding the qualifications of personnel providing direct student services and the certification of educators; and Section 53A-1-401 allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law.

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 R277-519 continues to be necessary because it establishes standards for awarding credit for professional learning, especially as it relates to teacher certification. Therefore, this rule should be continued.

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

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

EFFECTIVE: 02/14/2017

**Education, Administration
R277-916**

**Career and Technical Education
Introduction and Work-Based Learning
Programs**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**
DAR FILE NO.: 41317
FILED: 02/14/2017

**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; Section 53A-15-202 allows the Board to establish minimum standards for career and technical education programs in the public education system; and Section 53A-17a-113 directs the Board to distribute specific funds to local education agencies (LEAs).

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 R277-916 continues to be necessary because it establishes standards and procedures for LEAs seeking to qualify for College and Career Awareness Program funds administered by the Board. Therefore, this rule should be continued.

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

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

EFFECTIVE: 02/14/2017

**Environmental Quality, Administration
R305-1**

Records Access and Management

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**
DAR FILE NO.: 41301
FILED: 02/13/2017

**NOTICE OF REVIEW AND STATEMENT OF
CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: The Public Records Management Act (PRMA), Subsection 63A-12-104(2), authorizes governmental entities to specify at which level the requirements of PRMA shall be undertaken. This provision is the basis for DEQ's rule specifying that the entire agency is the responsible entity for purposes of the sharing provisions of Section 63G-2-206. Subsection 63G-2-204(2)(d) authorizes governmental entities to make rules specifying where and to whom requests for access should be directed.

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 on this rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The primary purpose of the rule is to notify requesters where to submit GRAMA requests. A related purpose is to give the agency the full statutory period for responding to a request even for GRAMA requests that are submitted to the wrong office. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
 ENVIRONMENTAL QUALITY
 ADMINISTRATION
 195 N 1950 W
 SALT LAKE CITY, UT 84116-3085
 or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
 ♦ Sandra Allen by phone at 801-536-4122, by FAX at 801-359-8853, or by Internet E-mail at skallen@utah.gov

AUTHORIZED BY: Brad Johnson, Deputy Director

EFFECTIVE: 02/13/2017

Examiners (Board of), Administration
R320-101
 Procedures for Electronic Meetings

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
 DAR FILE NO.: 41294
 FILED: 02/07/2017

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Sections 52-4-207 and 63G-9-205 require the Board of Examiners to establish rule in order to hold electronic meetings.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: There have been no written comments received in the past five years.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: In order for the Board of Examiners to hold an electronic meeting, statute requires a rule to be in place. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
 EXAMINERS (BOARD OF)
 ADMINISTRATION
 ROOM E130
 UTAH STATE CAPITOL COMPLEX
 SALT LAKE CITY, UT 84114
 or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
 ♦ Phalin Flowers by phone at 801-538-1361, or by Internet E-mail at pflowers@utah.gov

AUTHORIZED BY: Phalin Flowers, Administrative Assistant

EFFECTIVE: 02/07/2017

Health, Health Care Financing,
 Coverage and Reimbursement Policy
R414-1
 Utah Medicaid Program

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
 DAR FILE NO.: 41321
 FILED: 02/15/2017

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 authorizes the Department to adopt rules that provide services and eligibility requirements for Medicaid recipients.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: The Department received comments from the Association for Utah Community Health in August 2015, after filing an amendment to incorporate all Medicaid provider manuals by reference to 07/01/2015. The comments noted inaccuracies regarding non-required

services in the Rural Health Clinics and Federally Qualified Health Centers (FQHCs) Services Provider Manual, and suggested that "required primary health services" be consistent with federal regulations. The comments also recommended the Department clarify that FQHCs are not subject to regulations under the Emergency Medical Treatment and Labor Act because, like rural health clinics, they do not have emergency departments. The comments also noted a technical error in the manual regarding immunizations.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: After considering the comments, the Department maintained that any inaccuracy or lack of clarity in the provider manual did not impact Medicaid services nor provider reimbursement. The Department, therefore, made the rule effective, but also made corrections to the provider manual during the next policy cycle (January 2016 Medicaid Information Bulletin update) to ensure the manual was consistent with federal regulations and contained correct immunization information. The Department will continue this rule because it sets forth services and eligibility for the Medicaid program, specifies provider and recipient policy, specifies the role of certain entities within the Medicaid program, specifies the availability of program manuals and policies, and serves as the basis for all other rules in the Medicaid program. There is no opposition to the rule itself, and the Department addressed previous concerns through the corrections noted 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, MD, Executive Director

EFFECTIVE: 02/15/2017

Health, Family Health and
 Preparedness, Licensing
R432-31
 Life with Dignity Order

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
 OF CONTINUATION**
 DAR FILE NO.: 41310
 FILED: 02/13/2017

**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 26, Chapter 21, is the health code that mandates the licensing of health facilities.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: There have been no written comments from any party regarding this rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule continues to be required by Title 26, Chapter 21, of the Health Facility Licensure and Inspection Act. The Department agrees with the need to continue the rule.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
 HEALTH
 FAMILY HEALTH AND PREPAREDNESS,
 LICENSING
 3760 S HIGHLAND DR
 SALT LAKE CITY, UT 84106
 or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
 ♦ Carmen Richins by phone at 801-273-2802, by FAX at 801-274-0658, or by Internet E-mail at carmenrichins@utah.gov
 ♦ Joel Hoffman by phone at 801-273-2804, by FAX at 801-274-0658, or by Internet E-mail at jhoffman@utah.gov

AUTHORIZED BY: Joseph Miner, MD, Executive Director

EFFECTIVE: 02/13/2017

Health, Family Health and
 Preparedness, Licensing
R432-40
 Long-Term Care Facility Immunizations
**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
 OF CONTINUATION**
 DAR FILE NO.: 41309
 FILED: 02/13/2017

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 26, Chapter 21, is the health code that mandates the licensing of health facilities.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: There have been no written comments from any party regarding this rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule continues to be required by Title 26, Chapter 21, of the Health Facility Licensure and Inspection Act. The Department agrees with the need to continue the rule.

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

HEALTH
FAMILY HEALTH AND PREPAREDNESS,
LICENSING
3760 S HIGHLAND DR
SALT LAKE CITY, UT 84106
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Carmen Richins by phone at 801-273-2802, by FAX at 801-274-0658, or by Internet E-mail at carmenrichins@utah.gov
◆ Joel Hoffman by phone at 801-273-2804, by FAX at 801-274-0658, or by Internet E-mail at jhoffman@utah.gov

AUTHORIZED BY: Joseph Miner, MD, Executive Director

EFFECTIVE: 02/13/2017

Health, Family Health and
Preparedness, Licensing
R432-150
Nursing Care Facility

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 41311
FILED: 02/13/2017

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 26, Chapter 21, is the health code that mandates the licensing of health facilities.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: There have been no written comments from any party regarding this rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule continues to be required by Title 26, Chapter 21, of the Health Facility Licensure and Inspection Act. The Department agrees with the need to continue the rule.

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

HEALTH
FAMILY HEALTH AND PREPAREDNESS,
LICENSING
3760 S HIGHLAND DR
SALT LAKE CITY, UT 84106
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Carmen Richins by phone at 801-273-2802, by FAX at 801-274-0658, or by Internet E-mail at carmenrichins@utah.gov
◆ Joel Hoffman by phone at 801-273-2804, by FAX at 801-274-0658, or by Internet E-mail at jhoffman@utah.gov

AUTHORIZED BY: Joseph Miner, MD, Executive Director

EFFECTIVE: 02/13/2017

Health, Family Health and
Preparedness, Licensing
R432-151
Mental Disease Facility

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 41312
FILED: 02/13/2017

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 26, Chapter 21, is the health code that mandates the licensing of health facilities.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: There have been no written comments from any party regarding this rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule continues to be required by Title 26, Chapter 21, of the Health Facility Licensure and Inspection Act. The Department agrees with the need to continue the rule.

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

HEALTH
FAMILY HEALTH AND PREPAREDNESS,
LICENSING
3760 S HIGHLAND DR
SALT LAKE CITY, UT 84106
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ Carmen Richins by phone at 801-273-2802, by FAX at 801-274-0658, or by Internet E-mail at carmenrichins@utah.gov
- ◆ Joel Hoffman by phone at 801-273-2804, by FAX at 801-274-0658, or by Internet E-mail at jhoffman@utah.gov

AUTHORIZED BY: Joseph Miner, MD, Executive Director

EFFECTIVE: 02/13/2017

Health, Family Health and
Preparedness, Licensing
R432-152
Mental Retardation Facility

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 41313
FILED: 02/13/2017

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 26, Chapter 21, is the health code that mandates the licensing of health facilities.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR

OPPOSING THE RULE: There have been no written comments from any party regarding this rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule continues to be required by Title 26, Chapter 21, of the Health Facility Licensure and Inspection Act. The Department agrees with the need to continue the rule.

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

HEALTH
FAMILY HEALTH AND PREPAREDNESS,
LICENSING
3760 S HIGHLAND DR
SALT LAKE CITY, UT 84106
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ Carmen Richins by phone at 801-273-2802, by FAX at 801-274-0658, or by Internet E-mail at carmenrichins@utah.gov
- ◆ Joel Hoffman by phone at 801-273-2804, by FAX at 801-274-0658, or by Internet E-mail at jhoffman@utah.gov

AUTHORIZED BY: Joseph Miner, MD, Executive Director

EFFECTIVE: 02/13/2017

Health, Family Health and
Preparedness, Licensing
R432-201
Mental Retardation Facility:
Supplement "A" to the Small Health
Care Facility Rule

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 41314
FILED: 02/13/2017

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 26, Chapter 21, is the health code that mandates the licensing of health facilities.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR

OPPOSING THE RULE: There have been no written comments from any party regarding this rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule continues to be required by Title 26, Chapter 21, of the Health Facility Licensure and Inspection Act. The Department agrees with the need to continue the rule.

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

HEALTH
FAMILY HEALTH AND PREPAREDNESS,
LICENSING
3760 S HIGHLAND DR
SALT LAKE CITY, UT 84106
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ Carmen Richins by phone at 801-273-2802, by FAX at 801-274-0658, or by Internet E-mail at carmenrichins@utah.gov
- ◆ Joel Hoffman by phone at 801-273-2804, by FAX at 801-274-0658, or by Internet E-mail at jhoffman@utah.gov

AUTHORIZED BY: Joseph Miner, Executive Director

EFFECTIVE: 02/13/2017

Heritage and Arts, Administration **R450-1**

Government Records Access and Management Act Rules

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 41288
FILED: 02/03/2017

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: The authority for the following rule is Section 63G-2-204 and Section 63A-12-104 of the Government Records Access and Management Act (GRAMA), effective 07/01/1992. Specifically, 63A-12-104(2) states: "A governmental entity that includes divisions, boards, departments, committees, commissions, or other subparts that fall within the definition of a governmental entity under this chapter, may, by rule, specify at which level the requirements specified in this chapter shall be undertaken."

This rule makes it clear that all of the boards, commissions, and divisions within DHA are considered one entity and all requirements are handled by the Department administration.

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

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Rule R450-1 ensures public access to government records from the Department of Heritage and Arts in compliance with state law. Therefore, this rule should be continued.

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

HERITAGE AND ARTS
ADMINISTRATION
300 S RIO GRANDE ST
SALT LAKE CITY, UT 84101
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ Josh Loftin by phone at 801-245-7205, or by Internet E-mail at jloftin@utah.gov

AUTHORIZED BY: Jill Love, Executive Director

EFFECTIVE: 02/03/2017

Regents (Board of), University of Utah, Commuter Services

R810-2

Parking Meters and Other Pay Parking Spaces

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 41302
FILED: 02/13/2017

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 53B-3-103 allows the Board to enact regulations governing conduct of university and college students, faculty, and employees. Section 53B-3-107 identifies parking violation and notice thereof.

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

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The rule will continue allowing the Division to manage the pay parking spaces at the University of Utah. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
REGENTS (BOARD OF)
UNIVERSITY OF UTAH, COMMUTER SERVICES ROOM 101
1910 E SOUTH CAMPUS DR
SALT LAKE CITY, UT 84112-9350
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Solomon Brumbaugh by phone at 801-587-9394, by FAX at 801-587-9667, or by Internet E-mail at solomon.brumbaugh@utah.edu

AUTHORIZED BY: David Pershing, President

EFFECTIVE: 02/13/2017

**Regents (Board of), University of Utah,
Commuter Services
R810-5
Permit Types and Eligibility**

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 41303
FILED: 02/13/2017

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 53B-3-103 allows the Board to enact regulations governing conduct of university and college students, faculty, and employees. Section 53B-3-107 identifies parking violation and notice thereof.

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

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 classifies permit types and eligibility for University of Utah Commuter Services. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
REGENTS (BOARD OF)
UNIVERSITY OF UTAH, COMMUTER SERVICES ROOM 101
1910 E SOUTH CAMPUS DR
SALT LAKE CITY, UT 84112-9350
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Solomon Brumbaugh by phone at 801-587-9394, by FAX at 801-587-9667, or by Internet E-mail at solomon.brumbaugh@utah.edu

AUTHORIZED BY: David Pershing, President

EFFECTIVE: 02/13/2017

**Regents (Board of), University of Utah,
Commuter Services
R810-6
Permit Prices and Refunds**

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 41304
FILED: 02/13/2017

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 53B-3-103 allows the Board to enact regulations governing conduct of university and college students, faculty, and employees. Section 53B-3-107 identifies parking violation and notice thereof.

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

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Continuation will identify the refund policy for

parking permits at the University of Utah. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
REGENTS (BOARD OF)
UNIVERSITY OF UTAH, COMMUTER SERVICES ROOM 101
1910 E SOUTH CAMPUS DR
SALT LAKE CITY, UT 84112-9350
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Solomon Brumbaugh by phone at 801-587-9394, by FAX at 801-587-9667, or by Internet E-mail at solomon.brumbaugh@utah.edu

AUTHORIZED BY: David Pershing, President

EFFECTIVE: 02/13/2017

**Regents (Board of), University of Utah,
Commuter Services
R810-9
Contractors and Their Employees**

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 41305
FILED: 02/13/2017

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 53B-3-103 allows the Board to enact regulations governing conduct of university and college students, faculty, and employees. Section 53B-3-107 identifies parking violation and notice thereof.

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

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 allows Commuter Services to establish temporary parking areas for contractors and their employees during construction projects. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
REGENTS (BOARD OF)
UNIVERSITY OF UTAH, COMMUTER SERVICES ROOM 101
1910 E SOUTH CAMPUS DR
SALT LAKE CITY, UT 84112-9350
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Solomon Brumbaugh by phone at 801-587-9394, by FAX at 801-587-9667, or by Internet E-mail at solomon.brumbaugh@utah.edu

AUTHORIZED BY: David Pershing, President

EFFECTIVE: 02/13/2017

**Regents (Board of), University of Utah,
Commuter Services
R810-10
Enforcement System**

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 41306
FILED: 02/13/2017

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 53B-3-103 allows the Board to enact regulations governing conduct of university and college students, faculty, and employees. Section 53B-3-107 identifies parking violation and notice thereof.

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

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 establishes hours of enforcement, fee payments and penalties, and responsibility regarding parking tickets. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
REGENTS (BOARD OF)
UNIVERSITY OF UTAH, COMMUTER SERVICES

ROOM 101
1910 E SOUTH CAMPUS DR
SALT LAKE CITY, UT 84112-9350
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Solomon Brumbaugh by phone at 801-587-9394, by FAX at 801-587-9667, or by Internet E-mail at solomon.brumbaugh@utah.edu

AUTHORIZED BY: David Pershing, President

EFFECTIVE: 02/13/2017

Regents (Board of), University of Utah,
Commuter Services
R810-11
Appeals System

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 41307
FILED: 02/13/2017

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 53B-3-103 allows the Board to enact regulations governing conduct of university and college students, faculty, and employees. Section 53B-3-107 identifies parking violation and signage thereof.

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

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 establishes appeals procedures for parking tickets. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
REGENTS (BOARD OF)
UNIVERSITY OF UTAH, COMMUTER SERVICES
ROOM 101
1910 E SOUTH CAMPUS DR
SALT LAKE CITY, UT 84112-9350
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Solomon Brumbaugh by phone at 801-587-9394, by FAX at 801-587-9667, or by Internet E-mail at solomon.brumbaugh@utah.edu

AUTHORIZED BY: David Pershing, President

EFFECTIVE: 02/13/2017

School and Institutional Trust Lands,
Administration
R850-41
Rights of Entry

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 41291
FILED: 02/07/2017

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: Subsections 53C-1-302(1)(a)(ii) and 53C-4-101(1) authorize the Director of the School and Institutional Trust Lands Administration to make rules for the sale, exchange, lease, or other disposition or conveyance of trust lands, including procedures for determining fair-market value of those lands. The right for persons to enter upon trust lands to conduct non-disturbing, short-term activities is a profitable use of the lands and is one of the activities covered by the "other disposition conveyance" authorized by statute.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received by the agency concerning 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: Without the authorization to issue rights of entry on trust lands, the respective trust beneficiaries would forego the opportunity to receive revenues which have been substantial over the years. This rule provides the mechanism for non-disturbing activities to be conducted on trust lands that will benefit the respective trust beneficiaries while allowing others the opportunity to conduct business on those trust lands throughout the state. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED,
DURING REGULAR BUSINESS HOURS, AT:
SCHOOL AND INSTITUTIONAL TRUST LANDS
ADMINISTRATION
ROOM 500
675 E 500 S
SALT LAKE CITY, UT 84102-2818
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Kim Christy by phone at 801-538-5183, by FAX at 801-355-
0922, or by Internet E-mail at kimchristy@utah.gov

AUTHORIZED BY: David Ure, Director

EFFECTIVE: 02/07/2017

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

NOTICES OF FIVE-YEAR REVIEW EXTENSIONS

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).

Human Resource Management, Administration **R477-1** Definitions

FIVE-YEAR REVIEW EXTENSION

DAR FILE NO.: 41270
FILED: 02/02/2017

EXTENSION REASON AND NEW DEADLINE: The department needs additional time to complete this five-year review. The new filing deadline is 06/02/2017.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Greg Hargis by phone at 801-891-5680, or by Internet E-mail at ghargis@utah.gov

AUTHORIZED BY: Debbie Cragun, Executive Director

EFFECTIVE: 02/02/2017

Human Resource Management, Administration **R477-2** Administration

FIVE-YEAR REVIEW EXTENSION

DAR FILE NO.: 41271
FILED: 02/02/2017

EXTENSION REASON AND NEW DEADLINE: The department needs additional time to complete this five-year review. The new filing deadline is 06/02/2017.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Greg Hargis by phone at 801-891-5680, or by Internet E-mail at ghargis@utah.gov

AUTHORIZED BY: Debbie Cragun, Executive Director

EFFECTIVE: 02/02/2017

Human Resource Management, Administration **R477-3** Classification

FIVE-YEAR REVIEW EXTENSION

DAR FILE NO.: 41272
FILED: 02/02/2017

EXTENSION REASON AND NEW DEADLINE: The department needs additional time to complete this five-year review. The new filing deadline is 06/02/2017.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Greg Hargis by phone at 801-891-5680, or by Internet E-mail at ghargis@utah.gov

AUTHORIZED BY: Debbie Cragun, Executive Director

EFFECTIVE: 02/02/2017

Human Resource Management, Administration **R477-4** Filling Positions

FIVE-YEAR REVIEW EXTENSION

DAR FILE NO.: 41273
FILED: 02/02/2017

EXTENSION REASON AND NEW DEADLINE: The department needs additional time to complete this five-year review. The new filing deadline is 06/02/2017.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Greg Hargis by phone at 801-891-5680, or by Internet E-mail at ghargis@utah.gov

AUTHORIZED BY: Debbie Cragun, Executive Director

EFFECTIVE: 02/02/2017

Human Resource Management,
Administration
R477-5
Employee Status and Probation

FIVE-YEAR REVIEW EXTENSION

DAR FILE NO.: 41274
FILED: 02/02/2017

EXTENSION REASON AND NEW DEADLINE: The department needs additional time to complete this five-year review. The new filing deadline is 06/02/2017.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Greg Hargis by phone at 801-891-5680, or by Internet E-mail at ghargis@utah.gov

AUTHORIZED BY: Debbie Cragun, Executive Director

EFFECTIVE: 02/02/2017

Human Resource Management,
Administration
R477-6
Compensation

FIVE-YEAR REVIEW EXTENSION

DAR FILE NO.: 41276
FILED: 02/02/2017

EXTENSION REASON AND NEW DEADLINE: The department needs additional time to complete this five-year review. The new filing deadline is 06/02/2017.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Greg Hargis by phone at 801-891-5680, or by Internet E-mail at ghargis@utah.gov

AUTHORIZED BY: Debbie Cragun, Executive Director

EFFECTIVE: 02/02/2017

Human Resource Management,
Administration
R477-7
Leave

FIVE-YEAR REVIEW EXTENSION

DAR FILE NO.: 41277
FILED: 02/02/2017

EXTENSION REASON AND NEW DEADLINE: The department needs additional time to complete this five-year review. The new filing deadline is 06/02/2017.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Greg Hargis by phone at 801-891-5680, or by Internet E-mail at ghargis@utah.gov

AUTHORIZED BY: Debbie Cragun, Executive Director

EFFECTIVE: 02/02/2017

Human Resource Management,
Administration
R477-8
Working Conditions

FIVE-YEAR REVIEW EXTENSION

DAR FILE NO.: 41278
FILED: 02/02/2017

EXTENSION REASON AND NEW DEADLINE: The department needs additional time to complete this five-year review. The new filing deadline is 06/02/2017.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Greg Hargis by phone at 801-891-5680, or by Internet E-mail at ghargis@utah.gov

AUTHORIZED BY: Debbie Cragun, Executive Director

EFFECTIVE: 02/02/2017

Human Resource Management,
Administration
R477-9
Employee Conduct

FIVE-YEAR REVIEW EXTENSION
DAR FILE NO.: 41280
FILED: 02/02/2017

EXTENSION REASON AND NEW DEADLINE: The department needs additional time to complete this five-year review. The new filing deadline is 06/02/2017.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Greg Hargis by phone at 801-891-5680, or by Internet E-mail at ghargis@utah.gov

AUTHORIZED BY: Debbie Cragun, Executive Director

EFFECTIVE: 02/02/2017

FIVE-YEAR REVIEW EXTENSION
DAR FILE NO.: 41282
FILED: 02/02/2017

EXTENSION REASON AND NEW DEADLINE: The department needs additional time to complete this five-year review. The new filing deadline is 06/03/2017.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Greg Hargis by phone at 801-891-5680, or by Internet E-mail at ghargis@utah.gov

AUTHORIZED BY: Debbie Cragun, Executive Director

EFFECTIVE: 02/02/2017

Human Resource Management,
Administration
R477-12
Separations

FIVE-YEAR REVIEW EXTENSION
DAR FILE NO.: 41283
FILED: 02/02/2017

EXTENSION REASON AND NEW DEADLINE: The department needs additional time to complete this five-year review. The new filing deadline is 06/03/2017.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Greg Hargis by phone at 801-891-5680, or by Internet E-mail at ghargis@utah.gov

AUTHORIZED BY: Debbie Cragun, Executive Director

EFFECTIVE: 02/02/2017

Human Resource Management,
Administration
R477-10
Employee Development

FIVE-YEAR REVIEW EXTENSION
DAR FILE NO.: 41281
FILED: 02/02/2017

EXTENSION REASON AND NEW DEADLINE: The department needs additional time to complete this five-year review. The new filing deadline is 06/03/2017.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Greg Hargis by phone at 801-891-5680, or by Internet E-mail at ghargis@utah.gov

AUTHORIZED BY: Debbie Cragun, Executive Director

EFFECTIVE: 02/02/2017

FIVE-YEAR REVIEW EXTENSION
DAR FILE NO.: 41284
FILED: 02/02/2017

EXTENSION REASON AND NEW DEADLINE: The department needs additional time to complete this five-year review. The new filing deadline is 06/03/2017.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Greg Hargis by phone at 801-891-5680, or by Internet E-mail at ghargis@utah.gov

AUTHORIZED BY: Debbie Cragun, Executive Director

EFFECTIVE: 02/02/2017

Human Resource Management,
Administration
R477-13
Volunteer Programs

FIVE-YEAR REVIEW EXTENSION
DAR FILE NO.: 41284
FILED: 02/02/2017

EXTENSION REASON AND NEW DEADLINE: The department needs additional time to complete this five-year review. The new filing deadline is 06/03/2017.

Human Resource Management,
Administration
R477-11
Discipline

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Greg Hargis by phone at 801-891-5680, or by Internet E-mail at ghargis@utah.gov

AUTHORIZED BY: Debbie Cragun, Executive Director

EFFECTIVE: 02/02/2017

Human Resource Management,
Administration
R477-15
Workplace Harassment Prevention

FIVE-YEAR REVIEW EXTENSION

DAR FILE NO.: 41285

FILED: 02/02/2017

EXTENSION REASON AND NEW DEADLINE: The department needs additional time to complete this five-year review. The new filing deadline is 06/03/2017.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Greg Hargis by phone at 801-891-5680, or by Internet E-mail at ghargis@utah.gov

AUTHORIZED BY: Debbie Cragun, Executive Director

EFFECTIVE: 02/02/2017

End of the Notices of Five-Year Review Extensions Section

NOTICES OF FIVE-YEAR EXPIRATIONS

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). The Office of Administrative Rules (Office) is required to notify agencies of rules due for review at least 180 days prior to the anniversary date. 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 EXTENSION (EXTENSION)** with the Office. However, if the agency fails to file either the **FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION** or the **EXTENSION** by the date provide by the Office, the rule expires.

Upon expiration of the rule, the Office files a **NOTICE OF FIVE-YEAR EXPIRATION (EXPIRATION)** to document the action. The Office is required to remove the rule from the *Utah Administrative Code*. The agency may no longer enforce the rule and it must follow regular rulemaking procedures to replace the rule if it is still needed.

The Office has filed **EXPIRATIONS** for each of the rules listed below which were not reviewed in accordance with Section 63G-3-305. These rules have expired and have been removed from the *Utah Administrative Code*.

The expiration of administrative rules for failure to comply with the five-year review requirement is governed by Subsection 63G-3-305(8).

Pardons (Board of), Administration

R671-206

Competency of Offenders

FIVE-YEAR REVIEW EXPIRATION

DAR FILE NO.: 41269

FILED: 02/02/2017

SUMMARY: The five-year review and notice of continuation was not filed for this rule by the deadline of 02/01/2017. Therefore, this rule is expired as of 02/02/2017.

EFFECTIVE: 02/02/2017

End of the Notices of Notices of Five Year Expirations Section

NOTICES OF RULE EFFECTIVE DATES

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.

Abbreviations

AMD = Amendment

CPR = Change in Proposed Rule

NEW = New Rule

R&R = Repeal & Reenact

REP = Repeal

Administrative Services

Purchasing and General Services

No. 41023 (AMD): R33-8-102. Adding Additional Funds to a Contract

Published: 12/15/2016

Effective: 02/02/2017

Commerce

Occupational and Professional Licensing

No. 41047 (AMD): R156-5a. Podiatric Physician Licensing Act Rule

Published: 01/01/2017

Effective: 02/07/2017

Education

Administration

No. 41086 (AMD): R277-106. Utah Professional Practices Advisory Commission Appointment Process

Published: 01/01/2017

Effective: 02/07/2017

No. 41073 (AMD): R277-113. LEA Fiscal Policies and Accountability

Published: 01/01/2017

Effective: 02/07/2017

No. 41074 (AMD): R277-114. Corrective Action and Withdrawal or Reduction of Program Funds

Published: 01/01/2017

Effective: 02/07/2017

No. 41087 (AMD): R277-210. Utah Professional Practices Advisory Commission (UPPAC), Definitions

Published: 01/01/2017

Effective: 02/07/2017

No. 41088 (AMD): R277-211-6. Proposed Consent to Discipline

Published: 01/01/2017

Effective: 02/07/2017

No. 41089 (AMD): R277-212. UPPAC Hearing Procedures and Reports

Published: 01/01/2017

Effective: 02/07/2017

No. 41091 (REP): R277-425. Budgeting, Accounting, and Auditing for Utah Local Education Agencies (LEAs)

Published: 01/01/2017

Effective: 02/07/2017

No. 41075 (NEW): R277-521. National Board Certification Reimbursement

Published: 01/01/2017

Effective: 02/07/2017

No. 41092 (AMD): R277-526. Paraeducator to Teacher Scholarship Program

Published: 01/01/2017

Effective: 02/07/2017

No. 41093 (AMD): R277-602. Special Needs Scholarships - Funding and Procedures

Published: 01/01/2017

Effective: 02/07/2017

No. 41076 (NEW): R277-752. Special Education Intensive Services Fund

Published: 01/01/2017

Effective: 02/07/2017

No. 41094 (AMD): R277-915. Work-Based Learning Programs for Interns
Published: 01/01/2017
Effective: 02/07/2017

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No. 40879 (AMD): R315-15-13. Registration and Permitting of Used Oil Handlers
Published: 11/01/2016
Effective: 02/13/2017

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No. 41104 (AMD): R414-1-5. Incorporations by Reference
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No. 41070 (AMD): R414-302-6. Residents of Institutions
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BY AGENCY (CODE NUMBER)
AND
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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, 2017 through February 15, 2017. 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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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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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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	41161	R70-360	5YR	01/12/2017	2017-3/84	
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Commerce, Occupational and Professional Licensing	41047	R156-5a	AMD	02/07/2017	2017-1/11	
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	41316	R277-519	5YR	02/14/2017	Not Printed
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