

# 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 <https://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 <https://rules.utah.gov/> for additional information.

Office of Administrative Rules, Salt Lake City 84114

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# SPECIAL NOTICES

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## Commerce Occupational and Professional Licensing

### Public Notice of 2018 Board and Committee Meeting Schedules

NOTE: Meetings are subject to change - contact the Division at (801) 530-6628 to confirm meetings or check the Public Meeting Notice website ([www.pmn.utah.gov](http://www.pmn.utah.gov)). Most meetings are held in the Heber M. Wells Building, 160 East 300 South, Salt Lake City, Utah.

#### January

- 2 UBCC Unified Code Analysis Council and UBCC Architectural Advisory Committee 9:00 a.m.
- 3 Residence Lien Recovery Fund Advisory Board 8:15 a.m.
- 3 Clinical Mental Health Counselor Licensing Board 9:00 a.m.
- 3 Contract Security Education Peer Committee 9:00 a.m.
- 3 Plumbers Licensing Board 9:00 a.m.
- 3 Utah Board of Accountancy 1:30 p.m.
- 4 Alarm System Security and Licensing Board 9:00 a.m.
- 4 UBCC Plumbing/Health Advisory Committee 9:00 a.m.
- 4 UBCC Structural Advisory Committee 3:00 p.m.
- 9 UBCC Mechanical Advisory Committee 2:00 p.m.
- 10 Podiatric Physician Board 8:30 a.m.
- 10 Substance Use Disorder Counselor Licensing Board 9:00 a.m.
- 11 Board of Nursing 8:30 a.m.
- 16 Board of Massage Therapy 9:00 a.m.
- 16 Hunting Guides and Outfitters Licensing Board 1:00 p.m.
- 16 UBCC Education Advisory Committee 1:30 p.m.
- 17 Speech-Language Pathologist and Audiologist Licensing Board 9:00 a.m.
- 17 Professional Engineers and Professional Land Surveyors Licensing Board 9:00 a.m.
- 18 Physicians Licensing Board 9:00 a.m.
- 18 Veterinary Board 9:00 a.m.
- 18 Psychologist Licensing Board 1:00 p.m.
- 18 Electricians Licensing Board 9:00 a.m.
- 23 Utah State Board of Pharmacy 8:30 a.m.
- 23 Chiropractic Physician Licensing Board 9:00 a.m.
- 24 Utah State Board of Pharmacy 8:30 a.m.
- 25 Hearing Instrument Specialist Licensing Board 9:00 a.m.
- 30 Optometrist Licensing Board 9:00 a.m.
- 31 Construction Services Commission 9:00 a.m.

#### February

- 1 Nursing Education Advisory Peer Committee 8:00 a.m.
- 1 Social Worker Licensing Board 9:00 a.m.
- 1 UBCC Plumbing/Health Advisory Committee 9:00 a.m.
- 1 UBCC Structural Advisory Committee 3:00 p.m.
- 5 Cosmetology and Associated Professions Licensing Board 9:00 a.m.
- 6 UBCC Unified Code Analysis Council and UBCC Architectural Advisory Committee 9:00 a.m.
- 7 Residence Lien Recovery Fund Advisory Board 8:15 a.m.
- 7 Plumbers Licensing Board 9:00 a.m.
- 7 Utah Board of Accountancy 1:30 p.m.
- 8 Board of Nursing 8:30 a.m.
- 8 Osteopathic Physicians and Surgeon's Licensing Board 9:00 a.m.
- 8 Security Services Licensing Board 9:00 a.m.
- 8 Professional Geologist Licensing Board 10:00 a.m.
- 13 UBCC Mechanical Advisory Committee 2:00 p.m.
- 14 Architects Licensing Board 10:00 a.m.
- 14 Certified Nurse Midwife Board 3:00 p.m.
- 15 Electricians Licensing Board 9:00 a.m.

## SPECIAL NOTICES

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- 15 Private Probation Provider Licensing Board 10:00 a.m.
- 20 Acupuncture Licensing Board 9:00 a.m.
- 20 UBCC Education Advisory Committee 1:30 p.m.
- 21 Funeral Service Board 9:00 a.m.
- 27 Utah State Board of Pharmacy 8:30 a.m.
- 27 Health Facility Administrators Licensing Board 9:00 a.m.
- 28 Construction Services Commission 9:00 a.m.

### March

- 1 Alarm System Security and Licensing Board 9:00 a.m.
- 1 UBCC Plumbing/Health Advisory Committee 9:00 a.m.
- 1 UBCC Structural Advisory Committee 3:00 p.m.
- 2 Dentist and Dental Hygienist Board 9:00 a.m.
- 6 UBCC Unified Code Analysis Council and UBCC Architectural Advisory Committee 9:00 a.m.
- 7 Residence Lien Recovery Fund Advisory Board 8:15 a.m.
- 7 Plumbers Licensing Board 9:00 a.m.
- 7 Utah Board of Accountancy 1:30 p.m.
- 8 Board of Nursing 8:30 a.m.
- 8 Radiology Technologist Licensing Board 1:00 p.m.
- 9 Marriage and Family Therapy Licensing Board 9:00 a.m.
- 12 Physician Assistant Licensing Board 9:00 a.m.
- 12 Controlled Substances Advisory Committee 4:00 p.m.
- 13 UBCC Mechanical Advisory Committee 2:00 p.m.
- 14 Clinical Mental Health Counselor Licensing Board 9:00 a.m.
- 14 Dietitian Board 9:00 a.m.
- 15 Physicians Licensing Board 9:00 a.m.
- 15 Electricians Licensing Board 9:00 a.m.
- 20 Physical Therapist Licensing Board 8:30 a.m.
- 20 Building Inspector Licensing Board 9:00 a.m.
- 20 Board of Massage Therapy 9:00 a.m.
- 20 Respiratory Care Licensing Board 1:00 p.m.
- 20 UBCC Education Advisory Committee 1:30 p.m.
- 21 Professional Engineers and Professional Land Surveyors Licensing Board 9:00 a.m.
- 27 Utah State Board of Pharmacy 8:30 a.m.
- 28 Construction Services Commission 9:00 a.m.

### April

- 2 Cosmetology and Associated Professions Licensing Board 9:00 a.m.
- 3 Contract Security Education Peer Committee 9:00 a.m.
- 3 UBCC Unified Code Analysis Council and UBCC Architectural Advisory Committee 9:00 a.m.
- 4 Residence Lien Recovery Fund Advisory Board 8:15 a.m.
- 4 Plumbers Licensing Board 9:00 a.m.
- 4 Environmental Health Scientist Board 9:00 a.m.
- 4 Utah Board of Accountancy 1:30 p.m.
- 5 Social Worker Licensing Board 9:00 a.m.
- 5 UBCC Plumbing/Health Advisory Committee 9:00 a.m.
- 5 UBCC Structural Advisory Committee 3:00 p.m.
- 10 UBCC Mechanical Advisory Committee 2:00 p.m.
- 11 Podiatric Physician Board 8:30 a.m.
- 11 Substance Use Disorder Counselor Licensing Board 9:00 a.m.
- 11 Uniform Building Code Commission 9:00 a.m.
- 11 Architects Licensing Board 10:00 a.m.
- 12 Board of Nursing 8:30 a.m.
- 12 Genetic Counselor Licensing Board 9:00 a.m.
- 12 Security Services Licensing Board 9:00 a.m.
- 17 Acupuncture Licensing Board 9:00 a.m.
- 17 Recreational Therapy Board 9:00 a.m.
- 17 Hunting Guides and Outfitters Licensing Board 1:00 p.m.
- 17 UBCC Education Advisory Committee 1:30 p.m.



- 18 Landscape Architects Licensing Board 1:00 p.m.
- 18 Deception Detection Examiners Licensing Board 1:00 p.m.
- 19 Electricians Licensing Board 9:00 a.m.
- 19 Private Probation Provider Licensing Board 10:00 a.m.
- 19 Psychologist Licensing Board 1:00 p.m.
- 19 Certified Court Reporter Board 2:00 p.m.
- 19 Vocational Rehabilitation Counselor Licensing Board 2:00 p.m.
- 21 Licensed Direct-Entry Midwife Board 9:00 a.m.
- 24 Utah State Board of Pharmacy 8:30 a.m.
- 24 Chiropractic Physician Licensing Board 9:00 a.m.
- 24 Optometrist Licensing Board 9:00 a.m.
- 25 Construction Services Commission 9:00 a.m.
- 25 Athletic Trainer Licensing Board 9:00 a.m.
- 26 Hearing Instrument Specialist Licensing Board 9:00 a.m.
- 30 Online Prescribing, Dispensing and Facilitation Licensing Board 10:00 a.m.

May

- 1 Occupational Therapy Board 9:00 a.m.
- 1 UBCC Unified Code Analysis Council and UBCC Architectural Advisory Committee 9:00 a.m.
- 2 Residence Lien Recovery Fund Advisory Board 8:15 a.m.
- 2 Plumbers Licensing Board 9:00 a.m.
- 2 Utah Board of Accountancy 1:30 p.m.
- 3 Nursing Education Advisory Peer Committee 8:00 a.m.
- 3 Alarm System Security and Licensing Board 9:00 a.m.
- 3 UBCC Plumbing/Health Advisory Committee 9:00 a.m.
- 3 UBCC Structural Advisory Committee 3:00 p.m.
- 8 UBCC Mechanical Advisory Committee 2:00 p.m.
- 9 Clinical Mental Health Counselor Licensing Board 9:00 a.m.
- 9 Uniform Building Code Commission 9:00 a.m.
- 10 Board of Nursing 8:30 a.m.
- 10 Osteopathic Physicians and Surgeon's Licensing Board 9:00 a.m.
- 15 Board of Massage Therapy 9:00 a.m.
- 15 UBCC Education Advisory Committee 1:30 p.m.
- 16 Professional Engineers and Professional Land Surveyors Licensing Board 9:00 a.m.
- 16 Funeral Service Board 9:00 a.m.
- 16 Certified Nurse Midwife Board 3:00 p.m.
- 17 Physicians Licensing Board 9:00 a.m.
- 17 Electricians Licensing Board 9:00 a.m.
- 21 Veterinary Board 9:00 a.m.
- 22 Utah State Board of Pharmacy 8:30 a.m.
- 30 Construction Services Commission 9:00 a.m.

June

- 1 Dentist and Dental Hygienist Board 9:00 a.m.
- 4 Cosmetology and Associated Professions Licensing Board 9:00 a.m.
- 5 UBCC Unified Code Analysis Council and UBCC Architectural Advisory Committee 9:00 a.m.
- 6 Residence Lien Recovery Fund Advisory Board 8:15 a.m.
- 6 Plumbers Licensing Board 9:00 a.m.
- 6 Utah Board of Accountancy 1:30 p.m.
- 7 Social Worker Licensing Board 9:00 a.m.
- 7 UBCC Plumbing/Health Advisory Committee 9:00 a.m.
- 7 UBCC Structural Advisory Committee 3:00 p.m.
- 8 Marriage and Family Therapy Licensing Board 9:00 a.m.
- 11 Physician Assistant Licensing Board 9:00 a.m.
- 12 UBCC Mechanical Advisory Committee 2:00 p.m.
- 13 Uniform Building Code Commission 9:00 a.m.
- 13 Architects Licensing Board 10:00 a.m.
- 14 Board of Nursing 8:30 a.m.
- 14 Naturopathic Physician Licensing Board 9:00 a.m.

## SPECIAL NOTICES

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- 14 Security Services Licensing Board 9:00 a.m.
- 14 Professional Geologist Licensing Board 10:00 a.m.
- 19 Physical Therapist Licensing Board 8:30 a.m.
- 19 Acupuncture Licensing Board 9:00 a.m.
- 19 Building Inspector Licensing Board 9:00 a.m.
- 19 UBCC Education Advisory Committee 1:30 p.m.
- 20 Speech-Language Pathologist and Audiologist Licensing Board 9:00 a.m.
- 21 Electricians Licensing Board 9:00 a.m.
- 21 Private Probation Provider Licensing Board 10:00 a.m.
- 26 Utah State Board of Pharmacy 8:30 a.m.
- 27 Construction Services Commission 9:00 a.m.

### July

- 3 UBCC Unified Code Analysis Council and UBCC Architectural Advisory Committee 9:00 a.m.
- 3 Plumbers Licensing Board 9:00 a.m.
- 4 Contract Security Education Peer Committee 9:00 a.m.
- 4 Utah Board of Accountancy 1:30 p.m.
- 5 Alarm System Security and Licensing Board 9:00 a.m.
- 5 UBCC Plumbing/Health Advisory Committee 9:00 a.m.
- 5 UBCC Structural Advisory Committee 3:00 p.m.
- 10 UBCC Mechanical Advisory Committee 2:00 p.m.
- 11 Residence Lien Recovery Fund Advisory Board 8:15 a.m.
- 11 Podiatric Physician Board 8:30 a.m.
- 11 Clinical Mental Health Counselor Licensing Board 9:00 a.m.
- 11 Uniform Building Code Commission 9:00 a.m.
- 12 Board of Nursing 8:30 a.m.
- 12 Radiology Technologist Licensing Board 1:00 p.m.
- 17 Utah State Board of Pharmacy 8:30 a.m.
- 17 Board of Massage Therapy 9:00 a.m.
- 17 Hunting Guides and Outfitters Licensing Board 1:00 p.m.
- 17 UBCC Education Advisory Committee 1:30 p.m.
- 18 Substance Use Disorder Counselor Licensing Board 9:00 a.m.
- 18 Professional Engineers and Professional Land Surveyors Licensing Board 9:00 a.m.
- 19 Physicians Licensing Board 9:00 a.m.
- 19 Electricians Licensing Board 9:00 a.m.
- 19 Psychologist Licensing Board 1:00 p.m.
- 24 Chiropractic Physician Licensing Board 9:00 a.m.
- 25 Construction Services Commission 9:00 a.m.
- 26 Hearing Instrument Specialist Licensing Board 9:00 a.m.
- 30 Optometrist Licensing Board 9:00 a.m.

### August

- 1 Residence Lien Recovery Fund Advisory Board 8:15 a.m.
- 1 Plumbers Licensing Board 9:00 a.m.
- 1 Utah Board of Accountancy 1:30 p.m.
- 2 Nursing Education Advisory Peer Committee 8:00 a.m.
- 2 Social Worker Licensing Board 9:00 a.m.
- 2 UBCC Plumbing/Health Advisory Committee 9:00 a.m.
- 2 UBCC Structural Advisory Committee 3:00 p.m.
- 6 Cosmetology and Associated Professions Licensing Board 9:00 a.m.
- 7 UBCC Unified Code Analysis Council and UBCC Architectural Advisory Committee 9:00 a.m.
- 8 Uniform Building Code Commission 9:00 a.m.
- 8 Architects Licensing Board 10:00 a.m.
- 9 Board of Nursing 8:30 a.m.
- 9 Osteopathic Physicians and Surgeon's Licensing Board 9:00 a.m.
- 9 Security Services Licensing Board 9:00 a.m.
- 14 UBCC Mechanical Advisory Committee 2:00 p.m.
- 15 Funeral Service Board 9:00 a.m.
- 15 Certified Nurse Midwife Board 3:00 p.m.

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- 16 Electricians Licensing Board 9:00 a.m.
  - 16 Private Probation Provider Licensing Board 10:00 a.m.
  - 21 Acupuncture Licensing Board 9:00 a.m.
  - 21 UBCC Education Advisory Committee 1:30 p.m.
  - 28 Utah State Board of Pharmacy 8:30 a.m.
  - 28 Health Facility Administrators Licensing Board 9:00 a.m.
  - 29 Construction Services Commission 9:00 a.m.

#### September

- 5 Residence Lien Recovery Fund Advisory Board 8:15 a.m.
- 5 Plumbers Licensing Board 9:00 a.m.
- 5 Utah Board of Accountancy 1:30 p.m.
- 6 Alarm System Security and Licensing Board 9:00 a.m.
- 7 Dentist and Dental Hygienist Board 9:00 a.m.
- 10 Physician Assistant Licensing Board 9:00 a.m.
- 10 Controlled Substances Advisory Committee 4:00 p.m.
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- 13 Board of Nursing 8:30 a.m.
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- 18 Physical Therapist Licensing Board 8:30 a.m.
- 18 Building Inspector Licensing Board 9:00 a.m.
- 18 Board of Massage Therapy 9:00 a.m.
- 18 Respiratory Care Licensing Board 1:00 p.m.
- 18 UBCC Education Advisory Committee 1:30 p.m.
- 19 Professional Engineers and Professional Land Surveyors Licensing Board 9:00 a.m.
- 19 Deception Detection Examiners Licensing Board 1:00 p.m.
- 20 Physicians Licensing Board 9:00 a.m.
- 20 Veterinary Board 9:00 a.m.
- 20 Electricians Licensing Board 9:00 a.m.
- 25 Utah State Board of Pharmacy 8:30 a.m.
- 26 Construction Services Commission 9:00 a.m.

#### October

- 1 Cosmetology and Associated Professions Licensing Board 9:00 a.m.
- 3 Residence Lien Recovery Fund Advisory Board 8:15 a.m.
- 3 Contract Security Education Peer Committee 9:00 a.m.
- 3 Plumbers Licensing Board 9:00 a.m.
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- 11 Board of Nursing 8:30 a.m.
- 11 Security Services Licensing Board 9:00 a.m.
- 11 Professional Geologist Licensing Board 10:00 a.m.
- 16 Acupuncture Licensing Board 9:00 a.m.
- 16 Recreational Therapy Board 9:00 a.m.
- 16 Hunting Guides and Outfitters Licensing Board 1:00 p.m.
- 16 UBCC Education Advisory Committee 1:30 p.m.
- 17 Landscape Architects Licensing Board 1:00 p.m.
- 18 Electricians Licensing Board 9:00 a.m.
- 18 Private Probation Provider Licensing Board 10:00 a.m.
- 18 Psychologist Licensing Board 1:00 p.m.
- 18 Certified Court Reporter Board 2:00 p.m.
- 18 Vocational Rehabilitation Counselor Licensing Board 2:00 p.m.
- 20 Licensed Direct-Entry Midwife Board 9:00 a.m.

SPECIAL NOTICES

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- 23 Utah State Board of Pharmacy 8:30 a.m.
- 23 Chiropractic Physician Licensing Board 9:00 a.m.
- 24 Athletic Trainer Licensing Board 9:00 a.m.
- 25 Hearing Instrument Specialist Licensing Board 9:00 a.m.
- 29 Online Prescribing, Dispensing and Facilitation Licensing Board 10:00 a.m.
- 30 Optometrist Licensing Board 9:00 a.m.
- 31 Construction Services Commission 9:00 a.m.

November

- 1 Nursing Education Advisory Peer Committee 8:00 a.m.
- 1 Alarm System Security and Licensing Board 9:00 a.m.
- 6 Occupational Therapy Board 9:00 a.m.
- 7 Residence Lien Recovery Fund Advisory Board 8:15 a.m.
- 7 Plumbers Licensing Board 9:00 a.m.
- 7 Utah Board of Accountancy 1:30 p.m.
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- 8 Naturopathic Physician Licensing Board 9:00 a.m.
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- 14 Clinical Mental Health Counselor Licensing Board 9:00 a.m.
- 14 Certified Nurse Midwife Board 3:00 p.m.
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- 21 Professional Engineers and Professional Land Surveyors Licensing Board 9:00 a.m.
- 21 Funeral Service Board 9:00 a.m.
- 27 Utah State Board of Pharmacy 8:30 a.m.
- 28 Construction Services Commission 9:00 a.m.

December

- 3 Cosmetology and Associated Professions Licensing Board 9:00 a.m.
  - 5 Residence Lien Recovery Fund Advisory Board 8:15 a.m.
  - 5 Plumbers Licensing Board 9:00 a.m.
  - 5 Utah Board of Accountancy 1:30 p.m.
  - 6 Social Worker Licensing Board 9:00 a.m.
  - 7 Dentist and Dental Hygienist Board 9:00 a.m.
  - 10 Physician Assistant Licensing Board 9:00 a.m.
  - 12 Architects Licensing Board 10:00 a.m.
  - 13 Board of Nursing 8:30 a.m.
  - 13 Security Services Licensing Board 9:00 a.m.
  - 14 Marriage and Family Therapy Licensing Board 9:00 a.m.
  - 18 Utah State Board of Pharmacy 8:30 a.m.
  - 18 Acupuncture Licensing Board 9:00 a.m.
  - 18 Building Inspector Licensing Board 9:00 a.m.
  - 18 UBCC Education Advisory Committee 1:30 p.m.
  - 20 Physical Therapist Licensing Board 8:30 a.m.
  - 20 Electricians Licensing Board 9:00 a.m.
  - 20 Private Probation Provider Licensing Board 10:00 a.m.
  - 26 Construction Services Commission 9:00 a.m.
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**Environmental Quality  
Air Quality**

**Notice of Public Comment for Wildfire Exceptional Events on September 6 - 7, 2017**

Federal regulations, 40 Code of Federal Regulations (CFR) Part 50, allow states to exclude air quality data that exceed or violate a National Ambient Air Quality Standard (NAAQS) if they can demonstrate that an "exceptional event" has caused the exceedance or violation. Exceptional events are unusual or naturally occurring events that can affect air quality but are not reasonably controllable or preventable using techniques implemented to attain and maintain the NAAQS.

Exceptional events may be caused by human activity that is unlikely to recur at a particular location, or may be due to a natural event. The Environmental Protection Agency (EPA) defines a "natural event" as an event in which human activity plays little or no direct causal role to the event in question. For example, a natural event could include such things as high winds, wild fires, and seismic/volcanic activity. In addition, the EPA will allow states to exclude data from regulatory determinations on a case-by-case basis for monitoring stations that measure values that exceed or violate the NAAQS due to emissions from fireworks displays from cultural events.

Federal regulations (40 CFR Part 50.14) require that all relevant flagged data, the reasons for the data being flagged, and a demonstration that the flagged data are caused by exceptional events be made available by the State for 30 days of public review and comment. These comments will be considered in the final demonstration of the event that is submitted to EPA. The following monitoring stations air quality exceedances have been attributed to a wildfire exceptional event.

<u>Monitoring Station</u>	<u>Date</u>	<u>PM 2.5 microgram/m<sup>3</sup></u>	<u>Standard microgram/m<sup>3</sup></u>
Brigham City	9/5/17	41.5	35
Smithfield	9/5/17	41.4	35
Bountiful	9/6/17	43.8	35
Brigham City	9/6/17	51.5	35
Erda	9/6/17	38	35
Hawthorne	9/6/17	35.5	35
Ogden	9/6/17	39.1	35
Magna	9/6/17	37.1	35
Rose Park	9/6/17	37.8	35
Smithfield	9/6/17	60.1	35
Spanish Fork	9/6/17	39.9	35
Lindon	9/6/17	35	35
Brigham City	9/7/17	36.4	35
Smithfield	9/7/17	42.4	35

The documentation for public review and comment to support removing these data from use in regulatory determinations will be available beginning November 15, 2017 at <https://deq.utah.gov/ProgramsServices/programs/air/exceptionalevents/index.htm> or at the Multi Agency State Office Building, 195 North 1950 West in Salt Lake City. In compliance with the American with Disabilities Act, individuals with special needs (including auxiliary communicative aids and services) should contact Brooke Baker, Office of Human Resources at 801-536-4412 (TDD 536-4414).

*The comment period will close at 5:00 p.m. on December 15, 2017. Comments postmarked on or before that date will be accepted. Comments may be submitted by electronic mail to [jkarmazyn@utah.gov](mailto:jkarmazyn@utah.gov) or may be mailed to:*

*Joel Karmazyn  
Utah Division of Air Quality  
PO Box 144820  
195 N 1950 W  
Salt Lake City, UT 84114-4820*

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

**Long Term Acute Care**

The Division of Medicaid and Health Financing (DMHF) will amend Attachments 3.1-A and 3.1-B of the Medicaid State Plan to update inpatient hospital procedures that include long term acute care, and to make other technical changes.

This amendment, therefore, removes language that is either unnecessary or no longer applies to inpatient hospital procedures, and updates citations for state administrative rules and statutes.

This State Plan Amendment (SPA 17-0025-UT) does not affect total annual expenditures for the Medicaid program.

The SPA is pending approval from the Centers for Medicare and Medicaid Services and the proposed effective date is December 1, 2017.

*A copy of this change may be obtained from Craig Devashrayee (801-538-6641), or by writing the Technical Writing Unit, Utah Department of Health, P.O. Box 143102, Salt Lake City, UT 84114-3102. Comments are welcome at the same address. Copies of the change are also available at local county health department offices.*

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

**Notice for December 2017 Medicaid Rate Changes**

Effective December 1, 2017, Utah Medicaid will adjust its rates consistent with approved methodologies. Rate adjustments include new codes priced consistent with approved Medicaid methodologies as well as potential adjustments to existing codes. All rate changes are posted to the web and can be viewed at:  
<http://health.utah.gov/medicaid/stplan/lookup/CoverageLookup.php>.

**Pardons (Board of)  
Administration**

**Correcting Public Hearing Time for Filing on Rule R671-304 in the November 1, 2017, Bulletin**

The proposed amendment for Rule R671-304, Hearing Record, was published in the November 1, 2017, Bulletin, under Filing No. 42231. The time listed for the public hearing was incorrect. It should have been 8:00 AM not PM. This filing will be included with the other rules that are being changed under Title R671 that will be discussed at that hearing.

*Direct questions regarding this rule to: Bev Uipi by phone at 801-261-6446, or by Internet E-mail at [buiipi@utah.gov](mailto:buiipi@utah.gov)*

**End of the Special Notices Section**





## NOTICES OF PROPOSED RULES

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A state agency may file a **PROPOSED RULE** when it determines the need for a substantive change to an existing rule. With a **NOTICE OF PROPOSED RULE**, an agency may create a new rule, amend an existing rule, repeal an existing rule, or repeal an existing rule and reenact a new rule. Filings received between October 17, 2017, 12:00 a.m., and November 01, 2017, 11:59 p.m. are included in this, the November 15, 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 December 15, 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 March 15, 2018, the agency may notify the Office of Administrative Rules that it wants to make the **PROPOSED RULE** effective. The agency sets the effective date. The date may be no fewer than seven calendar days after the close of the public comment period nor more than 120 days after the publication date of this issue of the *Utah State Bulletin*. Alternatively, the agency may file a **CHANGE IN PROPOSED RULE** in response to comments received. If the Office of Administrative Rules does not receive a **NOTICE OF EFFECTIVE DATE OF A CHANGE IN PROPOSED RULE**, the **PROPOSED RULE** lapses.

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

**PROPOSED RULES** are governed by Section 63G-3-301, Rule R15-2, and Sections R15-4-3, R15-4-4, R15-4-5a, R15-4-9, and R15-4-10.

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

**Administrative Services, Finance**  
**R25-3**  
**Personal Use Expenditures**  
**Administrative Penalty Appeal**  
**Procedures**

**NOTICE OF PROPOSED RULE**

(New Rule)

DAR FILE NO.: 42286

FILED: 11/01/2017

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The purpose of this rule is to establish official procedures and standardized practices for administering appeal procedures for H.B. 431 passed during the 2017 General Session.

**SUMMARY OF THE RULE OR CHANGE:** This rule establishes appeal procedures for requesting an informal adjudicative hearing by the appeal authority when an employee or officer of a governmental entity disagrees with the responsible governmental entity's finding and administrative penalties regarding making personal use expenditures.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Subsection 63A-3-110(4)

**ANTICIPATED COST OR SAVINGS TO:**

◆ **THE STATE BUDGET:** The proposed rule is not expected to impact state revenues or expenditures. The purpose of this rule is to describe the process for appealing administrative findings and penalties associated with personal use expenditures. The goal of the underlying personal use expenditure law is to provide a deterrent, such that there is a \$0 net impact on all parties involved. However, direct fiscal impacts of the underlying personal use expenditure law on the state budget may include a possible monetary gain to the Division of Finance, in the form of an administrative penalty equal to 50% of the personal use expenditure. These fiscal impacts are inestimable, both because they apply only in cases of unforeseeable violations of law, and because the penalty assessed will vary depending on the amount of the personal use expenditure. Accordingly, the fiscal impacts of this rule, which describes a process through which the penalty may be confirmed or overturned, are also inestimable. Direct fiscal impacts may also include agency staff time and resources dedicated to the appeals process. These fiscal impacts are also inestimable, as the number of state employees or officers that will be determined to have made a personal use expenditure, be assessed a penalty, and appeal the determination and penalty is unknown and, ideally, will be \$0.

◆ **LOCAL GOVERNMENTS:** Because this rule applies only to state officers and employees, it is expected to have no impact on local governments.

◆ **SMALL BUSINESSES:** The purpose of this rule is to describe the process for appealing administrative findings and penalties associated with personal use expenditures. The goal of the underlying personal use expenditure law is to provide a deterrent, such that there is a \$0 net impact on all parties involved. However, inestimable fiscal impacts of the underlying law on small businesses may include any money that a state officer or employee might have spent at a small business but must instead pay to the Division of Finance in the form of an administrative penalty. This amount is inestimable, both because it applies only in cases of unforeseeable violations of law, and because the penalty assessed will vary depending on the amount of the personal use expenditure. Accordingly, the fiscal impacts of this rule, which describes a process through which the penalty may be confirmed or overturned, are also inestimable.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** The purpose of this rule is to describe the process for appealing administrative findings and penalties associated with personal use expenditures. The goal of the underlying personal use expenditure law is to provide a deterrent, such that there is a \$0 net impact on all parties involved and minimal occasions to file an appeal. Therefore, for the typical member of the affected party (a state officer or employee), the proposed rule is expected to have no direct or indirect fiscal impacts. However, inestimable fiscal impacts of the underlying personal expenditure law on a state officer or employee may include any money he or she might have to pay to the Division of Finance in the form of an administrative penalty. This amount is inestimable, both because it applies only in cases of unforeseeable violations of law, and because the penalty assessed will vary depending on the amount of the personal use expenditure. Accordingly, the fiscal impacts of this rule, which describes a process through which the penalty may be confirmed or overturned, are also inestimable. The state officer or employee may also be responsible for costs associated with filing the appeal. This amount is also inestimable, because it again applies only in cases of unforeseeable violations of law and depends on the actions taken and resources engaged by the appellant.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** The costs could be: time to prepare an appeal and attend an appeal hearing, attorney fees if the affected person hires an attorney, and travel costs to attend the appeal hearing. These costs cannot be reasonably estimated.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** I have reviewed these changes with the Division of Finance Director and believe these changes are reasonable and warranted. As further detailed in the cost answers above and the attached Appendix, inestimable fiscal impacts of the

underlying law on small and non-small businesses may include any money that a state officer or employee might have spent at a small or non-small business but must instead pay to Division of Finance in the form of an administrative penalty. This amount is inestimable, both because it applies only in cases of unforeseeable violations of law, and because the penalty assessed will vary depending on the amount of the personal use expenditure. Accordingly, the fiscal impacts of this rule, which describes a process through which the penalty may be confirmed or overturned, are also inestimable. As the goal of the underlying personal use expenditure law is to provide a deterrent, such that there is a \$0 net impact on all parties involved, the estimated fiscal impact of this rule on small and non-small businesses is \$0.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:  
 ADMINISTRATIVE SERVICES  
 FINANCE  
 ROOM 2110 STATE OFFICE BLDG  
 450 N STATE ST  
 SALT LAKE CITY, UT 84114-1201  
 or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
 ♦ John Reidhead by phone at 801-538-1678, by FAX at 801-538-3244, or by Internet E-mail at jreidhead@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 12/15/2017

THIS RULE MAY BECOME EFFECTIVE ON: 12/22/2017

AUTHORIZED BY: John Reidhead, Director

**Appendix: Regulatory Impact Analysis for Small and Non-Small Businesses**

	FY 2018	FY 2019	FY 2020
<b>Fiscal Costs</b>			
State Government	\$0	\$0	\$0
Local Government	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Costs:</b>	\$0	\$0	\$0

<b>Fiscal Benefits</b>			
State Government	\$0	\$0	\$0
Local Government	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0

Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Benefits:</b>	\$0	\$0	\$0
<b>Net Fiscal Benefits:</b>	\$0	\$0	\$0

Number of small businesses affected: 0 (constrained parties are state officers and employees only)

Average one-year fiscal impacts for non-small businesses: \$0 (one-time and ongoing)

Inestimable fiscal impacts: The purpose of this rule is to describe the process for appealing administrative findings and penalties associated with personal use expenditures. The goal of the underlying personal use expenditure law is to provide a deterrent, such that there is a \$0 net impact on all parties involved. However, inestimable fiscal impacts of the underlying law on small and non-small businesses may include any money that a state officer or employee might have spent at a small or non-small business but must instead pay to the Division of Finance in the form of an administrative penalty. This amount is inestimable, both because it applies only in cases of unforeseeable violations of law, and because the penalty assessed will vary depending on the amount of the personal use expenditure. Accordingly, the fiscal impacts of this rule, which describes a process through which the penalty may be confirmed or overturned, are also inestimable.

Other relevant non-fiscal impacts: None

**R25. Administrative Services, Finance.**  
**R25-3. Personal Use Expenditures Administrative Penalty Appeal Procedures.**

**R25-3-1. Authority and Purpose of Rule for Appeal Procedures.**

(1) The authority for the rule on these appeal procedures is found in Section 63A-3-110.

(2) This rule establishes official procedures and standardized practices for administering these appeal procedures.

**R25-3-2. Definitions.**

Terms used in this rule are defined in Subsection 63A-3-110(1).

In addition:  
"Administrator" means the Department of Administrative Services Division of Finance Director or designee.

"Appeal" means a formal request to a higher level of review of a lower level decision.

"Appeal Authority" means the individual(s) designated by the Administrator to act as the Appeal Authority hearing officer(s).

"Appellant" means the person who requested the review hearing.

"Extraordinary Circumstances" means a failure to take proper steps at the proper time, not in consequence of the person's own carelessness, inattention, lack of preparation, or willful disregard in the processing of an Appeal, but in consequence of some unexpected or unavoidable hindrance or accident.

"Party(ies)" means the officer or employee commencing a Request for Review, all respondents, and all persons authorized by statute or agency rule to participate as Parties in an adjudicative proceeding.

"Personal Use Expenditure" means an expenditure made without the authority of law that is not directly related to the performance of an activity as a state officer or employee; primarily furthers a personal interest or a state officer or employee or a state officer's or employee's family, friend, or associate; and would constitute taxable income under federal law. It does not include a de minimis or incidental expenditure, or a state vehicle or a monthly stipend for a vehicle that an officer or employee uses to travel to and from the officer's or employee's official duties, including a minimal allowance for a detour as provided by the state.

"Request for Review" means a formal request, in writing, for an informal hearing before the Appeal Authority.

"Responsible Governmental Entity" means the governmental entity from whose fund or account the Personal Use Expenditure or the payment for the indebtedness or liability for a Personal Use Expenditure was disbursed.

"Responsible Governmental Entity Head" means the executive director, commissioner, chief justice, or other top executive of the Responsible Governmental Entity, or a designee.

### **R25-3-3. Appeal and Request for Review Process.**

Person(s) acting on an Appeal and Request for Review pursuant to Subsection 63A-3-110(4), and in accordance with Title 63G, Chapter 4, Utah Administrative Procedures Act, and these rules, shall conduct the Appeal process according to the following steps:

(1) A review hearing before the Appeal Authority may be requested only after the Responsible Governmental Entity has determined--in accordance with its own investigative and Appeal processes--the following:

(a) an employee or officer intentionally made a Personal Use Expenditure or incurred indebtedness or liability on behalf of, or payable by, the Responsible Governmental Entity for a Personal Use Expenditure in violation of Subsection 63A-3-110(2); furthermore,

(b) the Responsible Governmental Entity Head imposed upon the employee or officer the administrative penalties specified in Subsection 63A-3-110(3), in writing.

(2) Should an employee or officer disagree with the Responsible Governmental Entity Head's finding or authorization of the administrative penalties, the aggrieved Party may file a Request for Review with the Administrator.

(a) The Request for Review must be submitted to the Administrator in writing, using the form available from the Division of Finance, within 30 calendar days of the day the Responsible Governmental Entity Head's formal notice of the finding and authorized administrative penalties is issued. All related documentation required by the Division of Finance form must also be submitted with the form.

(b) Copies of the form and the required documentation must be submitted to the Responsible Governmental Entity Head and other Parties by the employee or officer requesting the hearing.

(3) Within 15 days of submission of the Request for Review, any Party to the hearing may file a response with the

Administrator. The Party who submits a response shall send a copy of the response to other Parties.

### **R25-3-4. Administrator's Initial Review of Eligibility and Merit of the Request for Review.**

(1) Upon receipt of the Request for Review, the Administrator shall make an initial determination on the basis of Section 63A-3-110 and Section 63G-4-201 that the Appeal Authority has authority to review or decide the requested Appeal:

(a) Procedural Issues. The Administrator shall make an initial determination of the timeliness, jurisdiction, standing, and eligibility of the issues to be advanced.

(b) Determination. The Administrator has authority to determine which types of Appeals may be heard by the Appeal Authority. Those types of Appeals found to have been resolved by a preponderance of the evidence at the level of the Responsible Governmental Entity Head or those that do not qualify for advancement to the Appeal Authority are precluded from further consideration and review by the Appeal Authority.

(c) Preclusion. When an Appeal request is precluded from an Appeal Authority review, the matter under dispute shall be deemed as final at the level of the Responsible Governmental Entity Head.

(2) The Administrator shall notify within 30 days the requesting Party and the Responsible Governmental Entity Head in writing that the Request for Review is either granted or denied, constituting the final action by the Administrator. The decision letter must describe the factual findings and conclusions of the Administrator's review. The letter must state that any Party may file with the Administrator a written request for reconsideration within 30 days after the date the Administrator issues the decision, in accordance with Section 63G-4-302.

(a) Filing of a request for reconsideration is not a prerequisite for seeking judicial review of the decision.

(3) The decision letter should include a statement that a Party aggrieved may obtain judicial review of the decision, in accordance with Section 63G-4-401, by filing a petition within 30 days after the date the decision is issued; or, in the case of a request for reconsideration, by filing a petition within 30 days after the date the decision is issued, in accordance of Section 63G-4-302.

### **R25-3-5. Commencement of Informal Adjudicative Proceedings.**

(1) Purpose. An informal review hearing provides a fair and impartial opportunity for the Parties to be heard and to present evidence. The adjudicative process allows the Appeal Authority to be completely informed about the case. After having considered the Parties' evidence, the Appeal Authority may then render a decision based upon all of the facts, circumstances, and applicable laws, rules, and policies.

(2) After granting the Request for Review, the Administrator shall promptly designate the Appeal Authority and its presiding hearing officer, as authorized in Subsection 63A-3-110(4) (b).

(3) The presiding Appeal Authority hearing officer shall schedule a hearing date at least 30 days from the mailing date of the hearing notice.

(4) A written notice of the review hearing, signed by the presiding Appeal Authority hearing officer, shall be mailed to the

Administrator and all Parties and any other person who has a right to notice under statute or rule in accordance with Section 63G-4-201, and shall include the following:

(a) the names and mailing addresses of all persons to whom notice is being given, and the name, title, and mailing address of any attorney or employee who has been designated to appear for the Responsible Governmental Entity;

(b) the case file number or other reference number (if applicable);

(c) the name of the adjudicative proceeding;

(d) the date that the notice of the review hearing was mailed;

(e) a statement that the review hearing is to be conducted informally according to the provisions of rules adopted under Sections 63G-4-202 and 63G-4-203;

(f) a statement of the time and place of the scheduled review hearing, a statement of the purpose for which the hearing is to be held, and, to the extent known by the presiding Appeal Authority hearing officer, the questions to be decided;

(g) a statement that a Party who fails to attend or participate in a scheduled and noticed hearing may be held in default;

(h) a statement of the legal authority and jurisdiction under which the review hearing is to be maintained (i.e. Subsection 63A-3-110(4));

(i) the name, title, mailing address, and telephone number of the presiding Appeal Authority hearing officer.

**R25-3-6. Commencement of Informal Adjudicative Proceedings -- Granting Continuance or Extension of Time.**

(1) Notwithstanding Administrative Rule Subsection R25-3-5(3) above, after the review hearing date has been set, each Party may be granted one continuance or extension of time for the hearing, provided there are Extraordinary Circumstances justifying such continuance or extension. A Party desiring an extension of time or a continuance of the review hearing shall file a written request with the presiding Appeal Authority hearing officer.

(a) Every petition for a continuance shall specify the reason for the requested delay.

(b) In considering a request for continuance, the Appeal Authority shall take into account:

(i) whether the request was timely made in writing; and

(ii) whether the request is based on Extraordinary Circumstances.

**R25-3-7. Informal Adjudicative Proceedings.**

(1) An informal review hearing will be held only after timely notice to all Parties; timely notice being at least 30 days prior to the scheduled hearing in accordance with Administrative Rule Subsection R25-3-5(3) above.

(2) In reference to Section 63G-4-203, the following procedures for informal adjudicative proceedings apply:

(a) A hearing may be conducted without adherence to the rules of evidence required in judicial proceedings. Irrelevant, immaterial, and unduly repetitious evidence shall be excluded. The weight to be given to evidence shall be determined by the presiding Appeal Authority hearing officer. Any relevant evidence may be admitted if it is the type of evidence commonly relied upon by prudent persons in the conduct of their affairs. Hearsay evidence

may be used for the purpose of supplementing or explaining other evidence, but it shall not be sufficient in itself to support a finding.

(b) Discovery is prohibited, but the Appeal Authority may issue subpoenas and other orders to compel production of necessary evidence.

(c) All Parties shall have access to information contained in the case files and to all materials and information gathered in any investigation, to the extent permitted by law.

(d) Intervention is prohibited, except as stated in Subsection 63G-4-203(1)(g).

(e) A review hearing shall be open to all Parties named in the hearing notice, and all Parties shall be entitled to introduce evidence, examine and cross-examine witnesses, make arguments, and fully participate in the proceeding.

(f) The testimony and statements received at a review hearing may be under oath.

(g) The proceedings may be recorded electronically by the Department of Administrative Services Division of Finance at the division's expense. At its own expense any Party may have a reporter, who is approved by the division, prepare a transcript from the record of the hearing. If a Party desires that the testimony be recorded by means of a court reporter, that Party may employ a court reporter at its own expense and shall furnish a transcript of the testimony to the division free of charge. This transcript shall be available at the Division of Finance to any Party to the hearing.

**R25-3-8. Informal Adjudicative Proceedings -- Subpoenas.**

(1) Subpoena power. Pursuant to Subsection 63G-4-203(1)(e), the Appeal Authority may issue subpoenas to witnesses and may obtain documents or other evidence in conjunction with any inquiry, investigation, hearing, or other proceedings.

(a) The Appellant has the right to require the production of books, papers, records, documents, and other items pertinent to the facts at issue that are within the control of the governmental entity against which the Appeal is lodged, and which are not held to be protected or privileged by law. Affidavits and ex parte statements offered during a hearing may be received and considered by the Appeal Authority.

(b) A person receiving a subpoena issued by the Appeal Authority will find the title of the proceeding posted thereon, and the person to whom it is directed shall be compelled to attend and give testimony. A subpoena duces tecum may be used to produce designated books, or other items at a specified time and place when these items are under an agency's or a person's control.

(c) A request by counsel or a Party's representative to issue a subpoena must be reasonable and timely. At least 5 full working days' notice prior to a scheduled hearing must be given to the Appeal Authority, not counting preparation and delivery time. The requesting Party shall simultaneously notify the other Parties of the request.

(d) The original of each subpoena is to be presented to the person named therein, and, if applicable, a copy shall be issued to the counsel or representative of each Party.

(2) Service of subpoenas. Service of subpoenas shall be made by the requesting Party delivering the subpoena to the person named, unless the Appeal Authority is requested to deposit the subpoena properly addressed and postage prepaid, with the U.S. Postal Service, or to send it by State Mail and Distribution Services, or to send it by e-mail, or in any combination.

(3) Proof of service. If service has not been acknowledged by the witness, the server may make an affidavit of service. Failure to make proof of service does not affect the validity of the service.

**R25-3-9. Informal Adjudicative Proceedings -- Witnesses.**

(1) Availability of employees to testify. A governmental entity shall be responsible for making available any of its employees who are subpoenaed to testify in a review hearing.

(a) Off-duty employees. Agencies are not responsible for making available an employee who is: off duty; on sick, annual or other approved leave; or who, for any other reason, is not at work during the time the hearing is in progress.

(b) Non-disruption. The Parties and their representatives and the Appeal Authority shall make every effort to avoid disruption to the operation of state government or other governmental entities in the calling of employees to testify in hearings under these Appeal procedures.

(c) Witness failure. If a requested witness does not appear at the scheduled hearing, the witness' failure to appear may not necessitate the postponement of any proceedings.

(d) Excessive witnesses. If the number of witnesses requested by a Party is excessive, the Appeal Authority may require the Party to justify the request or face denial of part or all of the request.

(2) Hostile witnesses. When the presiding Appeal Authority hearing officer determines that a witness is uncooperative or even hostile, the witness may be examined by the Party calling that witness as if under cross-examination. The Party calling the witness may, upon showing that the witness was called in good faith but that the testimony is a surprise, proceed to impeach the witness by proof of prior inconsistent statements.

(3) Exclusion/sequestering of witnesses.

(a) The Appeal Authority presiding hearing officer may sequester witnesses from the hearing until they are called to testify.

(b) Witnesses not presently testifying may be sequestered on motion by one or both Parties or in the presiding hearing officer's discretion.

(c) The presiding Appeal Authority hearing officer will counsel the witnesses not to discuss the case with those witnesses who have not yet testified.

(4) Management representative. Prior to a hearing, the Responsible Governmental Entity may designate one person to serve as the agency's management representative. The agency's management representative is entitled to remain throughout the hearing to represent the agency at any proceeding even if called to testify, unless the presiding Appeal Authority hearing officer determines it is reasonable to expel the management representative for any or part of the hearing.

**R25-3-10. Informal Adjudicative Proceedings -- Failure to Appear; Default.**

When a Party or the Party's authorized representative to a proceeding fails to appear at a review hearing after due notice has been given, the presiding Appeal Authority hearing officer, at his or her discretion, may continue the matter, or may enter an order of default, pursuant to Section 63G-4-209, or may proceed to hear the matter in the absence of the defaulting Party.

**R25-3-11. Informal Adjudicative Proceedings -- Issuance of Decisions; Final Action.**

(1) Within 30 days after the close of the informal review hearing, the presiding Appeal Authority hearing officer shall issue in writing a signed decision, constituting the final action, which states the following:

(a) the decision;

(b) the reasons for the decision based on the facts appearing in the case files and on the facts presented in evidence at any review hearings;

(c) a statement that a Party aggrieved may within 20 days after the date that the decision is issued file with the presiding Appeal Authority hearing officer a written request for reconsideration;

(i) Filing of a request for reconsideration is not a prerequisite for seeking judicial review of the decision.

(d) a statement that a Party aggrieved may obtain judicial review of the decision in accordance with Section 63G-4-401 by filing a petition within 30 days after the date the decision constituting the final Appeal Authority action is issued; or, in the case of a request for a reconsideration, by filing a petition within 30 days after the date the decision is issued, in accordance of Section 63G-4-302;

(e) the names and mailing addresses of all persons to whom the decision is being given, and the name, title, and mailing address of any attorney or employee who was designated to appear for the Responsible Governmental Entity;

(f) the name, title, mailing address, and telephone number of the presiding Appeal Authority hearing officer.

(2) The distribution of the decision to all Parties, as well as to the Administrator, is accomplished when any of the following occurs:

(a) deposit postage prepaid with the U.S. Postal Service;

(b) deposit with State Mail and Distribution Services;

(c) personal delivery; or

(d) e-mail transmission.

(3) A mailing certificate must be attached to the decision, bearing the date of mailing and the names and addresses of those persons to whom the decision is originally distributed.

**R25-3-12. Informal Adjudicative Proceedings -- Request for Reconsideration.**

(1) Reconsideration. A written request for reconsideration may be filed by any Party with the presiding Appeal Authority hearing officer. It must be filed within 20 days after the date the decision is issued. The written reconsideration request must contain specific reasons why reconsideration is warranted with respect to the factual findings and conclusions of the Appeal Authority's final action. New or additional evidence may not be considered. A copy of the request for reconsideration shall be mailed to each Party by the person making the request.

(a) The presiding Appeal Authority hearing officer shall issue a written decision granting or denying the reconsideration request to the person making the request and shall send a copy of the decision to the other Parties.

(b) If the presiding Appeal Authority hearing officer does not issue a decision within 20 days after the filing of the request, the request for reconsideration shall be considered to be denied.

**R25-3-13. Record Retention.**

(1) The Department of Administrative Services Division of Finance shall retain the record copy of the decision along with the minutes, or electronic recording, or court reporter transcript (if available) of the proceedings according to the designated State of Utah retention schedules.

**R25-3-14. Appellant's Rights.**

(1) Representation. An Appellant may be represented by an attorney of law. However, the State neither provides legal counsel or representation to employees or officers who request a review hearing nor pays the fees for their representation in the course of the Appeal proceedings.

(2) Pro Se Status. A Party to an Appeal proceeding may appear pro se. When a Party appears pro se, the Party is entitled to request the issuance of subpoenas, directly examine and cross-examine witnesses, make opening and closing statements, submit documentary evidence, summarize testimony, and in all respects fully present one's own case.

(3) No Reprisal. Pursuant to Subsection 67-19a-303(3), no appointing authority, director, manager, or supervisor may take action to retaliate against an Appellant, a representative, or a witness who participates in or is scheduled to participate in an Appeal proceeding.

**KEY: informal adjudicative proceedings, hearings, Finance appeals**

**Date of Enactment or Last Substantive Amendment: 2017 Authorizing, and Implemented or Interpreted Law: 63A-3-110**

**Alcoholic Beverage Control,  
Administration  
R81-1-11**

**Multiple-Licensed Facility Storage and  
Service**

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 42290

FILED: 11/01/2017

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** This rule amendment is necessary to implement H.B. 442 passed in the 2017 General Session. This proposed rule amendment establishes a procedure by which a licensee surrenders a retail license if there are two or more licensed premises in the same room as required by Subsection 32B-5-207(3)(d).

**SUMMARY OF THE RULE OR CHANGE:** Subsection 32B-5-207(3)(c) requires that the licensee provide notice to the Alcoholic Beverage Control Commission (Commission) of each retail license the licensee will surrender effective 07/01/2018

if there are two or more licensed premises in the same room in violation of Subsection 32B-5-207(1). This proposed rule amendment creates a procedure in which a licensee may request a determination from the Department of Alcohol Beverage Control (Department) as to whether their licenses are in violation of Subsection 32B-5-207(1), establishes a deadline to notify the Department of which license(s) will be surrendered effective 07/01/2018, and creates an avenue for the Commission to take action in the event that a licensee fails to surrender a license that is in violation of Subsection 32B-5-207(1).

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 32B-2-202 and Subsection 32B-5-207(3)(d)

**ANTICIPATED COST OR SAVINGS TO:**

♦ **THE STATE BUDGET:** None--Any anticipated cost or savings to the state budget are a result of the statutory requirements of H.B. 442 (2017), which requires that a licensee hold only one license per room (with a small exception for banquet/reception and beer recreational licenses). Costs and savings for administering the change was calculated as part of the fiscal note. This rule change does not create any additional cost or savings beyond what was anticipated during the legislative process.

♦ **LOCAL GOVERNMENTS:** None--Any anticipated cost or savings to local governments are a result of the statutory requirements of H.B. 442 (2017), which requires that a licensee hold only one license per room (with a small exception for banquet/reception and beer recreational licenses). Costs and savings to local governments was calculated as part of the fiscal note. This rule change does not create any additional cost or savings beyond what was anticipated during the legislative process.

♦ **SMALL BUSINESSES:** None--Any anticipated cost or savings to small businesses are a result of the statutory requirements of H.B. 442 (2017), which requires that a licensee hold only one license per room (with a small exception for banquet/reception and beer recreational licenses). Costs and savings to small businesses was calculated as part of the fiscal note. This rule change does not create any additional cost or savings beyond what was anticipated during the legislative process.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** None--Any anticipated cost or savings to Persons other than small businesses, businesses, or local government entities are a result of statutory requirements of H.B. 442 (2017), which requires that a licensee hold only one license per room (with a small exception for banquet/reception and beer recreational licenses). Costs and savings to persons other than small businesses, businesses, or local government entities was calculated as part of the fiscal note. This rule change does not create any additional cost or savings beyond what was anticipated during the legislative process.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** None--This rule does not create any compliance cost for licensees, it

simply creates a procedure for compliance. There are no fees associated with this process and any costs for compliance are a result of statutory requirements of H.B. 442 (2017), which requires that a licensee hold only one license per room (with a small exception for banquet/reception and beer recreational licenses).

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: None--Any anticipated cost or savings to businesses are a result of the statutory requirements of H.B. 442 (2017), which requires that a licensee hold only one license per room (with a small exception for banquet/reception and beer recreational licenses). This rule amendment creates a procedure for surrendering license(s) that are not in compliance with the statutory change. The costs and savings to businesses was calculated as part of the fiscal note. There was no fee in statute and there is no fee in the proposed rule change. Savings to the businesses would result in reduced licensing fees as a result of surrendering one or more license(s) as required by statute. Therefore, this rule change does not create any additional cost or savings beyond what was anticipated during the legislative process.

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

ALCOHOLIC BEVERAGE CONTROL  
ADMINISTRATION  
1625 S 900 W  
SALT LAKE CITY, UT 84104-1630  
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Nina McDermott by phone at 801-977-6805, by FAX at 801-977-6888, or by Internet E-mail at nmcdermott@utah.gov  
◆ Vickie Ashby by phone at 801-977-6801, by FAX at 801-977-6889, or by Internet E-mail at vickieashby@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 12/15/2017

THIS RULE MAY BECOME EFFECTIVE ON: 12/22/2017

AUTHORIZED BY: Sal Petilos, Executive Director

**R81. Alcoholic Beverage Control, Administration.**

**R81-1. Scope, Definitions, and General Provisions.**

**R81-1-11. Multiple-Licensed Facility Storage and Service.**

(1) For the purposes of this rule:

(a) "premises" as defined in Section 32B-1-102(75) shall include the location of any licensed restaurant, limited restaurant, beer-only restaurant, ~~club~~ bar establishment, or recreational amenity on-premise beer retailer facility or facilities operated or managed by the same person or entity that are located within the same building or complex, and any similar sublicense located within the same building of a resort license under 32B-8. Multiple licensed facilities shall be termed "qualified premises" as used in this rule. Two premises may

not be located in the same room except as allowed by 32B-5-207(1)(b).

(b) the terms "sell", "sale", "to sell" as defined in Section 32B-1-102(92) shall not apply to a cost allocation of alcoholic beverages as used in this rule.

(c) "cost allocation" means an apportionment of the as purchased cost of the alcoholic beverage product based on the amount sold in each outlet.

(d) "remote storage alcoholic beverage dispensing system" means a dispensing system where the alcoholic product is stored in a single centralized location, and may have separate dispensing heads at different locations, and is capable of accounting for the amount of alcoholic product dispensed to each location.

(2) Where qualified premises have consumption areas in reasonable proximity to each other, the dispensing of alcoholic beverages may be made from the alcoholic beverage inventory of an outlet in one licensed location to patrons in either consumption area of the qualified premises subject to the following requirements:

(a) point of sale control systems must be implemented that will record the amounts of each alcoholic beverage product sold in each location;

(b) cost allocation of the alcoholic beverage product cost must be made for each location on at least a monthly or quarterly basis pursuant to the record keeping requirements of Section 32B-5-302;

(c) dispensing of alcoholic beverages to a licensed location may not be made on prohibited days or at prohibited hours pertinent to that license type;

(d) if separate inventories of liquor are maintained in one dispensing location, the storage area of each licensee's liquor must remain locked during the prohibited hours and days of sale for each license type;

(e) dispensing of alcoholic beverages to a licensed location may not be made in any manner prohibited by the statutory or regulatory operational restrictions of that license type;

(f) alcoholic beverages dispensed under this section may be delivered by servers from one outlet to the various approved consumption areas, or dispensed to each outlet through the use of a remote storage alcoholic beverage dispensing system.

(3) On qualified premises where each licensee maintains an inventory of alcoholic beverage products, the alcoholic beverages owned by each licensee may be stored in a common location in the building subject to the following guidelines:

(a) each licensee shall identify the common storage location when applying for or renewing their license, and shall receive department approval of the location;

(b) each licensee must be able to account for its ownership of the alcoholic beverages stored in the common storage location by keeping records, balanced monthly, of expenditures for alcoholic beverages supported by items such as delivery tickets, invoices, receipted bills, canceled checks, petty cash vouchers; and

(c) the common storage area may be located on the premises of one of the licensed liquor establishments.

(4) 32B-5-207(3)(d) requires that the commission establish by rule a procedure by which a licensee surrenders a retail license if there are two or more licensed premises in the same room in violation of 32B-5-207(1).

(a) If there are two or more premises located in the same room as of May 9, 2017 the licensee shall notify the commission of each retail license the licensee will surrender effective July 1, 2018.



(c) A Request for department decision regarding whether a premises is in violation of the same room requirement must be submitted to the department by March 12, 2018. Requests received by March 12, 2018 will receive a decision by May 1, 2018.

(d) Notification of surrender shall be made on a form provided by the department and submitted to the department by May 31, 2018.

(e) Failure to submit notification of surrender will result in non-renewal of retail licenses found to be in violation of the same room requirement.

**KEY: alcoholic beverages**

**Date of Enactment or Last Substantive Amendment: [~~June 24, 2015~~2017]**

**Notice of Continuation: May 2, 2016**

**Authorizing, and Implemented or Interpreted Law: 32B-2-201(10); 32B-2-202; 32B-2-204; 32B-2-206; 32B-3-203(3)(c); 32B-3-205(2)(b); 32B-5-304; 32B-1-305; 32B-1-306; 32B-1-307; 32B-1-607; 32B-1-304(1)(a); 32B-6-702; 32B-6-805(3); 32B-9-204(4); 32B-4-414(1)(b) and (c)**

**Alcoholic Beverage Control,  
Administration  
R81-1-12A  
Department Training Programs**

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 42292

FILED: 11/01/2017

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** This rule is necessary to implement H.B. 442 passed in the 2017 General Session. This proposed rule amendment develops and implements the retail and violation training programs described in Section 32B-5-405. This rule is required by Subsection 32B-5-405(3).

**SUMMARY OF THE RULE OR CHANGE:** This rule amendment establishes the following: requirements for training, measures to identify participants, testing to measure engagement of the participants, certificates for participants as a record for participants and license holders, and a \$25/per person fee.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 32B-2-202

**ANTICIPATED COST OR SAVINGS TO:**

♦ **THE STATE BUDGET:** None--Any anticipated cost or savings to the state budget are a result of the statutory requirements of H.B. 442 (2017), which requires the Department of Alcohol Beverage Control (Department) to

develop training programs for all managers and some businesses with violations. Costs and savings for administering this program and collecting the \$25/per person fee were calculated as part of the fiscal note. This rule change does not create any additional cost or savings beyond what was anticipated during the legislative process.

♦ **LOCAL GOVERNMENTS:** None--Any anticipated cost or savings to local governments are a result of the statutory requirements of H.B. 442 (2017), which requires the Department to develop training programs for all managers and some businesses with violations. Costs and savings to local governments were calculated as part of the fiscal note. This rule change does not create any additional cost or savings beyond what was anticipated during the legislative process.

♦ **SMALL BUSINESSES:** None--Any anticipated cost or savings to small businesses are a result of the statutory requirements of H.B. 442 (2017), which requires the Department to develop training programs for all managers and some businesses with violations. Costs and savings for small businesses participating in this program, including the \$25/per person fee were calculated as part of the fiscal note. This rule change does not create any additional cost or savings beyond what was anticipated during the legislative process.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** None--Any anticipated cost or savings to persons other than small businesses, businesses, or local government entities are a result of statutory requirements of H.B. 442 (2017), which requires the Department to develop training programs for all managers and some businesses with violations. Costs and savings were calculated as part of the fiscal note. This rule change does not create any additional cost or savings beyond what was anticipated during the legislative process.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** None--Any compliance cost for on-and off-premise applicants and licensees are a result of the statutory requirements of H.B. 442 (2017), which requires the Department to develop training programs for all managers and some businesses with violations. Costs and savings for these businesses participating in this program, including the \$25/per person fee were calculated as part of the fiscal note. This rule change does not create any additional cost or savings beyond what was anticipated during the legislative process.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** None--Any anticipated cost or savings to businesses are a result of the statutory requirements of H.B. 442 (2017), which requires the Department to develop training programs for all managers and some businesses with violations. Costs and savings for businesses participating in this program, including the \$25/per person fee were calculated as part of the fiscal note. This rule change does not create any additional cost or savings beyond what was anticipated during the legislative process.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED,  
DURING REGULAR BUSINESS HOURS, AT:  
ALCOHOLIC BEVERAGE CONTROL  
ADMINISTRATION  
1625 S 900 W  
SALT LAKE CITY, UT 84104-1630  
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
♦ Nina McDermott by phone at 801-977-6805, by FAX at 801-977-6888, or by Internet E-mail at nmcdermott@utah.gov  
♦ Vickie Ashby by phone at 801-977-6801, by FAX at 801-977-6889, or by Internet E-mail at vickieashby@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON  
THIS RULE BY SUBMITTING WRITTEN COMMENTS NO  
LATER THAN AT 5:00 PM ON 12/15/2017

THIS RULE MAY BECOME EFFECTIVE ON: 12/22/2017

AUTHORIZED BY: Salvador D. Petilos

**R81. Alcoholic Beverage Control, Administration.**

**R81-1. Scope, Definitions, and General Provisions.**

**R81-1-12A. Department Training Programs.**

(1) Authority and general purpose. This rule is pursuant to 32B-5-405(3) which requires that the department to make rules to develop and implement the retail manager and violation training programs described in 32B-5-405.

(2) Application of the rule.

(a) The requirements for the retail manager and violation training programs described in 32B-5-405.

(b) The department shall accurately identify each individual who takes and completes a training program by maintaining a database in which individual are identified by the last four digits of their social security number.

(c) The department will administer a test to ensure an individual taking a training program is focused and actively engaged in the training material throughout the training program.

(d) The department shall issue a certification card to each individual has completed a training program. Each licensee shall keep a copy of the card on the licensed premise for each individual required to complete the training program.

(e) a fee of \$25 will be charged to each individual for participation in a training program to cover the department's cost of providing the training program.

**KEY: alcoholic beverages**

**Date of Enactment or Last Substantive Amendment: [June 24, 2015]2017**

**Notice of Continuation: May 2, 2016**

**Authorizing, and Implemented or Interpreted Law: 32B-2-201(10); 32B-2-202; 32B-2-204; 32B-2-206; 32B-3-203(3)(c); 32B-3-205(2)(b); 32B-5-304; 32B-1-305; 32B-1-306; 32B-1-307; 32B-1-607; 32B-1-304(1)(a); 32B-6-702; 32B-6-805(3); 32B-9-204(4); 32B-4-414(1)(b) and (c)**

**Alcoholic Beverage Control,  
Administration  
R81-4A-15  
Grandfathered Bar Structures**

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 42284

FILED: 11/01/2017

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** This rule amendment is necessary to implement H.B. 442 passed in the 2017 General Session. This proposed rule amendment defines "remodels the grandfathered bar structure or dining area" that would require a grandfather restaurant to comply with provisions of Section 32B-6-205.2 prior to 07/01/2022. This definition is required by Subsection 32B-6-205.3(4).

**SUMMARY OF THE RULE OR CHANGE:** This proposed rule amendment adopts the definition of "remodels the grandfathered bar structure" found in this rule and applies to the bar structure and dining area.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 32B-1-102 and Section 32B-2-202 and Section 32B-6-202 and Section 32B-6-205.3

**ANTICIPATED COST OR SAVINGS TO:**

♦ **THE STATE BUDGET:** None--Any anticipated cost or savings to the state budget are a result of the statutory requirements of H.B. 442 (2017), which requires the Alcohol Beverage Control Commission (Commission) to define when a restaurant has remodeled their grandfathered bar or dining area. Costs and savings for administering this change were calculated as part of the fiscal note. This rule change does not create any additional cost of savings beyond what was anticipated during the legislative process.

♦ **LOCAL GOVERNMENTS:** None--Any anticipated cost or savings to local governments are a result of the statutory requirements of H.B. 442 (2017), which requires the Commission to define when a restaurant has remodeled their grandfathered bar or dining area. Costs and savings to local governments were calculated as part of the fiscal note. This rule change does not create any additional cost of savings beyond what was anticipated during the legislative process.

♦ **SMALL BUSINESSES:** None--Any anticipated cost or savings to small businesses are a result of the statutory requirements of H.B. 442 (2017), which requires the Commission to define when a restaurant has remodeled their grandfathered bar or dining area. This rule provides clarification to licensees (including small businesses) as what changes can be made to their restaurant without losing their grandfathered status prior to 07/01/2018. While a remodel, as defined by this rule, would require that the licensee comply

with additional operational requirements, prior to 07/01/2022, those costs and savings were calculated as part of the fiscal note for H.B. 442 (2017). This rule change does not create any additional cost or savings beyond what was anticipated during the legislative process.

◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: None--Any anticipated cost or savings to persons other than small businesses, businesses, or local government entities are a result of statutory requirements of H.B. 442 (2017), which requires the Commission to define when a restaurant has remodeled their grandfathered bar or dining area. Costs and savings were calculated as part of the fiscal note. This rule change does not create any additional cost or savings beyond what was anticipated during the legislative process.

COMPLIANCE COSTS FOR AFFECTED PERSONS: None--Any compliance cost for full service restaurants are a result of the statutory requirements of H.B. 442 (2017), which requires the Commission to define when a restaurant has remodeled their grandfathered bar or dining area. This rule provides clarification to licensees as what changes can be made to their restaurant without losing their grandfathered status prior to 07/01/2018. While a remodel, as defined by this rule, would require that the licensee comply with additional operational requirements prior to 07/01/2022, those costs and savings were calculated as part of the fiscal note for H.B. 442 (2017). This rule change does not create any additional cost or savings beyond what was anticipated during the legislative process.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: None--Any anticipated cost or savings to businesses are a result of the statutory requirements of H.B. 442 (2017), which requires the Commission to define when a restaurant has remodeled their grandfathered bar or dining area. This rule provides clarification to licensees (including businesses) as what changes can be made to their restaurant without losing their grandfathered status prior to 07/01/2018. While a remodel, as defined by this rule, would require that the licensee comply with additional operational requirements prior to 07/01/2022 those costs and savings were calculated as part of the fiscal note for H.B. 442 (2017). This rule change does not create any additional cost or savings beyond what was anticipated during the legislative process.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:  
 ALCOHOLIC BEVERAGE CONTROL  
 ADMINISTRATION  
 1625 S 900 W  
 SALT LAKE CITY, UT 84104-1630  
 or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
 ◆ Nina McDermott by phone at 801-977-6805, by FAX at 801-977-6888, or by Internet E-mail at nmcdermott@utah.gov

◆ Vickie Ashby by phone at 801-977-6801, by FAX at 801-977-6889, or by Internet E-mail at vickieashby@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 12/15/2017

THIS RULE MAY BECOME EFFECTIVE ON: 12/22/2017

AUTHORIZED BY: Sal Petilos, Executive Director

**R81. Alcoholic Beverage Control, Administration.**

**R81-4A. Restaurant Liquor Licenses.**

**R81-4A-15. Grandfathered Bar Structures**

(1) Authority [~~and Purpose~~]~~32B-1-102; 32B-6-202; and 32B-6-205.3.~~

(2) The purpose of this rule is to define terms for full service restaurant licenses as required by 32B-6 Part 2.~~(a) This rule is pursuant to 32B-6-202 which provides that:~~

~~(i) a bar structure, as defined in 32B-1-102(7), located in a currently licensed restaurant as of May 11, 2009, may be "grandfathered" to allow alcoholic beverages to continue to be stored or dispensed at the bar structure, and in some instances to be served to an adult patron seated at the bar structure;~~

~~(ii) a bar structure in a restaurant that is not operational as of May 12, 2009, may be similarly "grandfathered" if, as of May 12, 2009:~~

~~(A) a person has applied for a restaurant license from the commission;~~

~~(B) the person is "actively engaged in the construction of the restaurant" as defined by commission rule; and~~

~~(C) the person is granted a restaurant liquor license by the commission no later than December 31, 2009.~~

~~(b) This rule is also pursuant to 32B-6-202 which provides that:~~

~~(i) a "grandfathered bar structure" is no longer "grandfathered" once the restaurant "remodels the grandfathered bar structure"; and~~

~~(ii) the commission shall define by rule what is meant by "remodels the grandfathered bar structure".]~~

~~[(2) Application of Rule.~~

~~](3) Definitions.~~

(a) "Actively engaged in the construction of the restaurant" for purposes of 32B-6-202(1)(a)(ii)(A)(I) means that:

(i) a building permit has been obtained to build the restaurant; and

(ii) a construction contract has been executed and the contract includes an estimated date that the restaurant will be completed; or

(iii) work has commenced by the applicant on the construction of the restaurant and a good faith effort is made to complete the construction in a timely manner.

(b) "remodels the grandfathered bar structure" for purposes of 32B-6-202(1)(b) means that:

(i) the grandfathered bar structure has been altered or reconfigured to:

(A) extend the length of the existing structure to increase its seating capacity; or

(B) increase the visibility of the storage or dispensing area to restaurant patrons.

(c) "remodels the grandfathered bar structure" does not:

(i) preclude making cosmetic changes or enhancements to the existing structure such as painting, staining, tiling, or otherwise refinishing the bar structure;

(ii) preclude locating coolers, sinks, plumbing, cooling or electrical equipment to an existing structure; or

(iii) preclude utilizing existing space at the existing bar structure to add additional seating.

(d) Pursuant to 32B-5-303(3), the licensee must first apply for and receive approval from the department for a change of location where alcohol is stored, served, and sold other than what was originally designated in the licensee's application for the license. Thus, any modification of the alcoholic beverage storage and dispensing area at a "grandfathered bar structure" must first be reviewed and approved by the department to determine whether it is:

(i) an acceptable use of an existing bar structure; or

(ii) a remodel of a "grandfathered bar structure".

(e) "remodels the grandfathered bar structure or dining area" for purposes of 32B-6-205.3(4)(a)(ii) means that:

(i) the grandfathered bar structure or dining area has been altered or reconfigured to:

(A) extend the length of the existing bar structure to increase its seating capacity; or

(B) increase the visibility of the storage or dispensing area to restaurant patrons from the dining area.

(f) "remodels the grandfathered bar structure or dining area" does not:

(i) preclude making cosmetic changes or enhancements to the existing bar structure such as painting, staining, tiling, or otherwise refinishing the bar structure;

(ii) preclude locating coolers, sinks, plumbing, cooling or electrical equipment to an existing structure; or

(iii) preclude utilizing existing space at the existing bar structure to add additional seating.

(g) Pursuant to 32B-5-303(3), the licensee must first apply for and receive approval from the department for a change of location where alcohol is stored, served, and sold other than what was originally designated in the licensee's application for the license. Thus, any modification of the alcoholic beverage storage, dispensing, or consumption area must first be reviewed and approved by the department to determine whether it is:

(i) an acceptable use of an existing bar structure or dining area; or

(ii) a remodel of a "grandfathered bar structure or dining area".

**KEY: alcoholic beverages**

**Date of Enactment or Last Substantive Amendment:** ~~November 26, 2013~~ **2017**

**Notice of Continuation:** **May 2, 2016**

**Authorizing, and Implemented or Interpreted Law:** **32B-1-607; 32B-2-202; 32B-5-303(3); 32B-6-202; 32B-6-206; 32B-6-205.3**

## Alcoholic Beverage Control, Administration **R81-4C-14** Grandfathered Bar Structures

### NOTICE OF PROPOSED RULE (Amendment)

DAR FILE NO.: 42289

FILED: 11/01/2017

### RULE ANALYSIS

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** This rule amendment is necessary to implement H.B. 442 passed in the 2017 General Session. This proposed rule amendment defines "remodels the grandfathered bar structure or dining area" that would require a grandfathered limited service restaurant to comply with provisions of Section 32B-6-305.2 prior to 07/01/2022. This definition is required by Subsection 32B-6-305.3(4).

**SUMMARY OF THE RULE OR CHANGE:** This proposed rule amendment adopts the definition of "remodels the grandfathered bar structure" found in this rule and applies to the bar structure and dining area.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 32B-1-102 and Section 32B-2-202 and Section 32B-6-302 and Section 32B-6-305.3

### ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** None--Any anticipated cost or savings to the state budget are a result of the statutory requirements of H.B. 442 (2017), which requires the Alcohol Beverage Control Commission (Commission) to define when a limited service restaurant has remodeled their grandfathered bar or dining area. Costs and savings for administering this change were calculated as part of the fiscal note. This rule change does not create any additional cost or savings beyond what was anticipated during the legislative process.

◆ **LOCAL GOVERNMENTS:** None--Any anticipated cost or savings to local governments are a result of the statutory requirements of H.B. 442 (2017), which requires the Commission to define when a limited service restaurant has remodeled their grandfathered bar or dining area. Costs and savings to local government were calculated as part of the fiscal note. This rule change does not create any additional cost or savings beyond what was anticipated during the legislative process.

◆ **SMALL BUSINESSES:** None--Any anticipated cost or savings to small businesses are a result of the statutory requirements of H.B. 442 (2017), which requires the Commission to define when a limited service restaurant has

remodeled their grandfathered bar or dining area. This rule provides clarification to licensees (including small businesses) as to what changes can be made to their limited service restaurant without losing their grandfathered status prior to 07/01/2018. While a remodel, as defined by this rule, would require that the licensee comply with additional operational requirements prior to 07/01/2022, those costs and savings were calculated as part of the fiscal note for H.B. 442 (2017). This rule change does not create any additional cost or savings beyond what was anticipated during the legislative process.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** None--Any anticipated cost or savings to persons other than small businesses, businesses, or local government entities are a result of the statutory requirements of H.B. 442 (2017), which requires the Commission to define when a limited service restaurant has remodeled their grandfathered bar or dining area. Costs and savings were calculated as part of the fiscal note. This rule change does not create any additional cost or savings beyond what was anticipated during the legislative process.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** None--Any compliance cost for limited service restaurants are a result of the statutory requirements of H.B. 442 (2017), which requires the Commission to define when a limited service restaurant has remodeled their grandfathered bar or dining area. This rule amendment provides clarification to licensees as to what changes can be made to their limited service restaurant without losing their grandfathered status prior to 07/01/2018. While a remodel, as defined by this rule, would require that the licensee comply with additional operational requirements prior to 07/01/2022, those costs and savings were calculated as part of the fiscal note for H.B. 442 (2017). This rule change does not create any additional cost or savings beyond what was anticipated during the legislative process.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** None--Any anticipated cost or savings to businesses are a result of the statutory requirements of H.B. 442 (2017), which requires the Commission to define when a limited service restaurant has remodeled their grandfathered bar or dining area. This rule amendment provides clarification to licensees (including businesses) as to what changes can be made to their limited service restaurant without losing their grandfathered status prior to 07/01/2018. While a remodel, as defined by this rule, would require that the licensee comply with additional operational requirements prior to 07/01/2022, those costs and savings were calculated as part of the fiscal note for H.B. 442 (2017). This rule change does not create any additional cost or savings beyond what was anticipated during the legislative process.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:  
 ALCOHOLIC BEVERAGE CONTROL  
 ADMINISTRATION  
 1625 S 900 W  
 SALT LAKE CITY, UT 84104-1630  
 or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
 ◆ Nina McDermott by phone at 801-977-6805, by FAX at 801-977-6888, or by Internet E-mail at nmcdermott@utah.gov  
 ◆ Vickie Ashby by phone at 801-977-6801, by FAX at 801-977-6889, or by Internet E-mail at vickieashby@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 12/15/2017

THIS RULE MAY BECOME EFFECTIVE ON: 12/22/2017

AUTHORIZED BY: Sal Petilos, Executive Director

**R81. Alcoholic Beverage Control, Administration.**

**R81-4C. Limited Restaurant Licenses.**

**R81-4C-14. Grandfathered Bar Structures.**

(1) Authority [~~and Purpose~~] 32B-1-102; 32B-6-302; and 32B-6-305.3.

(2) The purpose of this rule is to define terms for full service restaurant licenses as required by 32B-6 Part 3. ~~(a) This rule is pursuant to 32B-6-302 which provides that:~~

~~(i) a bar structure, as defined in 32B-1-102(7), located in a currently licensed limited restaurant as of May 11, 2009, may be "grandfathered" to allow alcoholic beverages to continue to be stored or dispensed at the bar structure, and in some instances to be served to an adult patron seated at the bar structure;~~

~~(ii) a bar structure in a limited restaurant that is not operational as of May 12, 2009, may be similarly "grandfathered" if, as of May 12, 2009:~~

~~(A) a person has applied for a limited restaurant license from the commission;~~

~~(B) the person is "actively engaged in the construction of the restaurant" as defined by commission rule; and~~

~~(C) the person is granted a limited restaurant liquor license by the commission no later than December 31, 2009.~~

~~(b) This rule is also pursuant to 32B-6-302 which provides that:~~

~~(i) a "grandfathered bar structure" is no longer "grandfathered" once the limited restaurant "remodels the grandfathered bar structure"; and~~

~~(ii) the commission shall define by rule what is meant by "remodels the grandfathered bar structure".~~

([2]3) [Application of Rule] Definitions.

(a) "Actively engaged in the construction of the restaurant" for purposes of 32B-6-302(1)(a)(ii)(A)(I) means that:

(i) a building permit has been obtained to build the restaurant; and

(ii) a construction contract has been executed and the contract includes an estimated date that the restaurant will be completed; or

(iii) work has commenced by the applicant on the construction of the restaurant and a good faith effort is made to complete the construction in a timely manner.

(b) "remodels the grandfathered bar structure" for purposes of 32B-6-302(1)(b) means that:

(i) the grandfathered bar structure has been altered or reconfigured to:

(A) extend the length of the existing structure to increase its seating capacity; or

(B) increase the visibility of the storage or dispensing area to restaurant patrons.

(c) "remodels the grandfathered bar structure" does not:

(i) preclude making cosmetic changes or enhancements to the existing structure such as painting, staining, tiling, or otherwise refinishing the bar structure;

(ii) preclude locating coolers, sinks, plumbing, cooling or electrical equipment to an existing structure; or

(iii) preclude utilizing existing space at the existing bar structure to add additional seating.

(d) Pursuant to 32B-5-303(3), the licensee must first apply for and receive approval from the department for a change of location where alcohol is stored, served, and sold other than what was originally designated in the licensee's application for the license. Thus, any modification of the alcoholic beverage storage and dispensing area at a "grandfathered bar structure" must first be reviewed and approved by the department to determine whether it is:

(i) an acceptable use of an existing bar structure; or

(ii) a remodel of a "grandfathered bar structure".

(e) "remodels the grandfathered bar structure or dining area" for purposes of 32B-6-305.3(4)(a)(ii) means that:

(i) the grandfathered bar structure or dining area has been altered or reconfigured to:

(A) extend the length of the existing bar structure to increase its seating capacity; or

(B) increase the visibility of the storage or dispensing area to restaurant patrons from the dining area.

(f) "remodels the grandfathered bar structure or dining area" does not:

(i) preclude making cosmetic changes or enhancements to the existing bar structure such as painting, staining, tiling, or otherwise refinishing the bar structure;

(ii) preclude locating coolers, sinks, plumbing, cooling or electrical equipment to an existing structure; or

(iii) preclude utilizing existing space at the existing bar structure to add additional seating.

(g) Pursuant to 32B-5-303(3), the licensee must first apply for and receive approval from the department for a change of location where alcohol is stored, served, and sold other than what was originally designated in the licensee's application for the license. Thus, any modification of the alcoholic beverage storage, dispensing, or consumption area must first be reviewed and approved by the department to determine whether it is:

(i) an acceptable use of an existing bar structure or dining area; or

(ii) a remodel of a "grandfathered bar structure or dining area".

**KEY: alcoholic beverages**

**Date of Enactment or Last Substantive Amendment: [~~November 26, 2013~~2017]**

**Notice of Continuation: July 10, 2013**

**Authorizing, and Implemented or Interpreted Law: 32B-2-202; 32B-5-303(3); 32B-6-207; 32B-6-301 through 305.1**

## Alcoholic Beverage Control, Administration **R81-10** Off-Premise Beer Retailers

### NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 42288

FILED: 11/01/2017

### RULE ANALYSIS

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** This rule amendment is necessary to implement H.B. 442 passed in the 2017 General Session. This proposed rule amendment removes the definition "area that is visibly separate and distinct from the area where a nonalcoholic beverage is displayed" as rulemaking authority for that definition was removed from statute. Additionally, this proposed rule establishes a deadline for certain off-premises beer retailers to apply for an off-premise state beer license as required by Section 32B-7-401.

**SUMMARY OF THE RULE OR CHANGE:** This proposed rule amendment removes the definition "area that is visibly separate and distinct from the area where a nonalcoholic beverage is displayed". Statute now defines how beer should be displayed in off-premise retailers and does not give explicit authority for the agency to engage in rulemaking. This change establishes a deadline of 10/10/2018 for off-premise retailers who are in operation as of 07/01/2018 to submit their application for an off-premise beer retail license. The proposed change further defines "in operation as of July 1, 2018", as well as the requirements for a complete application.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 32B-2-202 and Section 32B-7-401 and Subsection 32B-7-202(5)

**ANTICIPATED COST OR SAVINGS TO:**

♦ **THE STATE BUDGET:** None--Any anticipated cost or savings to the state budget are a result of the statutory requirements of H.B. 442 (2017), which requires all off-premise beer retailers to obtain state licensing and requires that beer displays be limited to two locations. Costs and savings were calculated as part of the fiscal note. This rule

change does not create any additional cost or savings beyond what was anticipated during the legislative process.

♦ LOCAL GOVERNMENTS: None--Any anticipated cost or savings to local governments are a result of the statutory requirements of H.B. 442 (2017), which requires all off-premise beer retailers to obtain state licensing and requires that beer displays be limited to two locations. Costs and savings were calculated as part of the fiscal note. This rule change does not create any additional cost or savings beyond what was anticipated during the legislative process.

♦ SMALL BUSINESSES: None--Any anticipated cost or savings to small businesses are a result of the statutory requirements of H.B. 442 (2017), which requires all off-premise beer retailers to obtain state licensing and requires that beer displays be limited to two locations. Costs and savings were calculated as part of the fiscal note. This rule change does not create any additional cost or savings beyond what was anticipated during the legislative process.

♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: None--Any anticipated cost or savings to persons other than small businesses, businesses, or local government entities are a result of the statutory requirements of H.B. 442 (2017), which requires all off-premise beer retailers to obtain state licensing and requires that beer displays be limited to two locations. Those costs were calculated as part of the fiscal note. This rule change does not create any additional cost or savings beyond what was anticipated during the legislative process.

COMPLIANCE COSTS FOR AFFECTED PERSONS: None--Any compliance cost for off-premise beer retailers are a result of the statutory requirements of H.B. 442 (2017), which requires all off-premise beer retailers to obtain state licensing and requires that beer displays be limited to two locations. This rule change does not create any additional costs for affected persons, it simply creates a deadline for which to comply.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: None--Any anticipated cost or savings to businesses are a result of the statutory requirements of H.B. 442 (2017), which requires all off-premise beer retailers to obtain state licensing and requires that beer displays be limited to two locations. The application fee and requirements for licensing are set by statute and not by rule. Those costs and savings were calculated as part of the fiscal note. This rule change does not create any additional cost or savings beyond what was anticipated during the legislative process.

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

ALCOHOLIC BEVERAGE CONTROL  
ADMINISTRATION  
1625 S 900 W  
SALT LAKE CITY, UT 84104-1630  
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Nina McDermott by phone at 801-977-6805, by FAX at 801-977-6888, or by Internet E-mail at nmcdermott@utah.gov  
♦ Vickie Ashby by phone at 801-977-6801, by FAX at 801-977-6889, or by Internet E-mail at vickieashby@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 12/15/2017

THIS RULE MAY BECOME EFFECTIVE ON: 12/22/2017

AUTHORIZED BY: Sal Petilos, Executive Director

### **R81. Alcoholic Beverage Control, Administration.**

#### **R81-10. Off-Premise Beer Retailers.**

##### **R81-10-1. Separation of Alcoholic Beverages from Non-Alcoholic Beverages and Required Signage.**

(1) Authority and General Purpose. This rule is pursuant to 32B-7-202(5) that requires:

(a) ~~[an off-premise beer retailer to display beer sold by the retailer in an area that is visibly separate and distinct from the area where a nonalcoholic beverage is displayed, and requires the commission to define by rule what constitutes an "area that is visibly separate and distinct from the area where a nonalcoholic beverage is displayed"; and~~

~~\_\_\_\_\_ (b) [an off-premise beer retailer to prominently post in the separate and distinct area where beer is sold, an easily readable sign that reads in print that is no smaller than .5 inches, bold type, "These beverages contain alcohol. Please read the label carefully," and requires the commission to define by rule the format of the sign.~~

(2) Application of the Rule.

(a) ~~[Display requirements:~~

~~\_\_\_\_\_ (i) Pursuant to 32B-7-202(5), an off-premise beer retailer must display beer products in an "area that is visibly separate and distinct from the area where a non-alcoholic beverage is displayed."~~

~~\_\_\_\_\_ (ii) This requires that under no circumstances may there be a co-mingling or interspersing of beer products with non-alcoholic beverages, except that non-alcoholic beers may be displayed with beer products.~~

~~\_\_\_\_\_ (iii) The separation must clearly and unambiguously convey to a consumer those beverage products that contain alcohol and those that do not. This may be satisfied by any of the following means:~~

~~\_\_\_\_\_ (A) An entire display cabinet, cooler, shelf, aisle, end-cap, side-stack, or stand-alone floor display, or room where the only beverages displayed are beer products, accompanied by the prominent and unambiguous posting of the sign required by 32B-7-202(5); or~~

~~\_\_\_\_\_ (B) A shared display cabinet, cooler, shelf, aisle, or room where beer products are displayed separately from non-alcoholic beverages by way of a physical barrier or visible divider of sufficient prominence to create a clear divide between the beer products and the non-alcoholic beverages. The area where beer products are displayed must have a prominent and unambiguous posting of the sign required by 32B-7-202(5). End-cap, side-stack, or stand-alone floor displays may not contain both beer products and non-alcoholic beverages other than non-alcoholic beers.~~

~~(b) Sign requirements.~~

(i) The sign required by 32B-7-202(5) must be:

(A) prominently posted in the area where beer is sold;

(B) easily readable;

(C) in print that is no smaller than .5 inches, bold type.

(ii) The print on the sign must be clearly readable and on a solid, contrasting background.

(iii) The size of the sign, and the size of the print must be sufficiently large so as to be readable, and clearly and unambiguously convey to a consumer that the beverage products displayed in that area contain alcohol. In no instance may the sign be smaller than 8.5 inches x 3.5 inches.

(iv) Additional signs may be necessary depending on the size and type of display area. For example, an entire aisle devoted to beer products may require more than one sign to adequately inform the consumer.

**R81-10-2. Off-Premise Beer Retailer State License.**(1) Authority and General Purpose. This rule is pursuant to 32B-7-401 that requires:(a) the commission establish a deadline for each off-premise beer retailer in operation on July 1, 2018 to submit an application for an off-premise beer retailer state license.(2) Application of the Rule.(a) An off-premise beer retailer in operation on July 1, 2018 must submit a complete application for an off-premise beer state license by October 10, 2018.(i) An off-premise beer retailer is considered "in operation as of July 1, 2018" if they have all local licensing in place and are open to the public.(ii) A "complete application" includes the department's application form and all supplemental materials listed on the department's application checklist.**KEY: alcoholic beverages****Date of Enactment or Last Substantive Amendment: [~~June 27, 2008~~2017]****Notice of Continuation: May 31, 2013****Authorizing, and Implemented or Interpreted Law: [~~32A-1-107~~32B-1-102; 32B-7-202; 32B-7-401]**

Alcoholic Beverage Control,  
Administration  
**R81-10C-10**  
Grandfathered Bar Structures

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 42287

FILED: 11/01/2017

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule amendment is necessary to implement

H.B. 442 passed in the 2017 General Session. This proposed rule amendment defines "remodels the grandfathered bar structure or dining area" that would require a grandfathered beer-only restaurant to comply with provisions of Section 32B-6-905.1 prior to 07/01/2022. This definition is required by Section 32B-6-905.2.

**SUMMARY OF THE RULE OR CHANGE:** This proposed rule amendment adopts the definition of "remodels the grandfathered bar structure" found in this rule and applies to the bar structure and dining area.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 32B-1-102 and Section 32B-2-202 and Section 32B-6-902 and Section 32B-6-905.2

**ANTICIPATED COST OR SAVINGS TO:**

◆ **THE STATE BUDGET:** None--Any anticipated cost or savings to the state budget are a result of the statutory requirements of H.B. 442 (2017), which requires the Alcohol Beverage Control Commission (Commission) to define when a beer-only restaurant has remodeled their grandfathered bar or dining area. Costs and savings for administering this change were calculated as part of the fiscal note. This rule change does not create any additional cost or savings beyond what was anticipated during the legislative process.

◆ **LOCAL GOVERNMENTS:** None--Any anticipated cost or savings to local governments are a result of the statutory requirements of H.B. 442 (2017), which requires the Commission to define when a beer-only restaurant has remodeled their grandfathered bar or dining area. Costs and savings to local governments were calculated as part of the fiscal note. This rule change does not create any additional cost or savings beyond what was anticipated during the legislative process.

◆ **SMALL BUSINESSES:** None--Any anticipated cost or savings to small businesses are a result of the statutory requirements of H.B. 442 (2017), which requires the Commission to define when a beer-only restaurant has remodeled their grandfathered bar or dining area. This rule provides clarification to licensees (including small businesses) as to what changes can be made to their beer-only restaurant without losing their grandfathered status prior to 07/01/2018. While a remodel, as defined by this rule, would require that the licensee comply with additional operational requirements prior to 07/01/2022, those costs and savings were calculated as part of the fiscal note for H.B. 442 (2017). This rule change does not create any additional cost or savings beyond what was anticipated during the legislative process.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** None--Any anticipated cost or savings to persons other than small businesses, businesses, or local government entities are a result of the statutory requirements of H.B. 442 (2017), which requires the Commission to define when a beer-only restaurant has remodeled their grandfathered bar or dining area. Costs and savings were calculated as part of the fiscal



note. This rule change does not create any additional cost or savings beyond what was anticipated during the legislative process.

COMPLIANCE COSTS FOR AFFECTED PERSONS: None--Any compliance cost for beer-only restaurants are a result of the statutory requirements of H.B. 442 (2017), which requires the Commission to define when a beer-only restaurant has remodeled their grandfathered bar or dining area. This rule provides clarification to licensees as to what changes can be made to their beer-only restaurant without losing their grandfathered status prior to 07/01/2018. While a remodel, as defined by this rule, would require that the licensee comply with additional operational requirements prior to 07/01/2022, those costs and savings were calculated as part of the fiscal note for H.B. 442 (2017). This rule change does not create any additional cost or savings beyond what was anticipated during the legislative process.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: None--Any anticipated cost or savings to businesses are a result of the statutory requirements of H.B. 442 (2017), which requires the Commission to define when a beer-only restaurant has remodeled their grandfathered bar or dining area. This rule provides clarification to licensees (including businesses) as to what changes can be made to their beer-only restaurant without losing their grandfathered status prior to 07/01/2018. While a remodel, as defined by this rule, would require that the licensee comply with additional operational requirements prior to 07/01/2022, those costs and savings were calculated as part of the fiscal note for H.B. 442 (2017). This rule change does not create any additional cost or savings beyond what was anticipated during the legislative process.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:  
 ALCOHOLIC BEVERAGE CONTROL  
 ADMINISTRATION  
 1625 S 900 W  
 SALT LAKE CITY, UT 84104-1630  
 or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
 ♦ Nina McDermott by phone at 801-977-6805, by FAX at 801-977-6888, or by Internet E-mail at nmcdermott@utah.gov  
 ♦ Vickie Ashby by phone at 801-977-6801, by FAX at 801-977-6889, or by Internet E-mail at vickieashby@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 12/15/2017

THIS RULE MAY BECOME EFFECTIVE ON: 12/22/2017

AUTHORIZED BY: Sal Petilos, Executive Director

**R81. Alcoholic Beverage Control, Administration.**

**R81-10C. Beer-Only Restaurant Licenses.**

**R81-10C-10. Grandfathered Bar Structures.**

(1) Authority [~~and Purpose~~] 32B-1-102; 32B-6-902; and 32B-6-905.2.

(2) The purpose of this rule is to define terms for full service restaurant licenses as required by 32B-6 Part 9. ~~(a) This rule is pursuant to 32B-6-902 which provides that:~~

~~(i) a bar structure, as defined in 32B-1-102(7), located in an establishment licensed as an on-premise beer retailer and operational as of August 1, 2011, may be "grandfathered" to allow beer to continue to be stored or dispensed at the bar structure, and in some instances to be served to an adult patron seated at the bar structure;~~

~~(b) This rule is also pursuant to 32B-6-902 which provides that:~~

~~(i) a "grandfathered bar structure" is no longer "grandfathered" once the restaurant "remodels the grandfathered bar structure"; and~~

~~(ii) the commission shall define by rule what is meant by "remodels the grandfathered bar structure".~~

~~(2) Application of Rule.~~

~~(3) Definitions.~~

(a) "remodels the grandfathered bar structure" for purposes of 32B-6-902(1)(b) means that:

(i) the grandfathered bar structure has been altered or reconfigured to:

(A) extend the length of the existing structure to increase its seating capacity; or

(B) increase the visibility of the storage or dispensing area to restaurant patrons.

(~~e~~)b "remodels the grandfathered bar structure" does not:

(i) preclude making cosmetic changes or enhancements to the existing structure such as painting, staining, tiling, or otherwise refinishing the bar structure;

(ii) preclude locating coolers, sinks, plumbing, cooling or electrical equipment to an existing structure; or

(iii) preclude utilizing existing space at the existing bar structure to add additional seating.

(~~d~~)c Pursuant to 32B-5-303(3), the licensee must first apply for and receive approval from the department for a change of location where alcohol is stored, served, and sold other than what was originally designated in the licensee's application for the license. Thus, any modification of the alcoholic beverage storage and dispensing area at a "grandfathered bar structure" must first be reviewed and approved by the department to determine whether it is:

(i) an acceptable use of an existing bar structure; or

(ii) a remodel of a "grandfathered bar structure".

(d) "remodels the grandfathered bar structure or dining area" for purposes of 32B-6-905.2 means that:

(i) the grandfathered bar structure or dining area has been altered or reconfigured to:

(A) extend the length of the existing bar structure to increase its seating capacity; or

(B) increase the visibility of the storage or dispensing area to restaurant patrons from the dining area.

(e) "remodels the grandfathered bar structure or dining area" does not:

(i) preclude making cosmetic changes or enhancements to the existing bar structure such as painting, staining, tiling, or otherwise refinishing the bar structure;

(ii) preclude locating coolers, sinks, plumbing, cooling or electrical equipment to an existing structure; or

(iii) preclude utilizing existing space at the existing bar structure to add additional seating.

(f) Pursuant to 32B-5-303(3), the licensee must first apply for and receive approval from the department for a change of location where alcohol is stored, served, and sold other than what was originally designated in the licensee's application for the license. Thus, any modification of the alcoholic beverage storage, dispensing, or consumption area must first be reviewed and approved by the department to determine whether it is:

(i) an acceptable use of an existing bar structure or dining area; or

(ii) a remodel of a "grandfathered bar structure or dining area".

**KEY: alcoholic beverages**

**Date of Enactment or Last Substantive Amendment: [November 26, 2013]2017**

**Notice of Continuation: September 28, 2016**

**Authorizing, and Implemented or Interpreted Law: 32B-2-202; 32B-5; 32B-6-901 through 905**

**Commerce, Occupational and  
Professional Licensing  
R156-78-502  
Unprofessional Conduct**

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 42243

FILED: 10/19/2017

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** This amendment is required to update a reference to the most current version of the Code of Professional Ethics for Rehabilitation Counselors. (DOPL NOTE: This proposed rule filing was completed by all review parties within the Division of Occupational and Professional Licensing (Division) and Department of Commerce by 10/04/2017, which was well before the 10/16/2017 filing period, but the proposed filing was held at the request of the Division manager as he wanted to review the proposed amendment with the Vocational Rehabilitation Counselor Licensing Board at their 10/18/2017 meeting date. cwi)

**SUMMARY OF THE RULE OR CHANGE:** In Subsection R156-78-502(1)(a), the proposed amendment updates the reference to the most current version of the Code of Professional Ethics for Rehabilitation Counselors, which became effective 01/01/2017.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 58-78-101 and Subsection 58-1-106(1)(a) and Subsection 58-1-202(1)(a)

**MATERIALS INCORPORATED BY REFERENCE:**

- ◆ Updates Code of Professional Ethics for Rehabilitation Counselors, published by Commission on Rehabilitation Counselor Certification (CRCC), January 1, 2017

**ANTICIPATED COST OR SAVINGS TO:**

◆ **THE STATE BUDGET:** There is no anticipated cost or savings to the Division from the proposed amendment. The updated reference is available online at no cost to the Division. The Division will incur minimal costs of approximately \$75 to print and distribute the rule once the proposed amendment is made effective. Any costs incurred will be absorbed in the Division's current budget.

◆ **LOCAL GOVERNMENTS:** There is no anticipated cost or savings to local governments for the proposed amendment because it is only updating a reference to industry standards.

◆ **SMALL BUSINESSES:** The proposed amendment to Section R156-78-502 will have no fiscal impact on small businesses because it is only updating a reference to industry standards.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** The proposed amendment to Section R156-78-502 will have no fiscal impact on other persons because it is only updating a reference to industry standards. The updated reference is available online at no cost to other persons.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** The proposed amendment to Section R156-78-502 will have no fiscal impact on affected persons because it is only updating a reference to industry standards. The updated reference is available online at no cost to affected persons.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** The sole amendment to the rule updates the reference to the most current version of the Code of Professional Ethics for Rehabilitation Counselors. The former version of the ethics code was dated 2010 and the new ethics code is dated 2017. No fiscal or non-fiscal impact results from this amendment.

**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:**

- ◆ Jeff Busjahn by phone at 801-530-6789, by FAX at 801-530-6511, or by Internet E-mail at jbusjahn@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 12/15/2017

THIS RULE MAY BECOME EFFECTIVE ON: 12/22/2017

AUTHORIZED BY: Mark Steinagel, Director

**R156. Commerce, Occupational and Professional Licensing.  
R156-78. Vocational Rehabilitation Counselors Licensing Act Rule.**

**R156-78-502. Unprofessional Conduct.**

(1) "Unprofessional conduct" includes:

(a) violating any provision of the Code of Professional Ethics for Rehabilitation Counselors, published by the Commission on Rehabilitation Counselor Certification, effective January 1, [2010]2017, which is hereby adopted and incorporated by reference;

(b) failing to report in writing to the Division unlawful or unprofessional conduct as defined in Section 58-78-501, 58-78-502 and this Section, by a person licensed under Title 58, Chapter 78 within ten days after learning of the conduct, if the conduct:

(i)(A) results in disciplinary action taken by the licensee's employer or a professional association; or

(B) results in a significant adverse impact on the public's health, safety or welfare; and

(ii) was not known by the licensee to have already been reported to the Division; and

(c) failing to provide general supervision as defined in Subsection R156-78-102(4).

**KEY:** licensing, vocational rehabilitation counselor

**Date of Enactment or Last Substantive Amendment:** [January 7, 2016]2017

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

**Authorizing, and Implemented or Interpreted Law:** 58-78-101; 58-1-106(1)(a); 58-1-202(1)(a)

## Environmental Quality, Water Quality R317-10-10 Examination

### NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 42274

FILED: 10/30/2017

### RULE ANALYSIS

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The proposed change is: to help retain certification validity by removing opportunities for copying exam questions and corresponding answers; promote studying and understanding of the concepts and processes, rather than just memorizing individual questions and answers; and allow the exams to better evaluate the participants' actual

understanding of the subject matter when questions are repeated from previous sessions. If individuals have concerns about any particular questions, they are provided a comment form at the exam which should be completed and returned with the exams and marked scoresheets for review by the council and the testing provider in order to improve the quality of questions for future exams.

**SUMMARY OF THE RULE OR CHANGE:** The proposed amendment replaces the option of exam question reviews by participants after failing an exam with a recommendation that the certification council review the comment forms submitted following an exam and submit them to the testing provider.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Title 19, Chapter 5

**ANTICIPATED COST OR SAVINGS TO:**

◆ **THE STATE BUDGET:** Staff time to administer the reviews will be reduced by about four days per year. The state budget would not be affected by this small savings.

◆ **LOCAL GOVERNMENTS:** Local governments that employ wastewater operators who failed an exam and chose to review them, may or may not have paid the employee's salary for the time used to attend the review. Local governments that pay employees for review time would no longer incur this cost.

◆ **SMALL BUSINESSES:** The wastewater operator certification program is not mandatory for small businesses. Any participation in this program is on a voluntary basis, unless it is part of a settlement agreement resulting from violations of the Water Quality Act. Removing the option of a review should have no cost or savings to small businesses.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Other persons are not regulated by this rule and there would be no measurable cost or savings as a result of this change.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** There is no additional compliance costs for affected persons due to this review being eliminated. Each person is expected to study prior to testing, but there are no specific prerequisites.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** The elimination of review of wastewater certification exams should have no fiscal impact on businesses since the reviews were offered at no charge to those who failed the exams. Businesses were not required to have certified operators, so only those who wished to have some sort of validation of the abilities of their operators voluntarily participated in the program. They would not change their business practices due to the elimination of the reviews.

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

ENVIRONMENTAL QUALITY  
WATER QUALITY  
THIRD FLOOR

195 N 1950 W  
SALT LAKE CITY, UT 84116  
or at the Office of Administrative Rules.

**DIRECT QUESTIONS REGARDING THIS RULE TO:**

♦ Judy Etherington by phone at 801-536-4344, by FAX at 801-536-4301, or by Internet E-mail at [jetherington@utah.gov](mailto:jetherington@utah.gov)

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 12/15/2017

THIS RULE MAY BECOME EFFECTIVE ON: 01/01/2018

AUTHORIZED BY: Erica Gaddis, Director

**R317. Environmental Quality, Water Quality.**

**R317-10. Certification of Wastewater Works Operators.**

**R317-10-10. Examination.**

A. The time and place of examinations to qualify for a certificate shall be determined by the director upon recommendation of the council.

B. All examinations shall be scored and the applicant notified of the results.

C. Examination fees shall be charged according to the approved division fee schedule to cover the costs of testing.

D. All exams shall be administered in a manner that will ensure the integrity of the certification program.

E. ~~[In the event an applicant fails an exam, the applicant may request to review the exam within ten days following receipt of the exam score]~~ Question Comment Forms completed during the testing session should be reviewed by the council and submitted to the test provider.

F. The council shall not review examination questions for the purpose of changing individual examination scores.

1. However, recommendations may be made to improve individual questions in the databank for future examinations.

2. If an error is found in the grading of the exam, credit may be given.

**KEY:** water pollution, operator certification, wastewater treatment, renewals

**Date of Enactment or Last Substantive Amendment:** ~~[April 29, 2015]~~ 2018

**Notice of Continuation:** July 6, 2017

**Authorizing, and Implemented or Interpreted Law:** 19-5

Health, Disease Control and  
Prevention, Health Promotion

**R384-210**

Co-prescription Guidelines -- Reporting

**NOTICE OF PROPOSED RULE**

(New Rule)

DAR FILE NO.: 42283

FILED: 11/01/2017

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The purpose of this rule is to establish scientifically-based guidelines for controlled substance prescribers to co-prescribe an opiate antagonist to a patient pursuant to Section 26-55-108 which was changed during the 2017 General Session with S.B. 258.

**SUMMARY OF THE RULE OR CHANGE:** This rule establishes scientifically-based guidelines for controlled substance prescribers to co-prescribe an opiate antagonist to a patient pursuant to Title 26, Chapter 55.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Title 26, Chapter 55

**ANTICIPATED COST OR SAVINGS TO:**

♦ **THE STATE BUDGET:** This rule contains scientifically-based guidelines for controlled substance prescribers to co-prescribe an opiate antagonist to a patient and provide education on overdose prevention to patients and/or the patient's household members when factors that increase risk for opioid overdose are present. There may be savings in preventing individuals from requiring treatment in an emergency department or in hospitalization but those costs are hard to measure.

♦ **LOCAL GOVERNMENTS:** There may be savings in preventing individuals from requiring treatment in an emergency department or in hospitalization but those costs are hard to measure.

♦ **SMALL BUSINESSES:** Some small pharmacies may see an increase in sales of naloxone kits due to the co-prescribing guidelines.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There may be savings in preventing individuals from requiring treatment in an emergency department or in hospitalization costs but those costs are difficult to measure. Some pharmacies may see an increase in sales of naloxone kits due to the co-prescribing guidelines.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** This rule provides scientifically-based guidelines on co-prescribing an opiate antagonist to a patient established by Title 26, Chapter 55, which 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:** This new rule provides guidelines when a provider who prescribes a controlled substance should also co-prescribe

an opiate antagonist. This is pursuant to S.B. 258 (2017). The guidelines are scientifically based. This new rule will have a fiscal impact due to increase in sales for pharmacies and for the payors of the prescriptions which is outweighed by the benefit to the patients.

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

HEALTH  
DISEASE CONTROL AND PREVENTION,  
HEALTH PROMOTION  
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:

♦ Trisha Keller by phone at 801-538-6865, by FAX at 801-538-9134, or by Internet E-mail at trishakeller@utah.gov or mail at PO Box 142107, Salt Lake City, UT 84114-2107

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 12/15/2017

THIS RULE MAY BECOME EFFECTIVE ON: 12/22/2017

AUTHORIZED BY: Joseph Miner, MD, Executive Director

**R384. Health, Disease Control and Prevention; Health Promotion.**

**R384-210. Co-prescription Guidelines -- Reporting.**

**R384-210-1. Authority and Purpose.**

This rule establishes scientifically based guidelines for controlled substance prescribers to co-prescribe an opiate antagonist to a patient pursuant to Section 26-55-108.

**R384-210-2. Guidelines for the Issuance of a Prescription for an Opiate Antagonist Along with a Prescription for an Opiate.**

(1) Co-prescribing guidelines are applicable when prescribing opioids.

(2) Clinicians shall consider offering a co-prescription for an opiate antagonist, such as naloxone, and education on overdose prevention to patients and the patient's household members and/or close contacts, especially when factors that increase risk for opioid overdose are present. These risk factors include:

(a) history of overdose;

(b) history of substance use disorder;

(c) underlying mental health condition that make a patient susceptible to overdose;

(d) risk for returning to a high dose to which they are no longer tolerant (e.g., patients recently released from prison);

(e) medical conditions, such as respiratory disease, sleep apnea, or other comorbidities that make a patient susceptible to opioid toxicity, respiratory distress or overdose;

(f) higher opioid dosages (greater than or equal to 50 MME/day); and

(g) concurrent benzodiazepine use.

(3) Clinicians shall consider offering a co-prescription for an opiate antagonist, such as naloxone, and education on overdose to persons in a position to aid someone who is at risk of overdose.

**KEY: naloxone, opioid antagonist, co-prescribing**  
**Date of Enactment or Last Substantive Amendment: 2017**  
**Authorizing, and Implemented or Interpreted Law: 26-55**

Health, Disease Control and  
Prevention, Epidemiology  
**R386-702**  
Communicable Disease Rule

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 42285

FILED: 11/01/2017

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is to incorporate information in accordance with the 2017 Council of State and Territorial Epidemiologists (CSTE) position statement recommendations, clarify reporting requirements, and clarify language in an effort to improve interpretation of rule requirements.

SUMMARY OF THE RULE OR CHANGE: Reportable condition changes: 1) added *Bacillus cereus* infections caused by strains that express anthrax toxin genes (pXO1 and/or pXO2 plasmids), including *B. cereus* biovar anthracis. This was added to the anthrax case definition by CSTE in 2017. These infections are rare, but will cause an anthrax-like illness, and should be treated like an anthrax infection; 2) added *Candida auris* or *Candida haemulonii* from any body site. These are emerging diseases causing concern for both multidrug resistance and healthcare transmission; 3) added Chagas disease. There is evidence that the vector for this disease may be present in Utah, which makes addition of this disease important as a potential emerging infection; 4) added Middle-East Respiratory Syndrome (MERS); 5) added a section mandating antimicrobial susceptibility testing when performed on 1 of 12 different organisms; 6) clarified that syphilitic stillbirths are reportable as syphilis cases; 7) clarified acute, chronic, and perinatal hepatitis C are all reportable; 8) specified encephalitis due to any organism (bacterial, fungal, parasitic, protozoan, and viral) is reportable; 9) removed aseptic meningitis; and 10) removed *Staphylococcus aureus* with vancomycin-intermediate

resistance (VISA). Reportable through electronic laboratory reporting changes: 1) added positive influenza tests; 2) added *Pseudomonas aeruginosa*, resistant to a carbapenem, or with demonstrated carbapenemase production; and 3) added methicillin-susceptible *Staphylococcus aureus* (MSSA) and methicillin-resistant *Staphylococcus aureus* (MRSA) from normally sterile sites. Mandatory submission of clinical material changes: 1) added *Candida auris* or *Candida haemulonii* from any body site; 2) added carbapenem resistant *Acinetobacter* species, *Enterobacter* species, *Escherichia coli*, *Klebsiella* species, and *Pseudomonas aeruginosa*; and 3) removed vancomycin intermediate *Staphylococcus aureus*. Additional changes are: 1) mandated electronic laboratory reporting from laboratories. Electronic Laboratory Reporting (ELR) is the electronic transmission of data from the laboratories to the public health of laboratory reports which identify reportable conditions; 2) incorporated by reference reporting specification documents; 3) authorized electronic case reporting as an acceptable reporting method; 4) updated the Special Measures for the Control of HIV/AIDS. Specifically, revised definitions and added a definition for re-engagement to care; 5) added language specifying that entities ordering a laboratory test for a reportable communicable disease must provide the performing laboratory with the patient's address so that the laboratory can report to the appropriate jurisdiction; 6) corrected references throughout the rule; and 7) updated reference information in the "Official References" section.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 26-1-30 and Section 26-6-3 and Title 26, Chapter 23b

**MATERIALS INCORPORATED BY REFERENCE:**

- ◆ Updates Red Book, published by American Academy of Pediatrics, 05/01/2015

**ANTICIPATED COST OR SAVINGS TO:**

◆ **THE STATE BUDGET:** Please see Appendix: Regulatory Impact Analysis for Small and Non-Small Businesses. It is anticipated that proposed changes will require programming and mapping of data fields equating to approximately 0.10 FTE over 4 months to make modifications in diseases being added, removed, or changed. While some conditions are being added to the list, it is important to note that these conditions are anticipated to be rare (one case per year would be unusual), and because they are emerging conditions, they were formerly reportable as such. Therefore, making the conditions explicit will aid in clarifying for reporters that they are reportable, but will not result in costs. However, removal of two conditions from the reportable diseases list will result in decreased time required for epidemiologists to enter and analyze data (approximately 11 hours per year), manage case information, and proposed implementation of electronic laboratory reporting is anticipated to accrue further savings due to decreased time needed for data entry (estimated to save approximately 574 hours at state level). Overall, this results in anticipated savings at the state level. In addition, anticipated benefits from proposed changes at the

state level include: better characterization of disease burden at the state level; increased data accuracy and quality, improved timeliness of reporting resulting in improved timeliness in case referral to local health departments for investigation and management of cases allowing for more rapid identification of, and response to, outbreaks.

◆ **LOCAL GOVERNMENTS:** Please see Appendix: Regulatory Impact Analysis for Small and Non-Small Businesses. Because proposed changes require programming time at the state level, and for laboratories, no costs are anticipated for local health departments. However, savings are anticipated for local health departments related to the decreased time needed to investigate and manage cases for conditions being removed (approximately 90 hours per year). Further savings are anticipated related to electronic laboratory reporting. It is anticipated that approximately 844 hours of data entry time will be saved per local health department, or nearly 11,000 hours for all 13 local health departments in Utah, with full implementation of electronic laboratory reporting in Utah. In addition, anticipated benefits from proposed changes at the local level include: better characterization of disease burden at the local level; increased data accuracy and quality; improved timeliness of reporting resulting in improved timeliness in receipt, investigation, and management of cases allowing for more rapid intervention, as well as identification of, and response to, outbreaks.

◆ **SMALL BUSINESSES:** No Utah laboratories that will be required to report electronically are small businesses.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Please see Appendix: Regulatory Impact Analysis for Small and Non-Small Businesses. There are 54 laboratories in Utah that are required to report conditions to public health, all of which are non-small businesses. Currently, 49/54 (91%) are in the process of implementing electronic reporting. During the first year, it is estimated that the remaining five laboratories will incur a one-time annual cost of \$15,000 (approximately \$5,000 to build an interface, and \$10,000 for programming costs). All laboratories will then have an ongoing annual cost of approximately \$1,500 for maintenance of their respective reporting system. Additionally, to make programming changes associated with the proposed changes to the reportable conditions list, it is estimated that approximately 8 hours of programming time per laboratory (1 hour per condition added, removed, or modified) will be needed, or approximately \$600 per laboratory. Looking at anticipated savings, overall, there should be a net benefit from these changes for these laboratories. In 2016, 54,000 reports were provided to public health through non-electronic means; estimating 10 minutes per case for laboratory technicians to identify, fax, email, or call information to local or state public health, implementation of electronic reporting will result in approximately 9,180 hours of reporting time saved annually, or approximately 170 hours per laboratory. In addition, it is known that electronic reporting results in more complete notification to public health as it replaces a manual process that may result in delayed, incomplete, or forgotten reports. As an example, after transitioning one laboratory in

Utah to electronic reporting, the number of cases of Campylobacter reported from this laboratory increased by 45%, and the number of cases of Chlamydia reported from this laboratory increased by 27%. Also, public health in Utah receives notifications of reportable conditions faster from laboratories that report electronically. On average, Utah public health is notified of a reportable condition within three days after identification from electronic reporters, vs. six days after identification from non-electronic reporters because reporting is required within three days of identification of cases. This change will result in better compliance with reporting requirements in the rule. Other persons: Please see Appendix: Regulatory Impact Analysis for Small and Non-Small Businesses. Because there are two Tribes in Utah who use Utah's communicable disease surveillance system, EpiTrax, for surveillance and management of reportable conditions, it is anticipated that they will benefit from implementation of universal electronic laboratory reporting in the same way that local health departments will (i.e., from data entry savings of approximately 844 hours a year each, as well as benefits associated with more timely identification, investigation, and management of cases). Further, the proposed changes will lead to benefits for all citizens of the State of Utah, since it will result in more rapid identification and response to cases and outbreaks, which results in more rapid control and mitigation, and less exposure to infectious diseases and the resulting impacts of diseases in the community.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** Please see Appendix: Regulatory Impact Analysis for Small and Non-Small Businesses. There are 54 laboratories in Utah that are required to report conditions to public health, all of which are non-small businesses. Currently, 49/54 (91%) are in the process of implementing electronic laboratory reporting. During the first year, it is estimated that the remaining five laboratories will incur a one-time annual cost of \$15,000 (approximately \$5,000 to build an interface, and \$10,000 for programming costs). All laboratories will then have an ongoing annual cost of approximately \$1,500 for maintenance of their respective reporting system.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** The proposed amendment fiscally impacts businesses through the need for programming changes. The benefits to the rapid identification and response to cases and outbreaks will result in more rapid control and mitigation of the impact of infectious diseases on Utah citizens that live in an affected community.

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

HEALTH  
 DISEASE CONTROL AND PREVENTION,  
 EPIDEMIOLOGY  
 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:**

♦ Melissa Stevens Dimond by phone at 801-538-6810, by FAX at 801-538-9923, or by Internet E-mail at melissastevens@utah.gov or mail at PO Box 142104, Salt Lake City, UT 84114-2104

**INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 12/15/2017**

**THIS RULE MAY BECOME EFFECTIVE ON: 12/22/2017**

**AUTHORIZED BY: Joseph Miner, MD, Executive Director**

**Appendix: Regulatory Impact Analysis for Small and Non-Small Businesses**

	FY 2018	FY 2019	FY 2020
<b>Fiscal Costs</b>			
State Government	\$2,550	\$0	\$0
Local Government	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$181,575	\$81,000	\$81,000
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Costs:</b>	<b>\$184,125</b>	<b>\$81,000</b>	<b>\$81,000</b>
<b>Fiscal Benefits</b>			
State Government	\$9,953	\$9,953	\$9,953
Local Government	\$191,828	\$191,828	\$191,828
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$297,248	\$297,248	\$297,248
Other Persons	\$28,918	\$28,918	\$28,918
<b>Total Fiscal Benefits:</b>	<b>\$527,947</b>	<b>\$527,947</b>	<b>\$527,947</b>
<b>Net Fiscal Benefits:</b>	<b>\$343,822</b>	<b>\$446,947</b>	<b>\$446,947</b>

Note: Proposed changes in the rule that will incur direct costs include: 1) the proposal to make electronic laboratory reporting mandatory in Utah; and 2) the proposal to modify conditions that are reported in Utah, which would primarily require some programming time by laboratories. There are 54 laboratories in Utah, all of whom are non-small businesses. Please see the cost information in the rule analysis above for details

regarding cost and benefit estimates for proposed amendments to this rule.

### **R386. Health, Disease Control and Prevention, Epidemiology.**

#### **R386-702. Communicable Disease Rule.**

##### **R386-702-1. Purpose Statement.**

(1) The Communicable Disease Rule is adopted under authority of Sections 26-1-30, 26-6-3, and 26-23b.

(2) This rule outlines a multidisciplinary approach to communicable and infectious disease control and emphasizes reporting, surveillance, isolation, treatment and epidemiological investigation to identify and control preventable causes of infectious diseases. Reporting requirements and authorizations are specified for communicable and infectious diseases, outbreaks, and unusual occurrence of any disease. Each section has been adopted with the intent of reducing disease morbidity and mortality through the rapid implementation of established practices and procedures.

(3) The successes of medicine and public health dramatically reduced the risk of epidemics and early loss of life due to infectious agents during the twentieth century. However, the emergence of diseases such as Middle Eastern Respiratory Syndrome (MERS), and the rapid spread of diseases such as West Nile virus to the United States from other parts of the world, made possible by advances in transportation, trade, food production, and other factors, highlight the continuing threat to health from infectious diseases. Continual attention to these threats and cooperation among all health care providers, government agencies, and other entities that are partners in protecting the public's health are crucial to maintain and improve the health of the citizens of Utah.

##### **R386-702-2. Definitions.**

(1) Terms in this rule defined in Section 26-6-2:

- (a) Carrier
- (b) Communicable disease
- (c) Contact
- (d) Epidemic
- (e) Infection
- (f) Schools

(2) Terms in this rule defined in Section 26-6-6:

- (a) Health care provider

(3) Terms in this rule defined in Section 26-21-2:

- (a) Assisted living facilities
- (b) Nursing care facilities

(4) Terms in this rule defined in Section 26-23b-102:

- (a) Bioterrorism

(5) Terms in this rule defined in Section 26-39-102:

- (a) Childcare programs

(6) Terms in this rule defined in Section 78B-3-403:

- (a) Health care facilities

(7) Terms in this rule defined in Section 62A-15-602:

- (a) Mental health facilities

(8) Terms in this rule defined in Section R386-80-2:

- (a) Local health department

(9) In addition, for purposes of this rule:

(a) "Blood and plasma center" is defined as a blood bank, blood storage facility, plasma center, hospital, any another facility where blood or blood products are collected, or any facility where blood services are provided.

(b) "Care facilities licensed through the Department of Human Services" is described as any facility licensed through the Utah Department of Human Services, and includes adult day care facilities, adult foster care facilities, crisis respite facilities, domestic violence shelters and treatment programs, foster care homes, mental health treatment programs, residential treatment and day treatment facilities for persons with disabilities, substance abuse treatment programs, and youth treatment programs.

(c) "Case" is defined as any person, living or deceased, identified as having a communicable disease, condition, or syndrome that meets criteria for being reportable under this rule, or that is otherwise under public health investigation.

(d) "Clinic" is defined as any facility where a health care provider practices.

(e) "Condition" is defined as an abnormal state of health that may interfere with a person's regular feelings of wellbeing.

(f) "Correctional facility" is defined as an facility that forcibly confines an individual under the authority of the government, including but not limited to prisons, detention centers, jails, juvenile detention centers.

(g) "Department" is defined as the Utah Department of Health.

(h) "Diagnostic facility" is defined as the facility where the case or suspect case was seen and evaluated by a healthcare provider.

(i) "Dispensary" is defined as an office in a school, hospital, industrial plant, or other organization that dispenses medications or medical supplies.

(j) "Electronic case reporting" is defined as the transmission of clinical, diagnostic, laboratory, and treatment related data from reporting entities to the Department in a structured, computer-readable format that reflects comparable content to HL7 CDA(reg trademark) R2 Implementation Guide: Public Health Case Report, Release 2 - US Realm - the Electronic Initial Case Report (eICR). Electronic Initial Case Reporting is a form of electronic reporting.

(k) "Electronic laboratory reporting" is defined as the transmission of laboratory or health related data from reporting entities to the Department using HL7 ORU-R01 2.3.1 or 2.5.1, LOINC, and SNOMED standard message structure and vocabulary. Electronic laboratory reporting is a form of electronic reporting.

(l) "Electronic reporting" is defined as the transmission of laboratory or health related data from reporting entities to the Department in a structured, computer-readable format that reflects comparable content to HL7 messaging [using standard message structure and vocabulary, and do not require any hand keying for data to be incorporated into Department databases.]

(m[k]) "Encounter" is defined as an instance of an individual presenting to a health care facility.

(n[h]) "Event" is defined as any communicable disease, condition, laboratory result, syndrome, outbreak, epidemic, or other public health hazard that meets criteria for being reportable under this rule.

(o[m]) "Good Samaritan" is defined as a person who gives reasonable aid to strangers in grave physical distress.

(p[n]) "Invasive disease" is defined as infection occurring in parts of the body where organisms are not normally present, such as the bloodstream, organs, or the meninges.

(q[ø]) "Laboratory" is defined as any facility that receives, refers, or analyzes clinical specimens.



(r[p]) "Manual reporting" is defined as the transmission of laboratory or health related data from reporting entities to the Department using processes that require hand keying for data to be incorporated into Department databases.

(s[q]) "Normally sterile site" is defined as a part of the body where organisms are not normally present, such as the bloodstream, organs, or the meninges.

(t[f]) "Outbreak" is defined as the increased occurrence of any communicable disease, health condition, or syndrome in a community, institution, or region; or two or more cases of a communicable disease, health condition, or syndrome in persons with a common exposure.

(u[s]) "Public health hazard" is defined as the presence of an infectious organism or condition in the environment which endangers the health of a specified population.

(v[t]) "Suspect case" is defined as any person, living or deceased, who a reporting entity, local health department, or the Department believes might be a case, but for whom it has not been established that the criteria necessary to become a case have been met.

(w[u]) "Syndrome" is defined as a set of signs or symptoms that often occur together.

### R386-702-3. Reportable Events.

(1) The Department declares the following events to be of concern to public health and reporting of all instances is required or authorized by Sections 26-6-6 and 26-23b.

(2) Events Reportable by All Entities.

(a) Acute flaccid myelitis;

(b) Adverse event resulting from smallpox vaccination (Vaccinia virus, Orthopox virus);

(c) Anaplasmosis (*Anaplasma phagocytophilum*);

(d) Anthrax (*Bacillus anthracis*) or anthrax-like illness caused by *Bacillus cereus* strains that express anthrax toxin genes;

(e) Antibiotic resistant organisms from any clinical specimen that meet the following criteria:

(i) Resistant to a carbapenem, or with demonstrated carbapenemase, in:

(A) *Acinetobacter* species,

(B) *Enterobacter* species,

(C) *Escherichia coli*, or

(D) *Klebsiella* species,

(ii) Resistant [~~or intermediate resistant~~] to vancomycin in:

(A) *Staphylococcus aureus* (~~[VISA/VRSA]~~);

(f) Arbovirus infection, including but not limited to:

(i) Chikungunya virus infection,

(ii) West Nile virus infection, and

(iii) Zika virus infection, including congenital;

(g) Babesiosis (*Babesia* spp.);

(h) Botulism (*Clostridium botulinum*);

(i) Brucellosis (*Brucella* spp.);

(j) *Campylobacteriosis* (*Campylobacter* spp.);

(k) *Candida auris* or *Candida haemulonii* from any body site;

(l) Chagas disease;

(m[k]) Chancroid (*Haemophilus ducreyi*);

(n[H]) Chickenpox (*Varicella zoster* virus, VZV, Human herpesvirus 3, HHV-3);

(o[m]) Chlamydia (*Chlamydia trachomatis*);

(p[n]) Coccidioidomycosis (*Coccidioides* spp.), also known as valley fever;

(q[ø]) Colorado tick fever (Colorado tick fever virus, Coltivirus spp.), also known as American mountain tick fever;

(r[p]) Cryptosporidiosis (*Cryptosporidium* spp.);

(s[q]) Cyclosporiasis (*Cyclospora* spp., including *Cyclospora cayentanensis*);

(t[f]) Dengue fever (Dengue virus);

(u[s]) Diphtheria (*Corynebacterium diphtheriae*);

(v[t]) Ehrlichiosis (*Ehrlichia* spp.);

(w[u]) Encephalitis (bacterial, fungal, parasitic, protozoan, and viral);

(x[v]) Shiga toxin-producing *Escherichia coli* (STEC) infection;

(y[w]) Giardiasis (*Giardia lamblia*), also known as beaver fever;

(z[x]) Gonorrhea (*Neisseria gonorrhoeae*), including sexually transmitted and ophthalmia neonatorum;

(aa[y]) *Haemophilus influenzae*, invasive disease;

(bb[z]) Hantavirus infection (Sin Nombre virus);

(cc[aa]) Hemolytic uremic syndrome, postdiarrheal;

(dd[bb]) Hepatitis, viral, including but not limited to:

(i) Hepatitis A,

(ii) Hepatitis B (acute, chronic, and perinatal),

(iii) Hepatitis C (acute, chronic, and perinatal),

(iv) Hepatitis D, and

(v) Hepatitis E;

(ee[ee]) Human immunodeficiency virus (HIV) infection, including acquired immune deficiency syndrome (AIDS) diagnosis;

(ff[dd]) Influenza virus infection:

(i) Associated with a hospitalization,

(ii) Associated with a death in a person under 18 years of age, or

(iii) Suspected or confirmed to be caused by a non-seasonal influenza strain;

(gg[ee]) Legionellosis (*Legionella* spp.), also known as Legionnaires' disease;

(hh[ff]) Leptospirosis (*Leptospira* spp.);

(ii[gg]) Listeriosis (*Listeria* spp., including *Listeria monocytogenes*);

(jj[hh]) Lyme disease (*Borrelia burgdorferi*);

(kk[ii]) Malaria (*Plasmodium* spp.);

(ll[jj]) Measles (Measles virus), also known as rubeola;

(mm[kk]) Meningitis (aseptic, bacterial, fungal, parasitic, protozoan, and viral);

(nn[H]) Meningococcal disease (*Neisseria meningitidis*), invasive;

(oo) Middle East Respiratory Syndrome (MERS);

(pp[mmm]) Mumps (Mumps virus);

(qq[nn]) Mycobacterial infections, including:

(i) Tuberculosis (*Mycobacterium tuberculosis* complex),

(ii) Leprosy (*Mycobacterium leprae*), also known as Hansen's Disease,

(iii) All other mycobacterial infections (*Mycobacterium* spp.);

(rr[øø]) Pertussis (*Bordetella pertussis*);

(ss[pp]) Plague (*Yersinia pestis*);

(tt[qq]) Poliomyelitis (Poliovirus), paralytic and nonparalytic;

(uu[ff]) Psittacosis (*Chlamydophila psittaci*), also known as ornithosis;

(vv[ss]) Q fever (*Coxiella burnetii*);

(ww[tt]) Rabies (Rabies virus), human and animal;

(xx[tt]) Relapsing fever (*Borrelia* spp.), tick-borne and louse-borne;

(yy[vv]) Rubella (Rubella virus), including congenital syndrome;

(zz[ww]) Salmonellosis (*Salmonella* spp.);

(aaa[xx]) Severe acute respiratory syndrome, also known as SARS (SARS coronavirus or SARS-CoV);

(bbb[yy]) Shigellosis (*Shigella* spp.);

(ccc[zz]) Smallpox (*Variola major* and *Variola minor*);

(ddd[aaa]) Spotted fever rickettsioses (*Rickettsia* spp.), including Rocky Mountain spotted fever (*Rickettsia rickettsii*);

(eee[bbb]) Streptococcal disease, invasive, due to:

(i) *Streptococcus pneumoniae*,

(ii) Group A *Streptococcus* (*Streptococcus pyogenes*), and

(iii) Group B *Streptococcus* (*Streptococcus agalactiae*);

(fff[eee]) Syphilis (*Treponema pallidum*), including:

(i) all stages,

(ii) [-and-]congenital, and

(iii) syphilitic stillbirths;

(ggg[ddd]) Tetanus (*Clostridium tetani*);

(hhh[eee]) Toxic shock syndrome, staphylococcal (*Staphylococcus aureus*) or streptococcal (*Streptococcus pyogenes*);

(iii[fff]) Transmissible spongiform encephalopathies (prion diseases), including Creutzfeldt-Jakob disease;

(jjj[ggg]) Trichinellosis (*Trichinella* spp.);

(kkk[hhh]) Tularemia (*Francisella tularensis*);

(lll[iii]) Typhoid (*Salmonella typhi*), cases and carriers;

(mmm[jjj]) Vibriosis (*Vibrio* spp.), including Cholera (*Vibrio cholerae*);

(nnn[kkk]) Viral hemorrhagic fevers, including but not limited to:

(i) Ebola fever (*Ebolavirus* spp.),

(ii) Lassa fever (Lassa virus), and

(iii) Marburg fever (Marburg virus);

(ooo[lll]) Yellow fever (Yellow fever virus).

(3) Perinatally Transmissible Conditions Reportable by All Entities.

(a) Pregnancy is a reportable event for the following communicable diseases, and reporting is required even if the communicable disease was reported to public health prior to the pregnancy:

- (i) Hepatitis B infection;
- (ii) Hepatitis C infection;
- (iii) HIV infection;
- (iv) Listeriosis;
- (v) Rubella;
- (vi) Syphilis infection; and
- (vii) Zika virus infection.

(4) Antibiotic Susceptibility Tests Reportable by All Entities.

(a) Full panel antibiotic susceptibility test results, including minimum inhibitory concentration and results suppressed to the ordering clinician, are reportable when performed on the following organisms:

- (i) *Candida auris/Candida haemulonii* from any body site;

(ii) *Mycobacterium tuberculosis*;

(iii) *Neisseria gonorrhoeae*;

(iv) *Salmonella* species;

(v) *Shigella* species; and

(vi) *Streptococcus pneumoniae*.

(vii) Organisms resistant to a carbapenem, or with demonstrated carbapenemase, in:

(A) *Acinetobacter* species,

(B) *Enterobacter* species,

(C) *Escherichia coli*,

(D) *Klebsiella* species;

(viii) Organisms resistant to vancomycin in:

(A) *Staphylococcus aureus* (VRSA);

(b) All individual carbapenemase test results (positive, negative, equivocal, indeterminate), including the method used, are reportable when performed on the following organisms:

(i) Resistant to a carbapenem, or with demonstrated carbapenemase, in:

(A) *Acinetobacter* species,

(B) *Enterobacter* species,

(C) *Escherichia coli*, and

(D) *Klebsiella* species.

(b) Antiviral susceptibility test results; including nucleotide sequencing, genotyping, or phenotypic analysis; are reportable when performed on the following organisms:

(i) Human immunodeficiency virus (HIV).

([4]5) Unusual Events Reportable by All Entities.

(a) Unusual events include one or more cases or suspect cases of a communicable disease, condition, or syndrome considered:

- (i) Rare, unusual, or new to Utah;
- (ii) Previously controlled or eradicated;
- (iii) Caused by an unidentified or newly identified organism;
- (iv) Exposure or infection that may indicate a bioterrorism event with potential transmission to the public; or
- (v) Any other infection not explicitly identified in Subsection R386-702-3(2) that public health considers a public health hazard.

([5]6) Outbreaks, Epidemics, or Unusual Occurrences of Events Reportable by All Entities.

(a) Entities shall report two or more cases or suspect cases, with or without an identified organism, including but not limited to:

- (i) Gastrointestinal illnesses;
- (ii) Respiratory illnesses;
- (iii) Meningitis or encephalitis;
- (iv) Infections caused by antimicrobial resistant organisms;
- (v) Illnesses with suspected foodborne or waterborne transmission;
- (vi) Illnesses with suspected ongoing transmission in any facility;
- (vii) Infections that may indicate a bioterrorism event; or
- (viii) Any other infections not explicitly identified in Subsection R386-702-3(2) that public health considers a public health hazard.

(b) Entities shall report increases or shifts in pharmaceutical sales that may indicate changes in disease trends; or

([6]7) Laboratory Results Reportable by Electronic Reporters.

(a) In addition to laboratory results set forth in Subsections R386-702-3(2) through R386-702-3(6), ~~the Department declares the~~

~~following laboratory results to be reportable by entities reporting electronically.~~

~~(b) Entities reporting electronically shall include the following laboratory results or laboratory results that provide presumptive evidence of the following communicable diseases:~~

~~(i) Influenza virus;~~

~~(ii) Norovirus infection;~~

~~(iii) Pseudomonas aeruginosa, resistant to a carbapenem, or with demonstrated carbapenemase production;~~

~~(iv) Staphylococcus aureus from a normally sterile site with methicillin testing performed, reported as either methicillin-susceptible Staphylococcus aureus (MSSA) or methicillin-resistant Staphylococcus aureus (MRSA); and~~

~~(v) Streptococcal disease, invasive due to all species.~~

~~(e) Entities reporting electronically shall include all laboratory results (positive, negative, equivocal, indeterminate) associated with the following tests or conditions:~~

~~(i) CD4+ T-Lymphocyte tests, regardless of known HIV~~

~~status;~~

~~(ii) Chlamydia;~~

~~(iii) Clostridium difficile;~~

~~(iv) Cytomegalovirus (CMV), congenital (infants less than or equal to 12 months of age);~~

~~(v) Gonorrhea;~~

~~(vi) Hepatitis A;~~

~~(vii) Hepatitis B, including viral loads;~~

~~(viii) Hepatitis C, including viral loads;~~

~~(ix) HIV, including viral loads and confirmatory tests;~~

~~(x) Liver function tests, including ALT, AST, and bilirubin associated with a viral hepatitis case;~~

~~(xi) Lyme disease;~~

~~(xii) Syphilis;~~

~~(xiii) Tuberculosis; and~~

~~(xiv) Zika virus.~~

~~(c) Entities reporting electronically shall report full panel antibiotic susceptibility test results, including minimum inhibitory concentration and results suppressed to the ordering clinician, are reportable when performed on the following organisms:~~

~~(i) Pseudomonas aeruginosa, resistant to a carbapenem, or with demonstrated carbapenemase.~~

~~(d) The Department may, by authority granted through Section 26-23b, identify additional reporting criteria when deemed necessary for the management of outbreaks or identification of exposures.~~

~~(e) Non-positive laboratory results reported for the events identified in Subsection R386-702-3(6)(e) will be used for the following purposes as authorized in Utah Health Code Subsections 26-1-30(2)(c), 26-1-30(2)(d), and 26-1-30(2)(f):~~

~~(i) To determine when a previously reported case becomes non-infectious;~~

~~(ii) To identify newly acquired infections through identification of a seroconversion window; or~~

~~(iii) To provide information critical for assignment of a case definition.~~

~~(f) Information associated with a non-positive laboratory result will be kept by the Department for a period of 18 months.~~

~~(i) At the end of the 18 month period, if the result has not been appended to an existing case, personal identifiers will be stripped and expunged from the result.~~

(ii) The de-identified result will be added to a de-identified, aggregate dataset.

(iii) The dataset will be kept for use by public health to analyze trends associated with testing patterns and case distribution, and identify and establish prevention and intervention efforts for at-risk populations.

(7) Authorized Reporting of Syndromes and Conditions.

(a) Reporting of encounters for the following syndromes and conditions is authorized by Chapter 26-23b, unless made mandatory by the declaration of a public health emergency:

(i) Respiratory illness, including but not limited to:

(A) Upper or lower respiratory tract infections,

(B) Difficulty breathing, or

(C) Adult respiratory distress syndrome;

(ii) Gastrointestinal illness, including but not limited to:

(A) Vomiting,

(B) Diarrhea, or

(C) Abdominal pain;

(iii) Influenza-like constitutional symptoms or signs;

(iv) Neurologic symptoms or signs indicating the possibility of meningitis, encephalitis, or unexplained acute encephalopathy or delirium;

(v) Rash illness;

(vi) Hemorrhagic illness;

(vii) Botulism-like syndrome;

(viii) Lymphadenitis;

(ix) Sepsis or unexplained shock;

(x) Febrile illness (illness with fever, chills or rigors);

(xi) Nontraumatic coma or sudden death; and

(xii) Other criteria specified by the Department as indicative of disease outbreaks or injurious exposures of uncertain origin.

(b) Reporting of encounters for syndromes and conditions not specified in Subsection R386-702-3(7)(a) is also authorized by Chapter 26-23b, unless made mandatory by the declaration of a public health emergency.

(c) Information included in the reporting of the events identified in Subsection R386-702-3(7)(a) and R386-702-3(7)(b) will be used for the following purposes:

(i) To support early identification and ruling out of public health threats, disasters, outbreaks, suspected incidents, and acts of bioterrorism;

(ii) To assist in characterizing population groups at greatest risk for disease or injury;

(iii) To support assessment of the severity and magnitude of possible threats; or

(iv) To satisfy syndromic surveillance objectives of the Federal Centers for Medicaid and Medicare Meaningful Use incentive program.

(8) Reporting Exceptions

(a) A university or hospital that conducts research studies exempt from reporting AIDS and HIV infection under Section 26-6-3.5 shall seek written approval of reporting exemption from the Department institutional review board prior to the study commencement.

(b) The university or hospital shall submit the following to the HIV Epidemiologist within 30 days of Department institutional review board approval:

(i) A summary of the research protocol, including funding sources and justification for requiring anonymity; and

(ii) Written approval from the Department institutional review board.

(c) The university or hospital shall submit a report that includes all of the indicators specified in Subsection 26-6-3.5(4)(a) to the HIV Epidemiologist annually during an ongoing research study.

(d) The university or hospital shall submit a final report that includes all of the indicators specified in Subsection 26-6-3.5(4)(a) to the HIV Epidemiologist within 30 days of the conclusion of the research study.

(e) Documents can be submitted to the HIV Epidemiologist by fax at (801) 538-9923 or by mail to 288 North 1460 West Salt Lake City, Utah 84116.

#### **R386-702-4. Entities Required to Report.**

(1) Section 26-6-6 lists those entities required to report cases or suspect cases of the reportable events set forth in Section R386-702-3. This includes:

- (a) Health care providers, as defined in Section 78B-3-403;
- (b) Health care facilities, as defined in Section 78B-3-403;
- (c) Health care facilities operated by the federal government;
- (d) Mental health facilities, as defined in Section 62A-15-602;
- (e) Care facilities licensed through the Department of Human Services;
- (f) Nursing care facilities and assisted living facilities, as defined in Section 26-21-2;
- (g) Dispensaries;
- (h) Clinics;
- (i) Laboratories;
- (j) Schools, as defined in Section 26-6-2;
- (k) Childcare programs, as defined in Section 26-39-102;

and

(1) Any individual with a knowledge of others who have a communicable disease.

(2) In addition, the following entities are required to report cases or suspect cases of the reportable events set forth in Section R386-702-3:

- (a) Blood and plasma donation centers; and
- (b) Correctional facilities

(3) When more than one entity is involved in the processing of a clinical specimen (receiving, forwarding, or analyzing); or the

diagnosis, treatment, or care of a case or suspect case; all entities involved are required to report; even when diagnosis or testing is done outside of Utah.

(4) Health care entities may designate a single person or group of persons to report the events identified in Section R386-702-3 to public health on behalf of their health care providers or medical laboratories, as long as reporting complies with all requirements in this rule.

#### **R386-702-5. Mandatory Submission of Clinical Material.**

(1) Laboratories shall submit clinical material from all cases identified with organisms listed in Subsection R386-702-5(3) [below] to the Utah Department of Health, Utah Public Health Laboratory (UPHL) within three working days of identification.

- (a) Clinical material is defined as:

(i) A clinical isolate containing the organism for which submission of material is required; or

(ii) If an isolate is not available, material containing the organism for which submission of material is required, in the following order of preference:

- (A) a patient specimen,
- (B) nucleic acid, or
- (C) other laboratory material.

(2) Laboratories submitting clinical material from cases identified with organisms designated by UPHL as potential bioterrorism [~~BT~~]-agents shall first notify UPHL via telephone immediately.

(a) UPHL can be contacted during business hours at (801) 965-2400, or after hours at (801) 560-6586, of all bioterrorism[~~BT~~] agents that are being submitted.

(3) Organisms mandated for standard clinical submission include:

(a) Antibiotic resistant organisms from any clinical specimen that meet the following criteria:

(i) Resistant to a carbapenem, or with demonstrated carbapenemase, in:

- (A) Acinetobacter species,
- (B) Enterobacter species,
- (C) Escherichia coli, or
- (D) Klebsiella species,
- (E) Pseudomonas aeruginosa,

(ii) Resistant to vancomycin in:

(A) Staphylococcus aureus (VRSA);

(a)b) Campylobacter species;

(b)c) Candida auris or Candida haemulonii from any body site;

(d) Corynebacterium diphtheriae;

(e)e) Shiga toxin-producing Escherichia coli (STEC), including enrichment and/or MacConkey broths that tested positive by any method for Shiga toxin;

(f)d) Haemophilus influenzae, from normally sterile sites;

(g)e) Influenza A virus, unsubtypeable;

(h)f) Influenza virus (hospitalized cases only);

(i)g) Legionella species;

(j)h) Listeria monocytogenes;

(k)i) Measles (rubeola) virus;

(l)j) Mycobacterium tuberculosis complex;

(m)k) Neisseria meningitidis, from normally sterile sites;

(n)l) Salmonella species;

(o)m) Shigella species;[

(n) Staphylococcus aureus that is resistant or intermediate resistant to vancomycin;]

(p)o) Vibrio species;

(q)p) West Nile virus;

(r)q) Yersinia species;

(s)r) Zika virus; and

(t)s) Any organism implicated in an outbreak when instructed by authorized local or state health department personnel.

(4) Organisms mandated for bioterrorism[~~BT~~] clinical submission include:

- (a) Bacillus anthracis;
- (b) Brucella species;
- (c) Clostridium botulinum;

- (d) *Francisella tularensis*; and
- (e) *Yersinia pestis*.

(5) Submission of clinical material does not replace the requirement for laboratories to report the event to public health as defined in Sections R386-702-6 and R386-702-7.

(6) For additional information on this process, contact UPHL at (801) 965-2400.

**R386-702-6. Reporting Criteria.**

- (1) Manual Reporting
  - (a) Reporting Timeframes

(i) Entities shall report immediately reportable events by telephone as soon as possible, but no later than 24 hours after identification. Events designated as immediately reportable by the Department include cases and suspect cases of:

- (A) Anthrax or anthrax-like illness;
- (B) Botulism, excluding infant botulism;
- (C) Cholera;
- (D) Diphtheria;
- (E) *Haemophilus influenzae*, invasive disease;
- (F) Hepatitis A;
- (G) Influenza infection suspected or confirmed to be caused by a non-seasonal influenza strain;

- (H) Measles;
- (I) Meningococcal disease, invasive;
- (J) Middle East Respiratory Syndrome (MERS);
- (K) Plague;
- (L) Poliovirus, paralytic and nonparalytic;
- (M) Rabies, human and animal;
- (N) Rubella, excluding congenital syndrome;
- (O) Severe acute respiratory syndrome (SARS);
- (P) Smallpox;
- (Q) *Staphylococcus aureus* from any clinical specimen that is or intermediate resistant to vancomycin;

(R) Transmissible spongiform encephalopathies (prion diseases), including Creutzfeldt-Jakob disease;

- (S) Tuberculosis;
- (T) Tularemia;
- (U) Typhoid, cases and carriers;
- (V) Viral hemorrhagic fevers;
- (W) Yellow fever; or
- (X) Any event described in Subsections R386-702-3(4) or R386-702-3(5).

(ii) Entities shall report all events in Subsections R386-702-3(2) and through R386-702-3(6) not required to be reported immediately within three working days from the time of identification.

- (b) Methods for Reporting

(i) Entities reporting manually shall send reports to either a local health department or the Department by phone, secured fax, secured email, or mail.

(ii) Contact information for the Department is as follows:

- (A) Phone: (801) 538-6191 during business hours, or 888-EPI-UTAH (888-374-8824) after hours;
- (B) Secured fax: (801) 538-9923;
- (C) Secured email: [reporting@utah.gov](mailto:reporting@utah.gov) (contact the Department at (801) 538-6191 for information on this option); and
- (D) Mail: 288 North 1460 West Salt Lake City, Utah 84116.

(iii) A confidential morbidity report form is available at <http://health.utah.gov/epi/reporting/>.

(iv) The Department incorporates by reference version 2.0 of the Utah Reporting Specifications for Communicable Diseases, which identifies individual laboratory tests that shall be reported to the Department by manual reporting entities.

- (2) Electronic Reporting

- (a) Reporting Timeframes

(i) All entities that report electronically must report laboratory results within 24 hours of finalization.

(A) Entities can choose to report in real-time (as each report is released) or batch reports.

(B) Entities reporting electronically must report preliminary positive results for the immediately reportable events specified in Subsection R386-702-6(1)(a)(i).

- (b) Methods for Reporting

(i) All laboratories that identify cases or suspect cases shall report to the Department through electronic laboratory reporting. [strongly encourages hospitals and laboratories with the capacity to report events electronically to the Department,] in a manner approved by the Department. Reportable events shall be identified by automated computer algorithms.

(A) Laboratories may substitute electronic reporting if electronic laboratory reporting is not available, with permission from the Department, and in a manner approved by the Department.

(B) Hospitals reporting electronically shall use HL7 2.5.1 message structure, and standard LOINC and SNOMED terminology in accordance with Meaningful Use regulations.

(C) Laboratories reporting electronically shall use HL7 2.3.1 or 2.5.1 message structure, and appropriate LOINC codes designating the test performed.

(D) Entities reporting electronically shall submit all local vocabulary codes with translations to the Division of Disease Control and Prevention Informatics Program, if applicable.

(E) The Department incorporates by reference version 1.1 of the Utah Electronic Laboratory Reporting Specifications for Communicable Diseases, which identifies individual laboratory tests that shall be reported to the Department by electronic reporting entities.

(F) For additional information on this process, refer to <https://health.utah.gov/phaccess/public/elr/> or contact the Division of Disease Control and Prevention Informatics Program by phone (801-538-6191) or email ([elr@utah.gov](mailto:elr@utah.gov)).

(ii) Electronic case reporting is an authorized method of reporting to the Department. For additional information on this process, contact the Division of Disease Control and Prevention Informatics Program by phone (801-538-6191) or email ([elr@utah.gov](mailto:elr@utah.gov)).

(iii) Hospitals reporting electronically shall use HL7 2.5.1 message structure, and standard LOINC and SNOMED terminology in accordance with Meaningful Use regulations.

(iii) Laboratories reporting electronically shall use HL7 2.3.1 or 2.5.1 message structure, and appropriate LOINC codes designating the test performed.

(A) Laboratories reporting electronically shall submit all local vocabulary codes with translations to the Division of Disease Control and Prevention Informatics Program, if applicable.

- (3) Syndromic Reporting

- (a) Reporting Timeframes

(i) Entities reporting syndromes or conditions identified in Subsection R386-702-3([7]8) shall report as soon as practicable using a schedule approved by the Department.

(b) Methods for Reporting

(i) For information on reporting syndromic data, refer to <https://health.utah.gov/phaccess/public/SS/> or contact the Division of Disease Control and Prevention Informatics Program by phone (801-538-6191) or email ([elr@utah.gov](mailto:elr@utah.gov)).

**R386-702-7. Required Information.**

(1) Entities shall include as much of the following information as is known when reporting events specified in Subsections R386-702-3(2) through R386-702-3(6) to public health:

(a) Patient information:

(i) Full name;  
(ii) Date of birth;  
(iii) Address, including street address, city, state, and zip

code;

(iv) Telephone number;  
(v) Gender;  
(vi) Race and ethnicity;  
(vii) Date of onset;  
(viii) Hospitalization status and date of admission; and  
(ix) Pregnancy status and estimated due date.

(b) Diagnostic information:

(i) Name of the diagnostic facility;  
(ii) Address, including street address, city, state, and zip code; of the diagnostic facility;

(iii) Telephone number of the diagnostic facility;

(iv) Full name of the ordering or diagnosing health care provider;

(v) Address, including street address, city, state, and zip code; of the ordering or diagnosing health care provider; and

(vi) Telephone number of the ordering or diagnosing health care provider.

(c) Reporter information:

(i) Full name of the person reporting;  
(ii) Name of the facility reporting; and  
(iii) Telephone number of the person or facility reporting.

(d) Laboratory testing information:

(i) Name of the laboratory performing the test;  
(ii) The laboratory's name for, or description of, the test;  
(iii) Specimen source;  
(iv) Specimen collection date;  
(v) Testing results;  
(vi) Test reference range; and  
(vii) Test status (e.g. preliminary, final, amended and/or

corrected).

(2) Entities shall submit reports that are clearly legible and do not contain any internal codes or abbreviations to the Department.

(3) Entities ordering a laboratory test identified in the Utah Electronic Laboratory Reporting Specifications for Communicable Diseases shall provide the performing laboratory with the patient's address, so that the performing laboratory can report results to the appropriate public health agency.

(a) If the patient's address is not known by the ordering entity, the ordering entity shall provide the performing laboratory with the name and address of the diagnostic facility.

(4) Entities shall reference <http://health.utah.gov/epi/reporting>, or contacting the Department at (801) 538-6191, for additional reporting specifications, including technical documents, reporting forms, and protocols.

(5[4]) Full reporting of all relevant patient information is authorized when reporting events listed in Subsection R386-702-3([7]8) to public health.

(a) Entities shall include in reports at least the following information, if known:

(i) Name of the facility;  
(ii) A patient identifier;  
(iii) Date of visit;  
(iv) Time of visit;  
(v) Patient's age;  
(vi) Patient's gender;  
(vii) Zip code of patient's residence;  
(viii) Chief complaint(s), reason for visit, and/or diagnosis;

and

(ix) Whether the patient was admitted to the hospital.

**R386-702-8. Confidentiality of Reports.**

(1) All reports required by this rule are confidential and are not open to public inspection. All information collected pursuant to this rule shall not be released or made public, except as provided by Section 26-6-27. Penalties for violation of confidentiality are prescribed in Section 26-6-29.

(2) Nothing in this rule precludes the discussion of case information with an attending clinician or public health workers.

(3) Good Samaritans

(a) The Department or local health department shall disclose communicable disease-related information regarding the person who was assisted to the medical provider of a Good Samaritan when that medical provider submits a request to the Department or local health department. The request must include:

(i) Information regarding the occurrence of the accident, fire, or other life-threatening emergency;

(ii) A description of the exposure risk to the Good Samaritan; and

(iii) Contact information for the Good Samaritan and their medical provider.

(b) The Department or local health department will ensure that the disclosed information:

(i) Includes enough detail to allow for appropriate education and follow-up to the Good Samaritan; and

(ii) Ensures confidentiality is maintained for the person who was aided.

(c) No identifying information will be shared with the Good Samaritan or their medical provider regarding the person who was assisted. The Good Samaritan shall receive written information warning them that information regarding the person who was assisted is protected by state law.

**R386-702-9. Non-Compliance with Reporting Regulations.**

(1) Any person who violates any provision of Section R386-702 may be assessed a penalty as provided in Section 26-23-6.

(a) Willful non-compliance may result in the Department working with other agencies to incur penalties which may include loss of accreditation or licensure.

(2) Records maintained by reporting entities are subject to review by Department personnel to assure the completeness and accuracy of reporting.

(3) If public health conducts a surveillance project, such as assessing the completeness of case finding or assessing another measure of data quality, the Department may, at its discretion, waive any penalties for participating entities if cases are found that were not originally reported for whatever reason.

**R386-702-10. Information Necessary for Public Health Investigation and Surveillance.**

(1) Reporting entities shall provide the Department or local health department with any records or other materials requested by public health that are necessary to conduct a thorough investigation.

(a) This includes, but is not limited to, medical records, additional laboratory testing results, treatment and vaccination history, clinical material, or contact information for cases, suspect cases, or persons potentially exposed.

(b) The Department or local health department shall be granted on-site access to a facility, when such access is critical to a public health investigation.

**R386-702-11. General Measures for the Control of Communicable Diseases.**

(1) The local health department shall maintain all reportable disease records as needed to enforce Chapter 6 of the Health Code and this rule, or as requested by the Utah Department of Health.

(2) General Control Measures for Reportable Diseases.

(a) The local health department shall, when an unusual or rare disease occurs in any part of the state or when any disease becomes so prevalent as to endanger the state as a whole, contact the Bureau of Epidemiology, Utah Department of Health for assistance, and shall cooperate with the representatives of the Utah Department of Health.

(b) The local health department shall investigate and control the causes of epidemic, infectious, communicable, and other disease affecting the public health. The local health department shall also provide for the detection, reporting, prevention, and control of communicable, infectious, and acute diseases that are dangerous or important or that may affect the public health. The local health department may require physical examination and measures to be performed as necessary to protect the health of others.

(c) If, in the opinion of the local health officer it is necessary or advisable to protect the public's health that any person shall be kept from contact with the public, the local health officer shall establish, maintain and enforce involuntary treatment, isolation and quarantine as provided by Section 26-6-4. Control measures shall be specific to the known or suspected disease agent. Guidance is available from the Bureau of Epidemiology, Utah Department of Health or official reference listed in R386-702-18[2].

(3) Prevention of the Spread of Disease From a Case.

The local health department shall take action and measures as may be necessary within the provisions of Section 26-6-4; Title 26, Chapter 6b; and this rule, to prevent the spread of any communicable disease, infectious agent, or any other condition which poses a public health hazard. Action shall be initiated upon discovery of a case or upon receipt of notification or report of any disease.

(4) Prevention of the Spread of Disease or Other Public Health Hazard.

A case, suspected case, carrier, contact, other person, or entity (e.g. facility, hotel, organization) shall, upon request of a public health authority, promptly cooperate during:

(a) An investigation of the circumstances or cause of a case, suspected case, outbreak, or suspected outbreak.

(b) The carrying out of measures for prevention, suppression, and control of a public health hazard, including, but not limited to, procedures of restriction, isolation, and quarantine.

(5) Public Food Handlers.

A person known to be infected with a communicable disease that can be transmitted by food or drink products, or who is suspected of being infected with such a disease, may not engage in the commercial handling of food or drink products, or be employed on any premises handling those types of products, unless those products are packaged off-site and remain in a closed container until purchased for consumption, until the person is determined by the local health department to be free of communicable disease, or incapable of transmitting the infection.

(6) Communicable Diseases in Places Where Food or Drink Products are Handled or Processed.

If a case, carrier, or suspected case of a disease that can be conveyed by food or drink products is found at any place where food or drink products are handled or offered for sale, or if a disease is found or suspected to have been transmitted by these food or drink products, the local health department may immediately prohibit the sale, or removal of drink and all other food products from the premises. Sale or distribution of food or drink products from the premises may be resumed when measures have been taken to eliminate the threat to health from the product and its processing as prescribed by R392-100.

(7) Request for State Assistance.

If a local health department finds it is not able to completely comply with this rule, the local health officer or his representative shall request the assistance of the Utah Department of Health. In such circumstances, the local health department shall provide all required information to the Bureau of Epidemiology. If the local health officer fails to comply with the provisions of this rule, the Utah Department of Health shall take action necessary to enforce this rule.

(8) Approved Laboratories.

Laboratory analyses that are necessary to identify the causative agents of reportable diseases or to determine adequacy of treatment of patients with a disease shall be ordered by the physician or other health care provider to be performed in or referred to a laboratory holding a valid certificate under the Clinical Laboratory Improvement Amendments of 1988.

**R386-702-12. Special Measures for Control of Rabies.**

(1) Rationale of Treatment.

A physician must evaluate individually each exposure to possible rabies infection. The physician shall also consult with local or state public health officials if questions arise about the need for rabies prophylaxis.

(2) Management of Biting Animals.

(a) A healthy dog, cat, or ferret that bites a person shall be confined and observed at least daily for ten days from the date of bite, regardless of vaccination status, as specified by local animal control ordinances. It is recommended that rabies vaccine not be administered during the observation period. Such animals shall be evaluated by a veterinarian at the first sign of illness during confinement. A

veterinarian or animal control officer shall immediately report any illness in the animal to the local health department. If signs suggestive of rabies develop, a veterinarian or animal control officer shall direct that the animal be euthanized, its head removed, and the head shipped under refrigeration, not frozen, for examination of the brain by a laboratory approved by the Utah Department of Health.

(b) If the dog, cat, or ferret shows no signs of rabies or illness during the ten day period, the veterinarian or animal control officer shall direct that the unvaccinated animal be vaccinated against rabies at the owner's expense before release to the owner. If a veterinarian is not available, the animal may be released, but the owner shall have the animal vaccinated within 72 hours of release. If the dog, cat, or ferret was appropriately vaccinated against rabies before the incident, the animal may be released from confinement after the 10-day observation period with no further restrictions.

(c) Any stray or unwanted dog, cat, or ferret that bites a person may be euthanized immediately by a veterinarian or animal control officer, if permitted by local ordinance, and the head submitted, as described in R386-702-[6]12(2)(a), for rabies examination. If the brain is negative by fluorescent-antibody examination for rabies, one can assume that the saliva contained no virus, and the person bitten need not be treated.

(d) Wild animals include raccoons, skunks, coyotes, foxes, bats, the offspring of wild animals crossbred to domestic dogs and cats, and any carnivorous animal other than a domestic dog, cat, or ferret.

(e) Signs of rabies in wild animals cannot be interpreted reliably. If a wild animal bites or scratches a person, the person or attending medical personnel shall notify an animal control or law enforcement officer. A veterinarian, animal control officer or representative of the Division of Wildlife Resources shall kill the animal at once, without unnecessary damage to the head, and submit the brain, as described in R386-702-[6]12(2)(a), for examination for evidence of rabies. If the brain is negative by fluorescent-antibody examination for rabies, one can assume that the saliva contained no virus, and the person bitten need not be treated.

(f) Rabbits, opossums, squirrels, chipmunks, rats, and mice are rarely infected and their bites rarely, if ever, call for rabies prophylaxis or testing. Unusual exposures to any animal should be reported to the local health department or the Bureau of Epidemiology, Utah Department of Health.

(g) When rare, valuable, captive wild animals maintained in zoological parks approved by the United States Department of Agriculture or research institutions, as defined by Section 26-26-1, bite or scratch a human, the Bureau of Epidemiology, Utah Department of Health shall be notified. The provisions of subsection R386-702-[6]12(2)(e) may be waived by the Bureau of Epidemiology, Utah Department of Health if zoological park operators or research institution managers can demonstrate that the following rabies control measures are established:

(i) Employees who work with the animal have received preexposure rabies immunization.

(ii) The person bitten by the animal voluntarily agrees to accept postexposure rabies immunization provided by the zoological park or research facility.

(iii) The director of the zoological park or research facility shall direct that the biting animal be held in complete quarantine for a minimum of four months for dogs and cats, and six months for ferrets. Quarantine requires that the animal be prohibited from direct contact with other animals or humans.

(h) Any animal bitten or scratched by a wild, carnivorous animal or a bat that is not available for testing shall be regarded as having been exposed to rabies. The animal shall be placed in a strict quarantine for four months for dogs and cats, or six months for ferrets.

(i) For maximum protection of the public health, unvaccinated dogs, cats, and ferrets bitten or scratched by a confirmed or suspected rabid animal shall be euthanized immediately by a veterinarian or animal control officer. If the owner is unwilling to have the animal euthanized, the local health officer shall order that the animal be held in strict isolation in a municipal or county animal shelter or a veterinary medical facility approved by the local health department, at the owner's expense, for at least four months for dogs and cats, and six months for ferrets. The animal shall be vaccinated one month before being released. If any illness suggestive of rabies develops in the animal, the veterinarian or animal control officer shall immediately report the illness to the local health department and the veterinarian or animal control officer shall direct that the animal be euthanized and the head shall be handled as described in subsection R386-702-[6]12(2)(a).

(j) Dogs, cats, and ferrets that are currently vaccinated and are bitten by rabid animals, shall be revaccinated immediately by a veterinarian and confined and observed by the animal's owner for 45 days. If any illness suggestive of rabies develops in the animal, the owner shall report immediately to the local health department and the animal shall be euthanized by a veterinarian or animal control officer and the head shall be handled as described in subsection R386-702-[6]12(2)(a).

(k) Livestock exposed to a rabid animal and currently vaccinated with a vaccine approved by the United States Department of Agriculture for that species shall be revaccinated immediately by a veterinarian and observed by the owner for 45 days. Unvaccinated livestock shall be slaughtered immediately. If the owner is unwilling to have the animal slaughtered, the animal shall be kept under close observation by the owner for six months.

(l) Unvaccinated animals other than dogs, cats, ferrets, and livestock bitten by a confirmed or suspected rabid animal shall be euthanized immediately by a veterinarian or animal control officer.

(3) Testing Fees at Utah Public Health Laboratory (UPHL).

(a) Animals being submitted to UPHL for rabies testing must follow criteria defined in The Compendium of Animal Rabies Prevention and Control to be eligible for testing without a fee. Testing of animals that fit this criteria will be eligible for a waived fee for testing. Testing of animals that do not meet this criteria will incur a testing fee as set forth by UPHL.

(b) The following situations will not incur a rabies testing fee if testing is ordered for them through UPHL:

(i) Any bat in an instance where a person or animal has had an exposure, or reasonable probability of exposure, including, but not limited to: known bat bites, exposure to bat saliva, a bat found in a room with a sleeping person or unattended child, or a bat found near a child or mentally impaired or intoxicated person.

(ii) Dogs, cats, or ferrets, regardless of rabies vaccination status, if signs suggestive of rabies are documented in them.

(iii) Wild mammals and hybrids that expose persons, pets, or livestock (e.g., skunks, foxes, coyotes, and raccoons) may be tested.

(iv) Livestock may be tested if signs suggestive of rabies are documented.



(v) UDOH Bureau of Epidemiology staff are available to discuss additional situations that may warrant testing at (801) 538-6191.

(c) The following situations will incur a \$95 testing fee if testing is ordered for them through UPHL:

(i) Any stray with unknown or undocumented vaccination history that exposes a person, if signs suggestive of rabies are not documented, or if the animal has not been confined and observed for at least 10 days.

(ii) Dogs, cats, and ferrets: currently vaccinated animals that expose a person, if signs suggestive of rabies are not documented, or animals have not been confined and observed for at least 10 days.

(iii) Regardless of rabies vaccination status, a healthy dog, cat, or ferret that has not exposed a person.

(iv) Small rodents (e.g., rats, mice, squirrels, chipmunks, voles, or moles) and lagomorphs (rabbits and hares).

(v) Incomplete paperwork accompanying the sample will also result in a fee for testing; a thorough description of the situation must be included with each sample submission.

(vi) UDOH Bureau of Epidemiology staff are available to discuss additional situations that may not warrant testing at (801) 538-6191.

(d) If the submitting party feels they are charged inappropriately for rabies testing, they may send a letter describing the situation and requesting a waiver for fees to the: Utah Department of Health, Bureau of Epidemiology, P.O. Box 142104, Salt Lake City, UT 84114, attention: Zoonotic Diseases Epidemiologist. Information may be submitted electronically via email to: [epi@utah.gov](mailto:epi@utah.gov), with a note in the subject line "Attention: Zoonotic Diseases Epidemiologist".

(i) The submitting party has 30 days from receipt of the testing fee invoice to file an appeal. The letter must include copies of the original paperwork that was submitted, and a copy of the invoice received, for a waiver to be considered.

(ii) UDOH and UPHL have 30 days to review information after receipt of an appeal request to make an official decision and notify the submitter.

(iii) UDOH Bureau of Epidemiology staff are available to discuss questions about testing fees and the appeal process at (801) 538-6191.

(4) Measures for Standardized Rabies Control Practices.

(a) Humans requiring either pre- or post-exposure rabies prophylaxis shall be treated in accordance with the recommendations of the U.S. Public Health Service Immunization Practices Advisory Committee, as adopted and incorporated by reference in R386-702-18[2](2). A copy of the recommendations shall be made available to licensed medical personnel, upon request to the Bureau of Epidemiology, Utah Department of Health.

(b) A physician or other health care provider that administers rabies vaccine shall immediately report all serious systemic neuroparalytic or anaphylactic reactions to rabies vaccine ~~through the Vaccine Adverse Event Reporting System (VAERS) to the Bureau of Epidemiology, Utah Department of Health, using the process described in R386-702-4].~~

(c) The Compendium of Animal Rabies Prevention and Control, as adopted and incorporated by reference in R386-702-18[2] (5[3]), is the reference document for animal vaccine use.

(d) A county, city, town, or other political subdivision that requires licensure of animals shall also require rabies vaccination as a prerequisite to obtaining a license.

(e) Animal rabies vaccinations are valid only if performed by or under the direction of a licensed veterinarian in accordance with the Compendium of Animal Rabies Prevention and Control.

(f) All agencies and veterinarians administering vaccine shall document each vaccination on the National Association of State Public Health Veterinarians (NASPHV) form number 51, Rabies Vaccination Certificate, which can be obtained from vaccine manufacturers. The agency or veterinarian shall provide a copy of the report to the animal's owner. Computer-generated forms containing the same information are also acceptable.

(g) Animal rabies vaccines may be sold or otherwise provided only to licensed veterinarians or veterinary biologic supply firms. Animal rabies vaccine may be purchased by the Utah Department of Health and the Utah Department of Agriculture.

(5) Measures to Prevent or Control Rabies Outbreaks.

(a) The most important single factor in preventing human rabies is the maintenance of high levels of immunity in the pet dog, cat, and ferret populations through vaccination.

(i) All dogs, cats, and ferrets in Utah should be immunized against rabies by a licensed veterinarian; and

(ii) Local governments should establish effective programs to ensure vaccination of all dogs, cats, and ferrets and to remove strays and unwanted animals.

(b) If the Utah Department of Health determines that a rabies outbreak is present in an area of the state, the Utah Department of Health may require that:

(i) all dogs, cats, and ferrets in that area and adjacent areas be vaccinated or revaccinated against rabies as appropriate for each animal's age;

(ii) any such animal be kept under the control of its owner at all times until the Utah Department of Health declares the outbreak to be resolved;

(iii) an owner who does not have an animal vaccinated or revaccinated surrender the animal for confinement and possible destruction; and

(iv) such animals found at-large be confined and possibly destroyed.

#### **R386-702-13. Special Measures for Control of Typhoid.**

(1) Because typhoid control measures depend largely on sanitary precautions and other health measures designed to protect the public, the local health department shall investigate each case of typhoid and strictly manage the infected individual according to the following outline:

(2) Cases: Standard precautions are required during hospitalization. Use contact precautions for diapered or incontinent patients for the duration of illness. Hospital care is desirable during acute illness. Release of the patient from supervision by the local health department shall be based on three or more negative cultures of feces (and of urine in patients with schistosomiasis) taken at least 24 hours apart. Cultures must have been taken at least 48 hours after antibiotic therapy has ended and not earlier than one month after onset of illness as specified in R386-702-[7]13(6). If any of these cultures is positive, repeat cultures at intervals of one month during the 12-month period following onset until at least three consecutive negative cultures are obtained as specified in R386-702-[7]13(6). The patient shall be restricted from food handling, child care, and from providing patient care during the period of supervision by the local health department.

(3) **Contacts:** Administration of typhoid vaccine is recommended for all household members of known typhoid carriers. Household and close contacts of a carrier shall be restricted from food handling, child care, and patient care until two consecutive negative stool specimens, taken at least 24 hours apart, are submitted, or when approval is granted by the local health officer according to local jurisdiction.

(4) **Carriers:** If a laboratory or physician identifies a carrier of typhoid, the attending physician shall immediately report the details of the case by telephone to the local health department or the Bureau of Epidemiology, Utah Department of Health using the process described in R386-702-[4]6. Each infected individual shall submit to the supervision of the local health department. Carriers are prohibited from food handling, child care, and patient care until released in accordance with R386-702-[7]13(4)(a) or R386-702-[7]13(4)(b). All reports and orders of supervision shall be kept confidential and may be released only as allowed by Subsection 26-6-27(2)(c).

(a) **Convalescent Carriers:** Any person who harbors typhoid bacilli for three but less than 12 months after onset is defined as a convalescent carrier. Release from occupational and food handling restrictions may be granted at any time from three to 12 months after onset, as specified in R386-702-[7]13(6).

(b) **Chronic Carriers:** Any person who continues to excrete typhoid bacilli for more than 12 months after onset of typhoid is a chronic carrier. Any person who gives no history of having had typhoid or who had the disease more than one year previously, and whose feces or urine are found to contain typhoid bacilli is also a chronic carrier.

(c) **Other Carriers:** If typhoid bacilli are isolated from surgically removed tissues, organs, including the gallbladder or kidney, or from draining lesions such as osteomyelitis, the attending physician shall report the case to the local health department or the Bureau of Epidemiology, Utah Department of Health. If the person continues to excrete typhoid bacilli for more than 12 months, he is a chronic carrier and may be released after satisfying the criteria for chronic carriers in R386-702-[7]13(6).

(5) **Carrier Restrictions and Supervision:** The local health department shall report all typhoid carriers to the Bureau of Epidemiology, and shall:

- (a) Require the necessary laboratory tests for release;
- (b) Issue written instructions to the carrier;
- (c) Supervise the carrier.

(6) **Requirements for Release of Convalescent and Chronic Carriers:** The local health officer or his representative may release a convalescent or chronic carrier from occupational and food handling restrictions only if at least one of the following conditions is satisfied:

(a) For carriers without schistosomiasis, three consecutive negative cultures obtained from fecal specimens authenticated by the attending physician, hospital personnel, laboratory personnel, or local health department staff taken at least one month apart and at least 48 hours after antibiotic therapy has stopped;

(b) for carriers with schistosomiasis, three consecutive negative cultures obtained from both fecal and urine specimens authenticated by the attending physician, hospital personnel, laboratory personnel, or local health department staff taken at least one month apart and at least 48 hours after antibiotic therapy has stopped;

(c) the local health officer or his representative determine that additional treatment such as cholecystectomy or nephrectomy has terminated the carrier state; or

(d) the local health officer or his representative determines the carrier no longer presents a risk to public health according to the evaluation of other factors.

#### **R386-702-14. Special Measures for the Control of Ophthalmia Neonatorum.**

Every physician or midwife practicing obstetrics or midwifery shall, within three hours of the birth of a child, instill or cause to be instilled in each eye of such newborn one percent silver nitrate solution contained in wax ampules, or tetracycline ophthalmic preparations or erythromycin ophthalmic preparations, as these are the only antibiotics of currently proven efficacy in preventing development of ophthalmia neonatorum. The value of irrigation of the eyes with normal saline or distilled water is unknown and not recommended.

#### **R386-702-15. Special Measures for the Control of HIV/AIDS.**

(1) **Partner identification and notification:**

(a) If an individual is tested and found to have an HIV infection, the Department and/or local health department shall provide partner services, linkage-to-care activities, and promote retention to HIV care.

(2) **Definitions:**

(a) "Partner" is defined as any individual, including a spouse, who has shared needles, syringes, or drug paraphernalia or who has had sexual contact with an HIV infected individual.

(b) "Spouse" is defined as any individual who is the marriage partner of that person at any time within the ten-year period prior to the diagnosis of HIV infection.

(c) "Linkage to care" is defined by a reported CD4+ T-Lymphocyte test and/or HIV viral load determination within three months of HIV positive diagnosis.

(d) "Retention to care" is defined by a reported CD4+ T-Lymphocyte test or HIV viral load determination ~~twice~~ once within a 12-month period ~~and at least three months apart~~.

(3) **Partner services include:**

(a) Confidential partner notification within 30 days of receiving a positive HIV result or when relevant additional information is found to aide in an investigation or case management;

(b) Prevention counseling;

(c) Testing for HIV;

(d) Providing recommendations for testing for other sexually transmitted diseases;

(e) Providing recommendations for hepatitis screening and vaccination;

(f) Treatment or linkage to medical care on an ongoing basis, as needed ~~within three months of HIV diagnosis~~; and

(g) Linkage or referral to other prevention services and support.

(4) **Re-engagement to care includes:**

(a) Linkage to medical care, on an ongoing basis, as needed;

(b) Linkage or referral to other prevention services and support;

(c) Confidential partner notification, as needed;

(d) Prevention counseling;

(e) Providing recommendations for testing for other sexually transmitted diseases;

(f) Providing recommendations for hepatitis screening and vaccination;

(g) Medication adherence counseling; and

(h) Risk reduction counseling.**R386-702-16. Special Measures to Prevent Perinatal and Person-to-Person Transmission of Hepatitis B Infection.**

(1) A licensed healthcare provider who provides prenatal care shall routinely test each pregnant woman for hepatitis B surface antigen (HBsAg) at an early prenatal care visit. The provisions of this section do not apply if the pregnant woman, after being informed of the possible consequences, objects to the test on the basis of religious or personal beliefs.

(2) The licensed healthcare provider who provides prenatal care shall repeat the HBsAg test during late pregnancy for those women who tested negative for HBsAg during early pregnancy, but who are at high risk based on:

- (a) evidence of clinical hepatitis during pregnancy;
- (b) injection drug use;
- (c) occurrence during pregnancy or a history of a sexually transmitted disease;
- (d) occurrence of hepatitis B in a household or close family contact; or
- (e) the judgment of the healthcare provider.

(3) In addition to other reporting required by this rule, each positive HBsAg result detected in a pregnant woman shall be reported to the local health department or the Department, as specified in Section 26-6-6. That report shall indicate that the woman was pregnant at time of testing if that information is available to the reporting entity.

(4) A licensed healthcare provider who provides prenatal care shall document a woman's HBsAg test results, or the basis of the objection to the test, in the medical record for that patient.

(5) Every hospital and birthing facility shall develop a policy to assure that:

(a) when a pregnant woman is admitted for delivery, or for monitoring of pregnancy status, the result from a test for HBsAg performed on that woman during that pregnancy is available for review and documented in the hospital record;

(b) when a pregnant woman is admitted for delivery, if the woman's test result is not available to the hospital or birthing facility, the mother is tested for HBsAg as soon as possible, but before discharge from the hospital or birthing facility;

(c) if a pregnant woman who has not had prenatal care during that pregnancy is admitted for monitoring of pregnancy status only, and if the woman's test result is not available to the hospital or birthing facility, the mother is tested for HBsAg status before discharge from the hospital or birthing facility;

(d) positive HBsAg results identified by testing performed or documented during the hospital stay are reported as specified in this rule;

(e) infants born to HBsAg positive mothers receive hepatitis B immune globulin (HBIG) and hepatitis B vaccine, administered at separate injection sites, within 12 hours of birth;

(f) infants born to mothers whose HBsAg status is unknown receive hepatitis B vaccine within 12 hours of birth, and if the infant is born preterm with birth weight less than 2,000 grams, that infant also receives HBIG within 12 hours; and

(g) if at the time of birth the mother's HBsAg status is unknown and the HBsAg test result is later determined to be positive, that infant receives HBIG as soon as possible but within 7 days of birth.

(h) hepatitis B immune globulin (HBIG) administration and birth dose hepatitis B vaccine status of infants born to mothers who are HBsAg-positive are reported within 24 hours of delivery to the local health department and Utah Department of Health Immunization Program at (801) 538-9450.

(6) Local health departments shall perform the following activities or assure that they are performed:

(a) All females between the ages of 12 and 50 years at the time an HBsAg positive test result is reported will be screened for pregnancy status within one week of receipt of that lab result.

(b) Infants born to HBsAg positive mothers complete the hepatitis B vaccine series as specified in the most current version of "The Red Book" as cited in R386-702-13 (4).

(c) Children born to HBsAg positive mothers are tested for HBsAg and antibody against hepatitis B surface antigen (anti-HBs) at 9 to 12 months of age (testing is done at least one month after the final dose of hepatitis B vaccine series is administered, and no earlier than 9 months of age) to monitor the success of therapy and identify cases of perinatal hepatitis B infection.

(i) Children who test negative for HBsAg and do not demonstrate serological evidence of immunity against hepatitis B when tested as described in (c) receive three additional vaccine doses and are retested as specified in the most current version of "The Red Book" as cited in R386-702-1[3]8 (4).

(d) HBsAg positive mothers are advised regarding how to reduce their risk of transmitting hepatitis B to others.

(e) Household members and sex partners of HBsAg positive mothers are evaluated to determine susceptibility to hepatitis B infection and if determined to be susceptible, are offered or advised to obtain vaccination against hepatitis B.

(i) All identified acute hepatitis B cases shall be investigated by the local health department, and identified household and sexual contacts shall be advised to obtain vaccination against hepatitis B.

(7) The provisions of subsections (5) and (6) do not apply if the pregnant woman or the child's guardian, after being informed of the possible consequences, objects to any of the required procedures on the basis of religious or moral beliefs. The hospital or birthing facility shall document the basis of the objection.

(8) Prevention of transmission by individuals with chronic hepatitis B infection.

(a) The Department defines a chronic hepatitis B case as a person that is HBsAg positive, total antibody against hepatitis B core antigen (anti-HBc) positive (if performed) and IgM anti-HBc negative.

(b) An individual with chronic hepatitis B infection shall be advised regarding how to reduce the risk that the individual will transmit hepatitis B to others.

(c) Household members and sex partners of individuals with chronic hepatitis B infection shall be evaluated to determine susceptibility to hepatitis B infection, and if determined to be susceptible, shall be offered or advised to obtain vaccination against Hepatitis B.

**R386-702-17. Public Health Emergency.**

(1) Declaration of Emergency: With the Governor's and Executive Director's or in the absence of the Executive Director, his designee's, concurrence, the Department or a local health department may declare a public health emergency by issuing an order mandating reporting emergency illnesses or health conditions specified in sections R386-702-3 for a reasonable time.

(2) For purposes of an order issued under this section and for the duration of the public health emergency, the following definitions apply.

(a) "emergency center" means:

(i) a health care facility licensed under the provisions of Chapter 26-21 that operates an emergency department; or

(ii) a clinic that provides emergency or urgent health care to an average of 20 or more persons daily.

(b) "encounter" means an instance of an individual presenting at the emergency center who satisfies the criteria in section R386-702-3(2); and

(c) "diagnostic information" means an emergency center's records of individuals who present for emergency or urgent treatment, including the reason for the visit, chief complaint, results of diagnostic tests, presenting diagnosis, and final diagnosis, including diagnostic codes.

(3) Reporting Encounters: The Department shall designate the fewest number of emergency centers as is practicable to obtain the necessary data to respond to the emergency.

(a) Designated emergency centers shall report using the process described in R386-702-[4]6.

(b) An emergency center designated by the Department shall report the encounters to the Department by:

(i) allowing Department representatives or agents, including local health department representatives, to review its diagnostic information to identify encounters during the previous day; or

(ii) reviewing its diagnostic information on encounters during the previous day and reporting all encounters by 9:00 a.m. the following day, or

(iii) identifying encounters and submitting that information electronically to the Department, using a computerized analysis method, and reporting mechanism and schedule approved by the Department; or

(iv) by other arrangement approved by the Department.

(4) For purposes of epidemiological and statistical analysis, the emergency center shall report on encounters during the public health emergency that do not meet the definition for a reportable emergency illness or health condition. The report shall be made using the process described in R386-702-[4]6 and shall include the following information for each such encounter:

(a) facility name;

(b) date of visit;

(c) time of visit;

(d) patient's age;

(e) patient's sex;

(f) patient's zip code for patient's residence.

(5) If either the Department or a local health department collects identifying health information on an individual who is the subject of a report made mandatory under this section, it shall destroy that identifying information upon the earlier of its determination that the information is no longer necessary to carry out an investigation under this section or 180 days after the information was collected. However, the Department and local health departments shall retain identifiable information gathered under other sections of this rule or other legal authority.

(6) Reporting on encounters during the public health emergency does not relieve a reporting entity of its responsibility to report under other sections of this rule or other legal authority.

#### **R386-702-18. Official References.**

All treatment and management of individuals and animals who have or are suspected of having a communicable or infectious disease that must be reported pursuant to this rule shall comply with the following documents, which are adopted and incorporated by reference:

(1) American Public Health Association. "Control of Communicable Diseases Manual". 20th ed., Heymann, David L., editor, 2015.

(2) Centers for Disease Control and Prevention. "Human Rabies Prevention--United States, 2008: Recommendations of the Advisory Committee on Immunization Practices." Morbidity and Mortality Weekly Report. 57 (RR03) (2008):1-26, 28.

(3) National Association of State Public Health Veterinarians Committee. "Compendium of Animal Rabies Prevention and Control, 2016." Naspvh.org. National Association of State Public Health Veterinarians, 18 October 2016. Web. <http://naspvh.org/Documents/NASPHVRabiesCompendium.pdf>

(4) American Academy of Pediatrics. "Red Book: 201[2]5 Report of the Committee on Infectious Diseases" 30th Edition. Elk Grove Village, IL, American Academy of Pediatrics; 2015.

(5) National Association of State Public Health Veterinarians Animal Contact Compendium Committee 2013. "Compendium of Measures to Prevent Disease Associated with Animals in Public Settings, 2013." Journal of the American Veterinary Medicine Association 243 (2013): 1270-288.

**KEY: communicable diseases, quarantines, rabies, rules and procedures**

**Date of Enactment or Last Substantive Amendment: [January 27], 2017**

**Notice of Continuation: April 15, 2016**

**Authorizing, and Implemented or Interpreted Law: 26-1-30; 26-6-3; 26-23b**

## Health, Family Health and Preparedness, Children with Special Health Care Needs **R398-1** Newborn Screening

### NOTICE OF PROPOSED RULE

(Repeal)

DAR FILE NO.: 42279

FILED: 11/01/2017

### RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Rule R398-1 is being repealed. The oversight for this rule will be with The Division of Disease Control and Prevention (DCP). There will be a new Rule R438-15, New Born Screening, enacted. (EDITOR'S NOTE: The proposed new Rule R438-15 is under Filing No. 42282 in this issue, November 15, 2017, of the Bulletin.)

**SUMMARY OF THE RULE OR CHANGE:** The purpose of this rule change is to repeal in its entirety the existing Rule R398-1. The rule oversight for this rule is being changed to the Division of Disease Control and Prevention. With the move to the Division of Disease Control and Prevention, there will be additional language included to define the New Born Screening Advisory Committee membership and function. There will also be additional screening included, specifically Spinal Muscular Atrophy. The purpose of this rule is to facilitate early detection, prompt referral, early treatment, and prevention of disability and mental retardation in infants with certain genetic and endocrine disorders.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 26-1-6 and Section 26-10-6 and Subsection 23-1-30(2)(a) and Subsection 23-1-30(2)(b) and Subsection 23-1-30(2)(c)

**ANTICIPATED COST OR SAVINGS TO:**

- ◆ **THE STATE BUDGET:** There are no anticipated cost or savings to the state budget associated with changing the oversight of this rule.
- ◆ **LOCAL GOVERNMENTS:** There are no anticipated cost or savings to local governments associated with changing the oversight of this rule.
- ◆ **SMALL BUSINESSES:** There are no anticipated cost or savings to small businesses associated with changing the oversight of this rule.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There are no anticipated cost or savings associated with changing the oversight of this rule.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** There are no anticipated cost or savings associated with changing the oversight of this rule.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** There is no fiscal impact associated with the repeal of this rule since the rule will be implemented by DCP. The new DCP rule will have some additional anticipated costs addressed under the submission of Rule R438-15.

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

HEALTH  
FAMILY HEALTH AND PREPAREDNESS,  
CHILDREN WITH SPECIAL HEALTH CARE NEEDS  
44 N MARIO CAPECCHI DR  
SALT LAKE CITY, UT 84113  
or at the Office of Administrative Rules.

**DIRECT QUESTIONS REGARDING THIS RULE TO:**

- ◆ Joyce McStotts by phone at 801-584-8239, by FAX at 801-584-8488, or by Internet E-mail at [jmcstotts@utah.gov](mailto:jmcstotts@utah.gov)

**INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 12/15/2017**

**THIS RULE MAY BECOME EFFECTIVE ON: 12/22/2017**

**AUTHORIZED BY: Joseph Miner, MD, Executive Director**

**R398. Health, Family Health and Preparedness, Children with Special Health Care Needs.**

**[R398-1. Newborn Screening-**

**R398-1-1. Purpose and Authority.**

(1) ~~The purpose of this rule is to facilitate early detection; prompt referral, early treatment, and prevention of disability and mental retardation in infants with certain genetic and endocrine disorders.~~

(2) ~~Authority for the Newborn Screening program and promulgation of rules to implement the program are found in Sections 26-1-30(2)(a), (b), (c), (d), and (g) and 26-10-6.~~

**R398-1-2. Definitions.**

(1) ~~"Abnormal test result" means a result that is outside of the normal range for a given test.~~

(2) ~~"Appropriate specimen" means a blood specimen submitted on the Utah Newborn Screening form that conforms with the criteria in R398-1-8.~~

(3) ~~"Blood spot" means a clinical specimen(s) submitted on the filter paper (specially manufactured absorbent specimen collection paper) of the Newborn Screening form using the heel stick method.~~

(4) ~~"Department" means the Utah Department of Health.~~

(5) ~~"Follow up" means the tracking of all newborns with an abnormal result, inadequate or unsatisfactory specimen or a quantity not sufficient specimen through to a normal result or confirmed diagnosis and referral.~~

(6) ~~"Inadequate specimen" means a specimen determined by the Newborn Screening Laboratory to be unacceptable for testing.~~

(7) ~~"Indeterminate result" means a result that requires another specimen to determine normal or abnormal status.~~

(8) ~~"Institution" means a hospital, alternate birthing facility, or midwife service in Utah that provides maternity or nursery services or both.~~

(9) ~~"Medical home/practitioner" means a person licensed by the Department of Commerce, Division of Occupational and Professional Licensing to practice medicine, naturopathy, or chiropractic or to be a nurse practitioner, as well as the licensed or unlicensed midwife who takes responsibility for delivery or the ongoing health care of a newborn.~~

(10) ~~"Metabolic diseases" means those diseases screened by the Department which are caused by an inborn error of metabolism.~~

(11) ~~"Newborn Screening form" means the Department's demographic form with attached Food and Drug Administration (FDA) approved filter paper medical collection device.~~

(12) ~~"Quantity not sufficient specimen" or "QNS specimen" means a specimen that has been partially tested but does not have enough blood available to complete the full testing.~~

\_\_\_\_\_ (13) "Unsatisfactory specimen" means an inadequate specimen.

**R398-1-3. Implementation.**

\_\_\_\_\_ (1) Each newborn in the state of Utah shall submit to the Newborn Screening testing, except as provided in Section R398-1-11.

\_\_\_\_\_ (2) The Department of Health, after consulting with the Newborn Screening Advisory Committee, will determine the disorders on the Newborn Screening Panel, based on demonstrated effectiveness and available funding. Disorders for which the infant blood is screened are:

- \_\_\_\_\_ (a) Biotinidase Deficiency;
- \_\_\_\_\_ (b) Congenital Adrenal Hyperplasia;
- \_\_\_\_\_ (c) Congenital Hypothyroidism;
- \_\_\_\_\_ (d) Galactosemia;
- \_\_\_\_\_ (e) Hemoglobinopathy;
- \_\_\_\_\_ (f) Amino Acid Metabolism Disorders:
  - \_\_\_\_\_ (i) Phenylketonuria (phenylalanine hydroxylase deficiency and variants);
  - \_\_\_\_\_ (ii) Tyrosinemia type 1 (fumarylacetoacetate hydrolase deficiency);
  - \_\_\_\_\_ (iii) Tyrosinemia type 2 (tyrosine amino transferase deficiency);
  - \_\_\_\_\_ (iv) Tyrosinemia type 3 (4-OH-phenylpyruvate dioxygenase deficiency);
  - \_\_\_\_\_ (v) Maple Syrup Urine Disease (branched chain ketoacid dehydrogenase deficiency);
  - \_\_\_\_\_ (vi) Homocystinuria (cystathionine beta synthase deficiency);
  - \_\_\_\_\_ (vii) Citrullinemia (arginino succinic acid synthase deficiency);
  - \_\_\_\_\_ (viii) Argininosuccinic aciduria (argininosuccinic acid lyase deficiency);
  - \_\_\_\_\_ (ix) Argininemia (arginase deficiency);
  - \_\_\_\_\_ (x) Hyperprolinemia type 2 (pyroline-5-carboxylate dehydrogenase deficiency);
  - \_\_\_\_\_ (g) Fatty Acid Oxidation Disorders:
    - \_\_\_\_\_ (i) Medium Chain Acyl CoA Dehydrogenase Deficiency;
    - \_\_\_\_\_ (ii) Very Long Chain Acyl CoA Dehydrogenase Deficiency;
    - \_\_\_\_\_ (iii) Short Chain Acyl CoA Dehydrogenase Deficiency;
    - \_\_\_\_\_ (iv) Long Chain 3-OH Acyl CoA Dehydrogenase Deficiency;
    - \_\_\_\_\_ (v) Short Chain 3-OH Acyl CoA Dehydrogenase Deficiency;
    - \_\_\_\_\_ (vi) Primary carnitine deficiency (OCTN2 carnitine transporter defect);
    - \_\_\_\_\_ (vii) Carnitine Palmitoyl Transferase I Deficiency;
    - \_\_\_\_\_ (viii) Carnitine Palmitoyl Transferase 2 Deficiency;
    - \_\_\_\_\_ (ix) Carnitine Acylcarnitine Translocase Deficiency;
    - \_\_\_\_\_ (x) Multiple Acyl CoA Dehydrogenase Deficiency;
    - \_\_\_\_\_ (h) Organic Acids Disorders:
      - \_\_\_\_\_ (i) Propionic Acidemia (propionyl CoA carboxylase deficiency);
      - \_\_\_\_\_ (ii) Methylmalonic acidemia (multiple enzymes);
      - \_\_\_\_\_ (iii) Malonic Aciduria;
      - \_\_\_\_\_ (iv) Isovaleric acidemia (isovaleryl CoA dehydrogenase deficiency);
      - \_\_\_\_\_ (v) 2-Methylbutyryl CoA dehydrogenase deficiency;

- \_\_\_\_\_ (vi) Isobutyryl CoA dehydrogenase deficiency;
- \_\_\_\_\_ (vii) 2-Methyl-3-OH-butyryl CoA dehydrogenase deficiency;
- \_\_\_\_\_ (viii) Glutaric acidemia type 1 (glutaryl CoA dehydrogenase deficiency);
- \_\_\_\_\_ (ix) 3-Methylcrotonyl CoA carboxylase deficiency;
- \_\_\_\_\_ (x) 3-Ketothiolase deficiency;
- \_\_\_\_\_ (xi) 3-Hydroxy-3-methyl glutaryl CoA lyase deficiency;
- \_\_\_\_\_ (xii) Holocarboxylase synthase (multiple carboxylases) deficiency;
  - \_\_\_\_\_ (i) Cystic Fibrosis;
  - \_\_\_\_\_ (j) Severe Combined Immunodeficiency syndrome; and
  - \_\_\_\_\_ (k) Disorders of Creatine Metabolism.

**R398-1-4. Responsibility for Collection of the First Specimen.**

\_\_\_\_\_ (1) If the newborn is born in an institution, the institution must collect and submit an appropriate specimen, unless the newborn is transferred to another institution prior to 48 hours of age.

\_\_\_\_\_ (2) If the newborn is born outside of an institution, the practitioner or other person primarily responsible for providing assistance to the mother at the birth must arrange for the collection and submission of an appropriate specimen.

\_\_\_\_\_ (3) If there is no other person in attendance of the birth, the parent or legal guardian must arrange for the collection and submission of an appropriate specimen.

\_\_\_\_\_ (4) If the newborn is transferred to another institution prior to 48 hours of age, the receiving health institution must collect and submit an appropriate specimen.

**R398-1-5. Timing of Collection of First Specimen.**

\_\_\_\_\_ The first specimen shall be collected between 24 and 48 hours of the newborn's life. Except:

\_\_\_\_\_ (1) If the newborn is discharged from an institution before 48 hours of age, an appropriate specimen must be collected within four hours of discharge.

\_\_\_\_\_ (2) If the newborn is to receive a blood transfusion or dialysis, the appropriate specimen must be collected immediately before the procedure, except in emergency situations where time does not allow for collection of the specimen. If the newborn receives a blood transfusion or dialysis prior to collecting the appropriate specimen the following must be done:

\_\_\_\_\_ (a) Repeat the collection and submission of an appropriate specimen 7-10 days after last transfusion or dialysis for a second screening specimen;

\_\_\_\_\_ (b) Repeat the collection and submission of an appropriate specimen 120 days after last transfusion or dialysis for a first screening specimen.

**R398-1-6. Parent Education.**

\_\_\_\_\_ The person who has responsibility under Section R398-1-4 shall inform the parent or legal guardian of the required collection and submission and the disorders screened. That person shall give the second half of the Newborn Screening form to the parent or legal guardian with instructions on how to arrange for collection and submission of the second specimen.

**R398-1-7. Timing of Collection of the Second Specimen.**

\_\_\_\_\_ A second specimen shall be collected between 7 and 28 days of age.

~~\_\_\_\_\_ (1) The parent or legal guardian shall arrange for the collection and submission of the appropriate second specimen through an institution, medical home/practitioner, or local health department.~~

~~\_\_\_\_\_ (2) If the newborn's first specimen was obtained prior to 48 hours of age, the second specimen shall be collected by fourteen days of age.~~

~~\_\_\_\_\_ (3) If the newborn is hospitalized beyond the seventh day of life, the institution shall arrange for the collection and submission of the appropriate second specimen.~~

**R398-1-8. Criteria for Appropriate Specimen.**

~~\_\_\_\_\_ (1) The institution or medical home/practitioner collecting the appropriate specimen must:~~

~~\_\_\_\_\_ (a) Use only a Newborn Screening form purchased from the Department. The fee for the Newborn Screening form is set by the Legislature in accordance with Section 26-1-6;~~

~~\_\_\_\_\_ (b) Correctly store the Newborn Screening form;~~

~~\_\_\_\_\_ (c) Not use the Newborn Screening form beyond the date of expiration;~~

~~\_\_\_\_\_ (d) Not alter the Newborn Screening form in any way;~~

~~\_\_\_\_\_ (e) Complete all information on the Newborn Screening form. If the infant is being adopted, the following may be omitted: infant's last name, birth mother's name, address, and telephone number. Infant must have an identifying name, and a contact person must be listed;~~

~~\_\_\_\_\_ (f) Apply sufficient blood to the filter paper;~~

~~\_\_\_\_\_ (g) Not contaminate the filter paper with any foreign substance;~~

~~\_\_\_\_\_ (h) Not tear, perforate, scratch, or wrinkle the filter paper;~~

~~\_\_\_\_\_ (i) Apply blood evenly to one side of the filter paper and be sure it soaks through to the other side;~~

~~\_\_\_\_\_ (j) Apply blood to the filter paper in a manner that does not cause caking;~~

~~\_\_\_\_\_ (k) Collect the blood in such a way as to not cause serum or tissue fluids to separate from the blood;~~

~~\_\_\_\_\_ (l) Dry the specimen properly;~~

~~\_\_\_\_\_ (m) Not remove the filter paper from the Newborn Screening form.~~

~~\_\_\_\_\_ (2) Submit the completed Newborn Screening form to the Utah Department of Health, Newborn Screening Laboratory, 4431 South 2700 West, Taylorsville, Utah 84119.~~

~~\_\_\_\_\_ (a) The Newborn Screening form shall be placed in an envelope large enough to accommodate it without folding the form.~~

~~\_\_\_\_\_ (b) If mailed, the Newborn Screening form shall be placed in the U.S. Postal system within 24 hours of the time the appropriate specimen was collected.~~

~~\_\_\_\_\_ (c) If hand delivered, the Newborn Screening form shall be delivered within 48 hours of the time the appropriate specimen was collected.~~

**R398-1-9. Abnormal Result.**

~~\_\_\_\_\_ (1) (a) If the Department finds an abnormal result consistent with a disease state, the Department shall send written notice to the medical home/practitioner noted on the Newborn Screening form.~~

~~\_\_\_\_\_ (b) If the Department finds an indeterminate result on the first screening, the Department shall determine whether to send a~~

~~notice to the medical home/practitioner based on the results on the second screening specimen.~~

~~\_\_\_\_\_ (2) The Department may require the medical home/practitioner to collect and submit additional specimens for screening or confirmatory testing. The Department shall pay for the initial confirmatory testing on the newborn requested by the Department. The Department may recommend additional diagnostic testing to the medical home/practitioner. The cost of additional testing recommended by the Department is not covered by the Department.~~

~~\_\_\_\_\_ (3) The medical home/practitioner shall collect and submit specimens within the time frame and in the manner instructed by the Department.~~

~~\_\_\_\_\_ (4) As instructed by the Department or the medical home/practitioner, the parent or legal guardian of a newborn identified with an abnormal test result shall promptly take the newborn to the Department or medical home/practitioner to have an appropriate specimen collected.~~

~~\_\_\_\_\_ (5) The medical home/practitioner who makes the final diagnosis shall complete a diagnostic form and return it to the Department within 30 days of the notification letter from the Department.~~

**R398-1-10. Inadequate or Unsatisfactory Specimen, or QNS Specimen.**

~~\_\_\_\_\_ If the Department finds an inadequate or unsatisfactory specimen, or QNS specimen, the Department shall inform the institution or medical home/practitioner noted on the Newborn Screening form.~~

~~\_\_\_\_\_ (1) The institution or medical home/practitioner that submitted the inadequate or unsatisfactory, or QNS specimen shall submit an appropriate specimen in accordance with Section R398-1-8. The responsible institution or medical home/practitioner shall collect and submit the new specimen within two days of notice, and the responsible institution or medical home/practitioner shall label the form for testing as directed by the Department.~~

~~\_\_\_\_\_ (2) The parent or legal guardian of a newborn identified with an inadequate or unsatisfactory specimen or QNS specimen shall promptly take the newborn to the institution or medical home/practitioner to have an appropriate specimen collected.~~

**R398-1-11. Testing Refusal.**

~~\_\_\_\_\_ A parent or legal guardian may refuse to allow the required testing for religious reasons only. The medical home/practitioner or institution shall file in the newborn's record documentation of refusal; reason, education of family about the disorders, and a signed waiver by both parents or legal guardian. The practitioner or institution shall submit a copy of the refusal to the Utah Department of Health, Newborn Screening Program, P.O. Box 144710, Salt Lake City, UT 84114-4710.~~

**R398-1-12. Access to Medical Records.**

~~\_\_\_\_\_ (1) The Department shall have access to the medical records of a newborn in order to identify medical home/practitioner, reason appropriate specimen was not collected, or to collect missing demographic information.~~

~~\_\_\_\_\_ (2) The institution shall enter the Newborn Screening form number, also known as the Birth Record Number, into the Vital Records database and the Newborn Hearing Screening database.~~

**R398-1-13. Noncompliance by Parent or Legal Guardian.**

~~\_\_\_\_\_ If the medical home/practitioner or institution has information that leads it to believe that the parent or legal guardian is not complying with this rule, the medical home/practitioner or institution shall report such noncompliance as medical neglect to the Department.~~

**R398-1-14. Confidentiality and Related Information.**

~~\_\_\_\_\_ (1) The Department initially releases test results to the institution of birth for first specimens and to the medical home/practitioner, as noted on the Newborn Screening form, for the second specimen.~~

~~\_\_\_\_\_ (2) The Department notifies the medical home/practitioner noted on the Newborn Screening form as provided in Section R398-1-9(1) of any results that require follow up.~~

~~\_\_\_\_\_ (3) The Department releases information to a medical home/practitioner or other health practitioner on a need-to-know basis. Release may be orally, by a hard copy of results or available electronically by authorized access.~~

~~\_\_\_\_\_ (4) Upon request of the parent or guardian, the Department may release results as directed in the release.~~

~~\_\_\_\_\_ (5) All requests for test results or records are governed by Utah Code Title 26, Chapter 3.~~

~~\_\_\_\_\_ (6) The Department may release information in summary, statistical, or other forms that do not identify particular individuals.~~

~~\_\_\_\_\_ (7) A testing laboratory that analyzes newborn screening samples for the Department may not release information or samples without the Department's express written direction.~~

**R398-1-15. Blood Spots.**

~~\_\_\_\_\_ (1) Blood spots become the property of the Department.~~

~~\_\_\_\_\_ (2) The Department includes in parent education materials information about the Department's policy on the retention and use of residual newborn blood spots.~~

~~\_\_\_\_\_ (3) The Department may use residual blood spots for newborn screening quality assessment activities.~~

~~\_\_\_\_\_ (4) The Department may release blood spots for research upon the following:~~

~~\_\_\_\_\_ (a) The person proposing to conduct the research applies in writing to the Department for approval to perform the research. The application shall include a written protocol for the proposed research, the person's professional qualifications to perform the proposed research, and other information if needed and requested by the Department. When appropriate, the proposal will then be submitted to the Department's Internal Review Board for approval.~~

~~\_\_\_\_\_ (b) The Department shall de-identify blood spots it releases unless it obtains informed consent of a parent or guardian to release identifiable samples.~~

~~\_\_\_\_\_ (c) All research must be first approved by the Department's Internal Review Board.~~

**R398-1-16. Retention of Blood Spots.**

~~\_\_\_\_\_ (1) The Department retains blood spots for a minimum of 90 days.~~

~~\_\_\_\_\_ (2) Prior to disposal, the Department shall de-identify and autoclave the blood spots.~~

**R398-1-17. Reporting of Disorders.**

~~\_\_\_\_\_ If a diagnosis is made for one of the disorders screened by the Department that was not identified by the Department, the medical home/practitioner shall report it to the Department.~~

**R398-1-18. Statutory Penalties.**

~~\_\_\_\_\_ As required by Subsection 63G-3-201(5): Any medical home/practitioner or institution responsible for submission of a newborn screen that violates any provision of this rule may be assessed a civil money penalty as provided in Section 26-23-6.~~

**KEY: health care, newborn screening**

~~**Date of Enactment or Last Substantive Amendment: June 1, 2015**~~

~~**Notice of Continuation: September 4, 2014 (d), and (g)**~~

~~**Authorizing, and Implemented or Interpreted Law: 26-1-6; 26-1-30(2)(a), (b), (c); 26-10-6**~~

Health, Health Care Financing,  
Coverage and Reimbursement Policy  
**R414-1-29**  
Medicaid Policy for Reconstructive and  
Cosmetic Procedures

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 42235

FILED: 10/17/2017

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The purpose of this change is to clarify Medicaid policy on coverage for cosmetic procedures and reconstructive surgery.

**SUMMARY OF THE RULE OR CHANGE:** This amendment clarifies coverage for certain procedures and corrective surgery on abnormal structures and deformities of the body.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 26-1-5 and Section 26-18-3

**ANTICIPATED COST OR SAVINGS TO:**

♦ **THE STATE BUDGET:** There is no impact to the state budget because this change only clarifies Medicaid policy. It neither affects service coverage to Medicaid members nor reimbursement to Medicaid providers.

♦ **LOCAL GOVERNMENTS:** There is no budget impact to local governments because they neither fund nor provide cosmetic or reconstructive procedures to Medicaid members.

♦ **SMALL BUSINESSES:** There is no impact to small businesses because this change only clarifies Medicaid policy. It neither affects service coverage to Medicaid members nor reimbursement to Medicaid providers.



◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: There is no impact to Medicaid providers and to Medicaid members because this change only clarifies Medicaid policy. It neither affects service coverage nor provider reimbursement.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs to a single Medicaid provider or to a Medicaid member because this change only clarifies Medicaid policy. It neither affects service coverage nor provider reimbursement.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: After conducting a thorough analysis, it was determined that this proposed rule will not result in a fiscal impact to businesses.

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

HEALTH  
HEALTH CARE FINANCING,  
COVERAGE AND REIMBURSEMENT POLICY  
CANNON HEALTH BLDG  
288 N 1460 W  
SALT LAKE CITY, UT 84116-3231  
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Craig Devashrayee by phone at 801-538-6641, by FAX at 801-538-6099, or by Internet E-mail at cdevashrayee@utah.gov or mail at PO Box 143102, Salt Lake City, UT 84414-3102

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 12/15/2017

THIS RULE MAY BECOME EFFECTIVE ON: 01/01/2018

AUTHORIZED BY: Joseph Miner, MD, Executive Director

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

**R414-1. Utah Medicaid Program.**

**R414-1-29. Medicaid Policy for Reconstructive and Cosmetic Procedures.**

(1) Reconstructive or restorative services are medically necessary; and ~~performed on abnormal structures of the body to improve and restore bodily function or to correct deformity resulting from disease, trauma, congenital anomaly, or previous therapeutic intervention.~~

(a) performed on abnormal structures of the body to improve and restore bodily function; or

(b) performed to correct deformity resulting from disease, trauma, congenital anomaly, or previous therapeutic intervention.

(2) Medicaid does not cover ~~cosmetic procedures~~ ~~performed with the primary intent to improve appearance,~~ ~~are not covered services,~~ ~~nor does it cover~~ ~~and include~~ ~~non-medically necessary procedures performed in the same episode as a covered procedure.~~

(3) Coverage for reconstructive breast procedures related to cancer includes:

(a) reconstruction of the breast on which the procedure is performed; and

(b) reconstruction of the breast on which the procedure is not performed to produce a symmetrical appearance and prostheses.

(4) Medicaid limits reconstructive breast surgeries to initial occurrences that may include multi-step procedures.

(5) Medicaid does not cover repeat reconstructive breast procedures.

**KEY: Medicaid**

**Date of Enactment or Last Substantive Amendment:** ~~July 1, 2017~~**2018**

**Notice of Continuation:** February 15, 2017

**Authorizing, and Implemented or Interpreted Law:** 26-1-5; 26-18-3; 26-34-2

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

**R414-13**

**Psychology Services**

**NOTICE OF PROPOSED RULE**

(Repeal)

DAR FILE NO.: 42278

FILED: 11/01/2017

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Based on its five-year review, the Department of Health will repeal this rule because it defers to the Psychology Services Provider Manual, which has been archived and no longer exists.

SUMMARY OF THE RULE OR CHANGE: This rule is repealed in its entirety. Existing policies for psychology services have been moved to the Rehabilitative Mental Health and Substance Use Disorder Services Provider Manual, and have been consolidated in the Medicaid State Plan under Rehabilitative Mental Health Services.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 26-1-4 and Section 26-1-5

ANTICIPATED COST OR SAVINGS TO:

◆ THE STATE BUDGET: There is no impact to the state budget because this repeal neither affects service coverage nor provider reimbursement.

- ◆ LOCAL GOVERNMENTS: There is no impact to local governments because they do not fund member services under the Medicaid program.
- ◆ SMALL BUSINESSES: There is no impact to small businesses because this repeal neither affects service coverage nor provider reimbursement.
- ◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: There is no impact to Medicaid providers and to Medicaid members because this repeal neither affects service coverage nor provider reimbursement.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs to a single Medicaid provider or to a Medicaid member because this rule repeal neither affects service coverage nor provider reimbursement.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: After conducting a thorough analysis, it was determined that this repeal will not result in a fiscal impact to businesses.

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

HEALTH  
HEALTH CARE FINANCING,  
COVERAGE AND REIMBURSEMENT POLICY  
CANNON HEALTH BLDG  
288 N 1460 W  
SALT LAKE CITY, UT 84116-3231  
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ Craig Devashrayee by phone at 801-538-6641, by FAX at 801-538-6099, or by Internet E-mail at cdevashrayee@utah.gov or mail at PO Box 143102, Salt Lake City, UT 84414-3102

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 12/15/2017

THIS RULE MAY BECOME EFFECTIVE ON: 12/22/2017

AUTHORIZED BY: Joseph Miner, MD, Executive Director

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

##### **[R414-13. Psychology Services.**

##### **R414-13-1. Introduction.**

~~Psychologists may provide services for Medicaid recipients in accordance with the Psychology Services Utah Medicaid Provider Manual and Attachment 4.19-B of the Medicaid State Plan, as incorporated into Section R414-1-5.~~

~~KEY: Medicaid~~

~~Date of Enactment or Last Substantive Amendment: September 25, 2014~~

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

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

## Health, Health Care Financing, Coverage and Reimbursement Policy **R414-42** Telehealth Home Health Services

### NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 42236

FILED: 10/17/2017

### RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this change is to update and implement, by rule, the Medicaid policy for telemedicine services.

SUMMARY OF THE RULE OR CHANGE: This amendment includes new definitions, clarifies service coverage, and specifies limitations in the provision of telemedicine services. It also makes other minor corrections.

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

ANTICIPATED COST OR SAVINGS TO:

- ◆ THE STATE BUDGET: There is no impact to the state budget because this change only updates, by rule, ongoing Medicaid policy. It neither affects service coverage to Medicaid members nor reimbursement to Medicaid providers.
- ◆ LOCAL GOVERNMENTS: There is no budget impact to local governments because they neither fund nor provide telemedicine services to Medicaid members.
- ◆ SMALL BUSINESSES: There is no impact to small businesses because this change only updates, by rule, ongoing Medicaid policy. It neither affects service coverage to Medicaid members nor reimbursement to Medicaid providers.
- ◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: There is no impact to Medicaid providers and to Medicaid members because this change only updates, by rule, ongoing Medicaid policy. It neither affects service coverage nor reimbursement.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs to a single Medicaid provider or to a Medicaid member because this change only updates, by rule, ongoing Medicaid policy. It neither affects service coverage nor reimbursement.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: After conducting a thorough analysis, it was determined that this proposed rule will not result in a fiscal impact to businesses.

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

HEALTH  
HEALTH CARE FINANCING,  
COVERAGE AND REIMBURSEMENT POLICY  
CANNON HEALTH BLDG  
288 N 1460 W  
SALT LAKE CITY, UT 84116-3231  
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Craig Devashrayee by phone at 801-538-6641, by FAX at 801-538-6099, or by Internet E-mail at cdevashrayee@utah.gov or mail at PO Box 143102, Salt Lake City, UT 84414-3102

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 12/15/2017

THIS RULE MAY BECOME EFFECTIVE ON: 01/01/2018

AUTHORIZED BY: Joseph Miner, MD, Executive Director

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

**R414-42. [Telehealth Home Health Services]Telemedicine.**

**R414-42-1. Introduction and Authority.**

[(+)]This rule outlines eligibility, access requirements, coverage, limitations, and reimbursement for [Telehealth Home Health Services]telemedicine. This rule is authorized by [Title 26, Chapter 18, Section 12, UCA]Section 26-18-13.

[~~(2) Telehealth Home Health Services are an optional program.~~]

**R414-42-2. Definitions.**

(1) "Telemedicine" is two-way, real-time interactive communication between the member and the physician or authorized provider at the distant site. This electronic communication uses interactive telecommunications equipment that includes, at a minimum, audio and video equipment.

(2) "Authorized provider" means a provider in compliance with requirements as specified in Section I: General Information of the Utah Medicaid Provider Manual, Chapter 3, Provider Participation and Requirements.

(3) "Distant site" is the location of the provider when delivering the service via the telecommunications system.

(4) "Originating site" is the location of the Medicaid member at the time the service is furnished via a telecommunications system.

**[R414-42-2. Telehealth Home Health Services Eligibility.**

~~(1) To qualify for Telehealth home health services the recipient must:~~

- ~~(a) be eligible for Medicaid coverage;~~
- ~~(b) require medical monitoring for diabetes; and~~
- ~~(c) be willing and able to use the technology required to deliver the service.~~

~~(2) A home health agency may provide telehealth services if:~~

~~(a) the service is delivered through secure transmission lines at the home health agency to audio-visual computer equipment installed in the patients home;~~

~~(b) the secure transmission is between the home health agency and the patients home; and~~

~~(c) the home health agency has sent a registered nurse to the patient's home to provide a physical health assessment and evaluation of a patient's condition and the patient is:~~

~~(i) determined unable to leave the home by the home health agency;~~

~~(ii) determined suitable for participation by the home health agency;~~

~~(iii) formulated a nursing care plan by the home health agency; and~~

~~(iv) determined by the home health agency to require at least two skilled nursing home visits per week.~~

~~(3) Telehealth home health services are limited to patients residing in under served rural areas where the patient would be required to travel more than 50 paved road miles to obtain the service.]~~

**R414-42-3. [Telehealth Home Health Services Requirements] Covered Services.**

~~(1) Telehealth home health services are limited to diabetic monitoring and education.~~

~~(2) Telehealth home health services must meet all of the following:~~

~~(a) provide the level of confidentiality required under the Health Insurance Portability and Accountability Act of 1996 (HIPAA) for safe and secure information exchange;~~

~~(b) require the patient to see and hear the provider in real time;~~

~~(c) require the provider to see and hear the patient in real time; and~~

~~(d) provide audio and visual clarity sufficient to complete diabetic monitoring and education activities.~~

~~(3) The individual receiving telehealth home health services must need more than two home health agency visits per week. A home health agency that provides telehealth home health services must provide at least two in-person visits by a home health nurse per week and may use telehealth home health services only as a supplement to the in-person visits.]Covered services may be delivered by means of telemedicine, as clinically appropriate. Services include consultation services, evaluation and management services, mental health services, and substance use disorder services.~~

**R414-42-4. Limitations.**

~~(1) Telemedicine encounters must comply with privacy and security measures set forth under the Health Insurance Portability and Accountability Act of 1996 (HIPAA) to ensure that all~~

patient communications and records, including recordings of telemedicine encounters, are secure and remain confidential. The provider is responsible for determining whether the encounter is HIPAA compliant. Security measures for transmission may include password protection, encryption, and other reliable authentication techniques.

(2) Compliance with the Utah Health Information Network (UHIN) standards for telehealth must be maintained. These standards provide a uniform standard of billing for claims and encounters delivered via telehealth.

(3) The originating site receives no reimbursement for the use of telemedicine.

**R414-42-[4]5. Reimbursement of Services.**

~~[(1) Medicaid reimburses telehealth home health services in accordance with the Utah Medicaid State Plan, Attachment 4.19-B.~~

~~—(2)]~~ The Department pays the lesser of the amount billed or the rate on the fee schedule. A provider shall not charge the Department a fee that exceeds the provider's usual and customary charges for the provider's private pay patients.

~~[(3) The Department does not make payments separate from telehealth home health monitoring and education for transmission charges, equipment, or facility fees.]~~

**KEY: Medicaid**

**Date of Enactment or Last Substantive Amendment:** [~~December 29, 2008~~]**2018**

**Notice of Continuation:** September 17, 2013

**Authorizing, and Implemented or Interpreted Law:** 26-18-1[2]3

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

**R414-60-12**

**Provider-Administered Drugs for the  
Treatment of Opioid Use Disorders**

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 42291

FILED: 11/01/2017

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The purpose of this change is to implement by rule a policy for the treatment of opioid treatment disorders.

**SUMMARY OF THE RULE OR CHANGE:** This amendment clarifies payment for pharmacies that dispense drugs directly to providers for the treatment of opioid use disorders. It also clarifies that only providers may receive and administer these drugs to their patients.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 26-1-5 and Section 26-18-3

**ANTICIPATED COST OR SAVINGS TO:**

◆ **THE STATE BUDGET:** There is no impact to the state budget because this change only clarifies pharmacy services and does not affect reimbursement.

◆ **LOCAL GOVERNMENTS:** There is no impact to local governments because they do not fund pharmacy services under the Medicaid program.

◆ **SMALL BUSINESSES:** Some pharmacies may incur expenses related to delivery of medications to providers. Nevertheless, these expenses are negligible and are offset by potential revenue.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There is no impact to Medicaid providers and to Medicaid members because this change only clarifies pharmacy services and does not affect reimbursement.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** There is no impact to a single Medicaid provider or to a Medicaid member because this change only clarifies pharmacy services and does not affect reimbursement.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** After conducting a thorough analysis, it was determined that this proposed rule change will not result in a fiscal impact to businesses.

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

HEALTH  
HEALTH CARE FINANCING,  
COVERAGE AND REIMBURSEMENT POLICY  
CANNON HEALTH BLDG  
288 N 1460 W  
SALT LAKE CITY, UT 84116-3231  
or at the Office of Administrative Rules.

**DIRECT QUESTIONS REGARDING THIS RULE TO:**

◆ Craig Devashrayee by phone at 801-538-6641, by FAX at 801-538-6099, or by Internet E-mail at cdevashrayee@utah.gov or mail at PO Box 143102, Salt Lake City, UT 84414-3102

**INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 12/15/2017**

**THIS RULE MAY BECOME EFFECTIVE ON: 01/01/2018**

**AUTHORIZED BY:** Joseph Miner, MD, Executive Director

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

**R414-60. Medicaid Policy for Pharmacy Program.**

**R414-60-12. Provider-Administered Drugs for the Treatment of Opioid Use Disorders.**

A pharmacy may bill Medicaid for any covered, provider-administered drug not directly dispensed to a patient for the treatment of an opioid use disorder. The pharmacy may only release the drug to the administering provider or the provider's staff for treatment.

**KEY: Medicaid**

**Date of Enactment or Last Substantive Amendment: [~~October 1~~], 2017**

**Notice of Continuation: April 28, 2017**

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

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

**R414-516**

**Nursing Facility Non-State  
Government-Owned Upper Payment  
Limit Quality Improvement Program**

**NOTICE OF PROPOSED RULE**

(New Rule)

DAR FILE NO.: 42293

FILED: 11/01/2017

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The purpose of this rule is to implement a Quality Improvement (QI) program for non-state government-owned nursing facilities.

**SUMMARY OF THE RULE OR CHANGE:** This new rule implements increased quality care in nursing facilities that receive upper payment limit funds. For example, the rule implements QI program requirements, quality measure reporting, incentives for construction and renovation, incentives for direct resident services, and provisions for programs that do not earn the minimum requirement of QI points.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 26-1-5 and Section 26-18-3

**ANTICIPATED COST OR SAVINGS TO:**

♦ **THE STATE BUDGET:** There is no impact to the state budget because funding for the QI program is within appropriations previously set forth by the Legislature.

♦ **LOCAL GOVERNMENTS:** There is a potential impact to local government-owned hospitals that fail to meet the standards of the QI program.

♦ **SMALL BUSINESSES:** Nursing facilities owned by local government hospitals must earn sufficient QI points to maintain their upper payment limit funds. Nevertheless, revenue is unique to each individual business and cannot be quantified as a whole.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Medicaid providers may increase their annual revenue by earning additional QI points. Nevertheless, revenue is unique to each individual provider and cannot be quantified as a whole. Medicaid members will see improvements in their quality of care and will not incur additional expenses.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** A nursing facility owned by a local government hospital may experience increased costs to earn QI points. The costs, however, are unique to each provider and cannot be quantified as a whole. Furthermore, a Medicaid member will only see improvements in care without additional expenses.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** Local government hospitals receive upper payment funds to improve the care of Medicaid members. Nursing facilities owned by these hospitals may have to increase their expenditures in order to qualify for these payments.

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

HEALTH  
HEALTH CARE FINANCING,  
COVERAGE AND REIMBURSEMENT POLICY  
CANNON HEALTH BLDG  
288 N 1460 W  
SALT LAKE CITY, UT 84116-3231  
or at the Office of Administrative Rules.

**DIRECT QUESTIONS REGARDING THIS RULE TO:**

♦ Craig Devashrayee by phone at 801-538-6641, by FAX at 801-538-6099, or by Internet E-mail at cdevashrayee@utah.gov or mail at PO Box 143102, Salt Lake City, UT 84414-3102

**INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 12/15/2017**

**THIS RULE MAY BECOME EFFECTIVE ON: 01/01/2018**

**AUTHORIZED BY: Joseph Miner, MD, Executive Director**

**R414. Health, Health Care Financing, coverage and Reimbursement Policy.**

**R414-516. Nursing Facility Non-State Government-Owned Upper Payment Limit Quality Improvement Program.**

**R414-516-1. Introduction and Authority.**

This rule defines the participation requirements for the Quality Improvement (QI) program within the Nursing Care

Facility Non-State Government-Owned Upper Payment Limit (NF NSGO UPL) program. This rule only applies to NF providers who are part of a Contract with the Department to participate in the NF NSGO UPL program. This rule is authorized by Sections 26-1-5 and 26-18-3.

**R414-516-2. Definitions.**

The definitions in Rule R414-505 apply to this rule. In addition:

(1) "American Health Care Association (AHCA)" means the national association of long term and post-acute providers for quality care and services for frail, elderly, and disabled Americans.

(2) "Certification And Survey Provider Enhanced Reports (CASPER)" means a quality measure report used by the Centers for Medicare and Medicaid Services (CMS) to compare data between nursing facility programs.

(3) "Certified Nurse Aid (CNA)" means any person who completes a nurse aid training and competency evaluation program (NATCEP) and passes the state certification examination.

(4) "Division" means the Division of Medicaid and Health Financing (DMHF).

(5) "Eden Certification" means a program achieving Eden Milestones as approved by the Eden Alternative organization.

(6) "Fair Rental Value (FRV)" means the definition provided in Attachment 4.19-D of the Medicaid State Plan.

(7) "Five-Star Quality Rating System" means a rating system developed by CMS to help consumers, their families, and other caregivers compare health inspection reports, staffing, and quality measures (QM) between nursing programs.

(8) "Nurse" means an individual who is licensed under Title 58, Chapter 31b as:

(a) a licensed practical nurse (LPN);

(b) a registered nurse (RN);

(c) an advanced practice registered nurse (APRN); or

(d) a nurse practitioner (NP).

(9) "Program" means each distinct NF program participating in the NF NSGO UPL program.

(10) "Qualified Activity Professional" means:

(a) a qualified therapeutic recreation specialist or an activities professional who is licensed or registered in the state of Utah;

(b) an activities professional who is recognized by an accrediting body;

(c) a person who has two years of experience in a social or recreational program within the last five years, one year of which was full-time in a therapeutic activities program;

(d) an occupational therapist (OT); or

(e) an occupational therapy assistant (OTA).

(11) "Qualified Clinician" means:

(a) a physician;

(b) a surgeon;

(c) a chiropractic physician;

(d) a physician assistant;

(e) a physical therapist;

(f) a physical therapist assistant;

(g) an OT; or

(h) an OTA.

(12) "Resident" means a Utah Medicaid eligible individual who resides in and receives nursing facility services in a Utah Medicaid-certified nursing facility.

**R414-516-3. Quality Improvement Program Requirements of Participation.**

(1) A program is required to earn quality improvement (QI) points to participate in the NF NSGO UPL Program. A program shall earn and document:

(a) In Calendar Year 2018, 10 or more QI points with a minimum of five QI points from Subsection R414-516-6;

(b) In Calendar Year 2019, 12 or more QI points with a minimum of six QI points from Subsection R414-516-6;

(c) In Calendar Year 2020 and beyond, 14 or more QI points with a minimum of seven from Subsection R414-516-6.

(2) QI points may be earned from any combination of the QI Program Categories as long as the minimum number of QI points are earned from Subsection R414-516-6.

(3) When calculating compliance under R414-516-6, a program shall not count residents who are in the facility less than 14 days.

(4) Each program shall submit to the Division a compliance form, using the current Division form, within 30 days of the end of the calendar year documenting that the program qualifies to earn points under the selected QI program categories. A compliance form must be mailed or electronically mailed to the correct address found at [www.health.utah.gov/medicaid/stplan/longtermcarefq.htm](http://www.health.utah.gov/medicaid/stplan/longtermcarefq.htm).

**R414-516-4. Quality Measures and CASPER Reporting.**

(1) A program may earn QI points through achieving the following quality awards, certifications, and ratings:

(2) The AHCA National Quality Award;

(a) A program that has earned the Gold AHCA quality award may earn six QI points for the duration of the award;

(b) A program that has earned the Silver AHCA quality award may earn four QI points for the duration of the award;

(c) A program that has earned the Bronze AHCA quality award may earn two QI points for the duration of the award.

(3) The HealthInsight Quality Award;

(a) A program that has earned a HealthInsight Quality Award may earn two QI points for the year awarded.

(4) The Quality Measures (QM) section of the Five-Star Quality Rating System;

(a) The Division shall determine all five-star quality ratings by the reports received and generated in the calendar year;

(b) A program that earns a 4.5 or greater QM average during the calendar year may earn three QI points;

(c) A program that earns a 3.5 to 4.49 QM average during the calendar year may earn two QI points;

(d) A program that has a Q3 and Q4 average that is greater than the Q1 and Q2 average may earn one QI point;

(5) Eden Certification Milestones; and

(a) A program that achieves an Eden Certification Milestone at the time of implementation of this rule may receive QI points in the same formula for a program achieving the initial milestone;

\_\_\_\_\_ (b) A program may earn, in the initial year of the achievement, one QI point for achieving milestone one;

\_\_\_\_\_ (c) A program may earn, in the initial year of the achievement, three QI points for achieving milestone two and two QI points the following year;

\_\_\_\_\_ (d) A program may earn, in the initial year of the achievement, five QI points for achieving milestone three, three QI points the following year, and two QI points the third year.

\_\_\_\_\_ (6) A program may earn QI points for:

\_\_\_\_\_ (a) Having recent 12-month CASPER data (October through September) where the program was not above the 75th percentile, on average, in the comparison group national percentile in all CASPER measures. One QI point may be earned for this achievement;

\_\_\_\_\_ (b) Demonstrating a 12-month (October through September) average rating below the 25th percentile in the comparison group national percentile in 13 of 17 CASPER measures. Four QI points may be earned for this achievement;

\_\_\_\_\_ (c) Demonstrating a 12-month (October through September) average rating below the 25th percentile in the comparison group national percentile in 10 to 12 of 17 CASPER measures. Two QI points may be earned for this achievement;

\_\_\_\_\_ (d) Demonstrating a 12-month (October through September) average rating below the 50th percentile in the comparison group national percentile in 13 of 17 CASPER measures. One QI point may be earned for this achievement;

\_\_\_\_\_ (e) Having demonstrated a 20 percent improvement in two specific quality measures on the CASPER report at the end of the 12-month data (October through September) period as compared to the prior 12-month data period. One QI point may be earned for this achievement.

#### **R414-516-5. Construction and Renovation.**

\_\_\_\_\_ A program may earn up to seven QI points by constructing or renovating its physical facility or increasing access to care by providing services in a rural county as follows:

\_\_\_\_\_ (1) Constructing or renovating its physical facility:

\_\_\_\_\_ (a) A program may earn seven QI points for having a FRV facility age of eight years or less;

\_\_\_\_\_ (b) A program may earn five QI points for having a FRV facility age of fifteen years or less;

\_\_\_\_\_ (c) A program may earn up to four QI points for using a percentage of UPL monies on facility renovations. The percentage

is calculated by dividing the monies spent on a major renovation, replacement beds, or additional beds as reported in the program's audited FRV Data Report as described in the Attachment 4.19-D of the Medicaid State Plan, (numerator) by the amount of NF NSGO UPL monies paid in the same period as the FRV Data Reported renovation project (denominator).

\_\_\_\_\_ (i) A program may earn four QI points for using greater than 75 percent of UPL monies.

\_\_\_\_\_ (ii) A program may earn two QI points for using greater than 50 percent of UPL monies.

\_\_\_\_\_ (2) Access to care by providing services to Medicaid members in a rural county.

\_\_\_\_\_ (a) A program located in a county other than Cache, Davis, Salt Lake, Utah, Washington, or Weber may receive one QI point.

\_\_\_\_\_ (b) A program located in an area where no other Utah Medicaid-certified nursing facility is within a 35-mile radius may receive one QI point.

#### **R414-516-6. Direct Resident Services.**

\_\_\_\_\_ A program may earn QI points by providing Direct Resident Services and Staffing as follows:

\_\_\_\_\_ (1) Providing employee retention programs. A program may earn up to four QI points for providing employee retention programs in the categories below:

\_\_\_\_\_ (a) A program may earn one QI point by offering health insurance to all full-time employees;

\_\_\_\_\_ (b) A program may earn one QI point by demonstrating improved staff retention of twenty percent facility wide compared to the previous calendar year. The program shall calculate staff retention by dividing the number of staff who separated from the program during the calendar year (numerator) by the number of all staff employed during the calendar year (denominator), and subtracting the retention percentage of the previous calendar year from the retention percentage of the current calendar year;

\_\_\_\_\_ (c) A program may earn two QI points by demonstrating a staff turnover rate below 50 percent during the calendar year. The program shall calculate turnover rate by dividing the number of distinct staff who separated from the program during the calendar year (numerator) by the number of all distinct staff employed during the calendar year (denominator).

\_\_\_\_\_ (d) A program may earn one QI point by offering:

\_\_\_\_\_ (i) a 401K plan which includes an employer contribution;

or

\_\_\_\_\_ (ii) a pension or retirement program.

\_\_\_\_\_ (e) A program may earn one (1) QI point by:

\_\_\_\_\_ (i) providing tuition reimbursement for formal education;

\_\_\_\_\_ (ii) providing reimbursement for continuing education; or

\_\_\_\_\_ (iii) providing reimbursement for certification courses.

\_\_\_\_\_ (2) Providing a denture replacement policy. A program may earn one QI point by providing a denture replacement policy where the program will replace lost or damaged dentures for residents within 90 days of the loss or damage.

\_\_\_\_\_ (3) Providing staff training. A program may earn one QI point by providing staff training by a nursing facility industry-recognized source using virtual or onsite resources.

\_\_\_\_\_ (4) Providing optional dining services. A program may earn up to three QI points for dining service options provided in the categories below:

\_\_\_\_\_ (a) A program may earn one QI point for providing a menu option of at least five meal choices outside of the planned meal;

\_\_\_\_\_ (b) A program may earn one QI point for providing a cook-to-order menu;

\_\_\_\_\_ (c) A program may earn three QI points for providing a five-meal program for the entire calendar year; or

\_\_\_\_\_ (d) A program may earn one QI point for providing a four-meal program for the entire calendar year.

\_\_\_\_\_ (5) Providing a Preferred Snack Program with 80 percent compliance. A program may earn two QI points by providing distinct resident preferences for snacks.

\_\_\_\_\_ (a) A program shall provide a snack survey including food and beverage options, snack time options, the date of the survey, and the name of the person completing the survey.

\_\_\_\_\_ (b) The program shall complete the survey within two weeks of admission or by March 31, 2018, whichever is later.

\_\_\_\_\_ (c) A program shall provide the snack and beverage at each resident's preferred time.

\_\_\_\_\_ (d) If a resident requires assistance for feeding, the facility shall provide a dining assistant during the snack.

\_\_\_\_\_ (e) A program shall complete a snack survey for each distinct resident quarterly or as requested by the resident.

\_\_\_\_\_ (f) The program shall calculate compliance by dividing the number of distinct residents who complete a preferred snack survey (numerator) by the number of distinct residents during the quarter, who desired to complete a snack survey (denominator).

\_\_\_\_\_ (6) Providing a Preferred Bedtime Program with 80 percent compliance. A program may earn two QI points by providing resident preferences for bedtime.

\_\_\_\_\_ (a) The program shall provide a bedtime survey, in which the resident was asked about preferred bedtime options and preferred rituals. The program must include the date of the survey and the name of the person who completed it.

\_\_\_\_\_ (b) The program shall complete the survey within two weeks of admission or by March 31, 2018, whichever is later.

\_\_\_\_\_ (c) The program shall provide each resident their preferred bedtime options and rituals.

\_\_\_\_\_ (d) The program shall complete a bedtime survey annually or as requested by the resident.

\_\_\_\_\_ (e) The program shall calculate compliance by dividing the number of distinct residents who complete a bedtime survey (numerator) by the number of distinct residents during the calendar year, subtracted by the distinct residents who declined to complete a bedtime survey (difference is denominator).

\_\_\_\_\_ (7) Providing consistent CNA or nursing staff assignments to residents with 80 percent compliance. A program may earn up to five QI points by providing consistent CNA or nursing staff assignments to residents. The points may be earned by providing the same CNA or nurse for a distinct resident for 32 waking hours during a standard Sunday through Saturday week.

\_\_\_\_\_ (a) A program may earn one QI point for having a staffing schedule providing consistent CNA's and nurses for the entire program.

\_\_\_\_\_ (b) The program may earn one QI point for providing consistent CNA assignment to a distinct hall containing at least 10 residents.

\_\_\_\_\_ (c) The program may earn two QI points for providing consistent CNA assignment to an entire program.

\_\_\_\_\_ (d) The program may earn one point for providing consistent nurse assignment to a hall containing at least 10 residents.

\_\_\_\_\_ (e) A program may earn two QI points for providing consistent nurse assignment to an entire program.

\_\_\_\_\_ (f) The program shall provide the consistent assignment for 40 of 52 weeks during the calendar year.

\_\_\_\_\_ (g) The program shall calculate compliance by dividing the number of distinct residents who have consistent assignment in the hall or program (numerator) by the number of distinct residents during the calendar year in the hall or program (denominator).

\_\_\_\_\_ (8) Providing a Range of Motion (ROM) program to residents with 80 percent compliance. A program may earn four QI points by providing ROM assessments to residents semi-annually by a qualified clinician; or, may earn two QI points by providing a

ROM assessment to residents semi-annually by a restorative nurse aid under the direct supervision of a qualified clinician.

\_\_\_\_\_ (a) The program shall include a ROM assessment for passive range of motion (PROM) or an active range of motion (AROM) assessment for shoulder, elbow, wrist, digits of the hand, hip, knee, and ankle joints. The program shall also include a ROM assessment of which joint has limitations, the reduced anatomical motion to the joint, how the restriction limits function, the title and name of the person completing the plan of care (POC), and the date of the POC.

\_\_\_\_\_ (b) If a reduction in ROM is found and the clinician recommends a ROM POC, the POC shall include:

\_\_\_\_\_ (i) a goal to return the resident to the highest practicable level of function;

\_\_\_\_\_ (ii) the frequency and duration of the POC;

\_\_\_\_\_ (iii) the title and name of the person completing the POC; and

\_\_\_\_\_ (iv) the date of the POC.

\_\_\_\_\_ (c) If the program develops a POC for a resident, a qualified clinician or another qualified professional shall complete the POC under the supervision of a qualified clinician.

\_\_\_\_\_ (d) If a resident qualifies for a ROM POC, but desires not to participate, the qualified clinician shall document the refusal and provide a ROM assessment semi-annually.

\_\_\_\_\_ (e) The program shall calculate compliance by dividing the number of distinct residents who received a ROM assessment semi-annually plus the number of residents refusing to complete a ROM assessment semi-annually (sum is numerator) by the number of distinct residents during the calendar year (denominator).

\_\_\_\_\_ (9) Providing a One-on-One Activity program with 80% compliance. A program may earn up to four QI points by providing a one-on-one activity program. A one-on-one activity program shall provide a 30-minute minimum individual activity onsite or within the community each month for each resident; and

\_\_\_\_\_ (a) A program may earn one QI point by providing a schedule for one-on-one activity participation for residents desiring to participate;

\_\_\_\_\_ (b) A program may earn three QI points if compliant with providing one-on-one activities;

\_\_\_\_\_ (c) A qualified activity professional shall complete an activity interest (AI) survey for each resident including recreational, educational, physical, arts and crafts, and any additional activity options preferred by the resident. The AI survey shall include the name and title of the surveyor and the date the survey was completed;

\_\_\_\_\_ (d) For each resident who desires to participate in a one-on-one activity program;

\_\_\_\_\_ (e) A qualified activity professional shall develop a POC including the preferred list of activities and a method of grading the importance of the activities to the resident. The activity POC shall include:

\_\_\_\_\_ (i) the activities to be completed during the one-on-one activity;

\_\_\_\_\_ (ii) the goal of the activity;

\_\_\_\_\_ (iii) what the activity is promoting

\_\_\_\_\_ (iv) the date the POC was completed; and

\_\_\_\_\_ (v) the title and name of the person completing the POC.

\_\_\_\_\_ (f) The person who completes the activity with the resident shall document:



- \_\_\_\_\_ (i) the preferred activity completed;
- \_\_\_\_\_ (ii) the duration of the activity;
- \_\_\_\_\_ (iii) the goal of the activity;
- \_\_\_\_\_ (iv) which quality of life measures were promoted; and
- \_\_\_\_\_ (v) any relevant comments made by the resident.

\_\_\_\_\_ (g) The qualified activity professional shall modify the POC as appropriate or when requested by the resident.

\_\_\_\_\_ (h) If a resident who desires to participate in the one-on-one activity program cannot participate in a given month, the nursing facility program shall document the refusal.

\_\_\_\_\_ (i) If a resident refuses to participate in the one-on-one activity program, the qualified activity professional shall document the refusal and continue to complete an AI survey with the resident and offer the one-on-one activity program annually.

\_\_\_\_\_ (j) If a resident who initially refuses to participate in a one-on-one activity program and desires to participate before the annual AI survey, the qualified activity professional shall complete the steps noted for residents desiring to participate in a one-on-one activity program.

\_\_\_\_\_ (k) The program shall calculate compliance by adding the number of distinct residents who participated in but declined a monthly one-on-one activity, the number of distinct residents who completed the program, and the number of distinct residents who declined to complete the program (distinct sum is numerator) divided by the number of distinct residents during the calendar year (denominator).

\_\_\_\_\_ (10) Providing a Mobility Program to qualifying residents with 80 percent compliance. A program may earn four QI points by providing a mobility program to qualifying residents. The nursing facility program shall offer residents who qualify for a walking program a walking activity five of seven days in a standard week for 40 out of 52 weeks during the calendar year.

\_\_\_\_\_ (a) A nurse shall complete the mobility and sit-stand survey and a one-step command (OSC) survey. The Division shall provide the mobility surveys.

\_\_\_\_\_ (b) A resident who achieves a combined score of eight or higher on the mobility and sit-stand surveys and a score of one on the OSC survey qualifies to participate in a walking program.

\_\_\_\_\_ (c) The nurse who completes the mobility surveys shall establish a POC for the walking program to determine:

- \_\_\_\_\_ (i) the distance of the walk;
- \_\_\_\_\_ (ii) duration of the walk; and
- \_\_\_\_\_ (iii) the amount of assistance required by the resident, including mobility devices to be provided by the staff.

\_\_\_\_\_ (d) The nursing facility program shall provide weekly documentation to illustrate program completion, including modifications to a residents walking program.

\_\_\_\_\_ (e) If a resident qualifies for but refuses to participate in a walking program, the nurse shall document the refusal and complete the mobility, sit-stand, and one-step command surveys annually.

\_\_\_\_\_ (f) If a resident initially declines to participate in a walking program and then requests to engage in a walking program before the annual follow-up surveys, the program shall complete the survey and develop a walking POC for the resident.

\_\_\_\_\_ (g) The nursing facility program shall calculate compliance by adding the number of distinct residents who completed the walking program with the distinct residents who qualified for but requested limited participation in the program, and residents who qualified for but declined participation in the walking

program (distinct sum is numerator) by the number of distinct residents who qualified for a walking program during the calendar year (denominator).

#### **R414-516-7. Exceptions and Holdings.**

\_\_\_\_\_ (1) A program that does not earn the minimum required QI points during a calendar year shall:

\_\_\_\_\_ (a) earn the number of QI points not achieved from that calendar year in addition to the required QI points the subsequent calendar year; and

\_\_\_\_\_ (b) submit to the Division a plan of correction that details how the program will come into compliance with the QI Program.

\_\_\_\_\_ (c) A plan of correction shall be postmarked or show proof of delivery to the Division within 10 business days of the request.

\_\_\_\_\_ (2) The Division shall remove from the UPL Seed Contract, a program that fails to earn the minimum QI points for a second consecutive year as required by Subsection R414-516-7(1) (a).

\_\_\_\_\_ (a) Once the Division determines that the program failed to meet QI program qualifications, the Division shall send the program a notice of failure to meet the requirements.

\_\_\_\_\_ (b) The program shall have the opportunity to appeal the determination in accordance with Rule R410-14, or shall waive the right of appeal.

\_\_\_\_\_ (c) If the program does not file an appeal or the Division's determination is upheld, the Division shall amend the UPL seed contract to remove the program effective the last day of the quarter in which the determination was made.

\_\_\_\_\_ (3) If a program that has been removed from the UPL Seed Contract desires to be added back to the contract prospectively, the program shall demonstrate compliance to Subsection R414-516-3(1)(c) for one full year ("trial period") after the effective date of the removal.

\_\_\_\_\_ (a) The program shall submit to the Division within 30 days of the trial period:

- \_\_\_\_\_ (i) the current compliance form; and
- \_\_\_\_\_ (ii) documentation of compliance with all QI programs in which points were earned.

\_\_\_\_\_ (b) If the Division determines that the program was compliant during the trial period, the Division may add the program back to the UPL Seed Contract effective the first day of the quarter following the date compliance was determined.

\_\_\_\_\_ (4) The Division may audit a program at any time to ensure compliance.

\_\_\_\_\_ (a) The Division shall provide notice that indicates the period of the audit and the QI programs being audited.

\_\_\_\_\_ (b) When an audit is performed, all documentation requested by the Division shall be postmarked or demonstrate proof of delivery to the Division within 10 business days of the request.

\_\_\_\_\_ (c) Failure to submit the requested documentation in a timely manner shall result in the program forfeiting the QI points for the specific QI program category being audited.

\_\_\_\_\_ (d) If an audit is completed, as applicable, the findings of the audit shall supersede the program's reported QI points.

\_\_\_\_\_ (e) The program shall have the opportunity to appeal the determination in accordance with Rule R410-14, or shall waive the right of appeal.

**KEY: Medicaid****Date of Enactment or Last Substantive Amendment: 2018****Authorizing, and Implemented or Interpreted Law: 26-1-5; 26-18-3**

Health, Disease Control and  
Prevention, Laboratory Services  
**R438-15**  
Newborn Screening

**NOTICE OF PROPOSED RULE**

(New Rule)

DAR FILE NO.: 42282

FILED: 11/01/2017

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Rule R398-1, which resides in the Division of Family Health and Preparedness, is being repealed and its content is being adopted as the new Rule R438-15 by the Division of Disease Control and Prevention where the program now resides. As recommended by the Social Services Appropriations Subcommittee, the new rule has incorporated language to better define the Newborn Screening Advisory Committee. Additionally, Spinal Muscular Atrophy is being added to the list of screened disorders per recommendation of the Newborn Screening Advisory Committee. (EDITOR'S NOTE: The proposed repeal of Rule R398-1 is under Filing No. 42279 in this issue, November 15, 2017, of the Bulletin.)

SUMMARY OF THE RULE OR CHANGE: There are three components to this rule change. First is the adoption as a new rule, R438-15, under the Division of Disease Control and Prevention. Second is the additional language included to define the Newborn Screening Advisory Committee membership and function. Third is the addition of Spinal Muscular Atrophy to the list of disorders included in the screening panel.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 26-1-30 and Section 26-10-6

**ANTICIPATED COST OR SAVINGS TO:**

◆ THE STATE BUDGET: The cost to Medicaid is estimated to be \$44,328 (15,233 X \$2.91). This is based on 2015 Medicaid data which indicated that 31% of Utah births are Medicaid eligible. The calculated cost to add Spinal Muscular Atrophy (SMA) screening is \$2.91/newborn. Medical literature indicates that screening for SMA will identify 4 to 6 cases in 50,000 births. Early identification results in a decrease in hospitalizations, and unnecessary testing and treatments for newborns identified with this disorder. Each child not identified through newborn screening requires more in hospitalizations and testing before SMA is identified.

Estimated savings per case identified through newborn screening ranges from \$350,000 to \$2,000,000.

◆ LOCAL GOVERNMENTS: There is no impact on local governments. Additional costs for SMA screening are passed on to Medicaid, third party payers, and others.

◆ SMALL BUSINESSES: There is no impact on small businesses. Additional costs for SMA screening are passed on to Medicaid, third party payers, and others.

◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: Additional costs for SMA screening are passed on to third party payers, Medicaid, and others. The additional cost to persons other than businesses is \$103,430 based on 2015 non-Medicaid deliveries. This is calculated as \$2.91 X 35,543 births.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The compliance cost will be \$2.91 per newborn screened. The Department does not have sufficient data to estimate the cost to any particular third party payer who pays for the screenings.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Balancing the cost of testing at \$2.91 per newborn against the value of identifying 4 to 6 cases per year in Utah and avoiding the delay in care and suffering by the child and family is a difficult task. Impact on third party payors has been carefully evaluated and tentatively determined to be reasonable and appropriate. Public comment will be carefully evaluated.

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

HEALTH  
DISEASE CONTROL AND PREVENTION,  
LABORATORY SERVICES  
4431 S 2700 W  
TAYLORSVILLE, UT 84119  
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Robyn Atkinson by phone at 801-965-2424, by FAX at 801-969-3704, or by Internet E-mail at rmatkinson@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 12/15/2017

THIS RULE MAY BECOME EFFECTIVE ON: 12/22/2017

AUTHORIZED BY: Joseph Miner, MD, Executive Director

**R438. Disease Control and Prevention.****R438-15. Newborn Screening.****R438-15-1. Purpose and Authority.**

(1) The purpose of this rule is to facilitate early detection, prompt referral, early treatment, and prevention of disability and

mental retardation in infants with certain genetic and endocrine disorders.

(2) Authority for the Newborn Screening program and promulgation of rules to implement the program are found in Sections 26-1-6, 26-1-30 and 26-10-6.

**R438-15-2. Definitions.**

(1) "Abnormal test result" means a result that is outside of the normal range for a given test.

(2) "Appropriate specimen" means a blood specimen submitted on the Utah Newborn Screening form that conforms with the criteria in R438-15-9.

(3) "Blood spot" means a clinical specimen(s) submitted on the filter paper (specially manufactured absorbent specimen collection paper) of the Newborn Screening form using the heel stick method.

(4) "Department" means the Utah Department of Health.

(5) "Follow up" means the tracking of all newborns with an abnormal result, inadequate or unsatisfactory specimen or a quantity not sufficient specimen through to a normal result or confirmed diagnosis and referral.

(6) "Inadequate specimen" means a specimen determined by the Newborn Screening Laboratory to be unacceptable for testing.

(7) "Indeterminate result" means a result that requires another specimen to determine normal or abnormal status.

(8) "Institution" means a hospital, alternate birthing facility, or midwife service in Utah that provides maternity or nursery services or both.

(9) "Medical home/practitioner" means a person licensed by the Department of Commerce, Division of Occupational and Professional Licensing to practice medicine, naturopathy, or chiropractic or to be a nurse practitioner, as well as the licensed or unlicensed midwife who takes responsibility for delivery or the ongoing health care of a newborn.

(10) "Metabolic diseases" means those diseases screened by the Department which are caused by an inborn error of metabolism.

(11) "Newborn Screening form" means the Department's demographic form with attached Food and Drug Administration (FDA)-approved filter paper medical collection device.

(12) "Quantity not sufficient specimen" or "ONS specimen" means a specimen that has been partially tested but does not have enough blood available to complete the full testing.

(13) "Unsatisfactory specimen" means an inadequate specimen.

**R438-15-3. Newborn Screening Advisory Committee**

(1) Newborn Screening Advisory Committee shall be composed of at least 9 members as follows:

(a) an individual with an advanced degree (MS/PhD/MD) in genetics or other relevant field, who will serve as Chair;

(b) a representative from the Utah Hospital Association;

(c) a community pediatrician;

(d) the Director of the Division of Disease Control and Prevention;

(e) an advocate or a consumer of a newborn screening services;

(f) clinical consultants for the Newborn Screening program;

(g) a representative from the Utah Public Health Laboratory

(h) a representative from the Newborn Screening Follow-up Program;

(i) a representative from the research community with knowledge about disorders considered for future addition to the newborn screening panel.

(2) The Department Executive Director shall approve committee membership with counsel from the advisory committee.

(3) The term of committee members shall be four years;

(a) members may serve up to three additional terms as requested;

(b) if a vacancy occurs in the committee membership for any reason, a replacement shall be appointed for the unexpired term in the same manner as the original appointment;

(c) a majority of the committee constitutes a quorum at any meeting. If a quorum is present, the action of the majority of members shall be the action of the advisory committee.

(4) The committee shall:

(a) advise the Department on policy issues related to newborn screening services;

(b) provide guidance to programs and functions within the Department having to do with newborn screening services and

(c) evaluate potential tests that could be added to newborn or population screening and make recommendations to the Department.

**R438-15-4. Implementation.**

(1) Each newborn in the state of Utah shall submit to the Newborn Screening testing, except as provided in Section R438-15-12.

(2) The Department of Health, after consulting with the Newborn Screening Advisory Committee, will determine the disorders on the Newborn Screening Panel, based on demonstrated effectiveness and available funding. Disorders for which the infant blood is screened are:

(a) Biotinidase Deficiency;

(b) Congenital Adrenal Hyperplasia;

(c) Congenital Hypothyroidism;

(d) Galactosemia;

(e) Hemoglobinopathy;

(f) Amino Acid Metabolism Disorders;

(i) Phenylketonuria (phenylalanine hydroxylase deficiency and variants);

(ii) Tyrosinemia type 1 (fumarylacetoacetate hydrolase deficiency);

(iii) Tyrosinemia type 2 (tyrosine amino transferase deficiency);

(iv) Tyrosinemia type 3 (4-OH-phenylpyruvate dioxygenase deficiency);

(v) Maple Syrup Urine Disease (branched chain ketoacid dehydrogenase deficiency);

(vi) Homocystinuria (cystathionine beta synthase deficiency);

(vii) Citrullinemia (arginino succinic acid synthase deficiency);

(viii) Argininosuccinic aciduria (argininosuccinic acid lyase deficiency);

(ix) Argininemia (arginase deficiency);

(x) Hyperprolinemia type 2 (pyroline-5-carboxylate dehydrogenase deficiency);

(g) Fatty Acid Oxidation Disorders;

- \_\_\_\_\_ (i) Medium Chain Acyl CoA Dehydrogenase Deficiency;
- \_\_\_\_\_ (ii) Very Long Chain Acyl CoA Dehydrogenase Deficiency;
- \_\_\_\_\_ (iii) Short Chain Acyl CoA Dehydrogenase Deficiency;
- \_\_\_\_\_ (iv) Long Chain 3-OH Acyl CoA Dehydrogenase Deficiency;
- \_\_\_\_\_ (v) Short Chain 3-OH Acyl CoA Dehydrogenase Deficiency;
- \_\_\_\_\_ (vi) Primary carnitine deficiency (OCTN2 carnitine transporter defect);
- \_\_\_\_\_ (vii) Carnitine Palmitoyl Transferase I Deficiency;
- \_\_\_\_\_ (viii) Carnitine Palmitoyl Transferase 2 Deficiency;
- \_\_\_\_\_ (ix) Carnitine Acylcarnitine Translocase Deficiency;
- \_\_\_\_\_ (x) Multiple Acyl CoA Dehydrogenase Deficiency;
- \_\_\_\_\_ (h) Organic Acids Disorders:
  - \_\_\_\_\_ (i) Propionic Acidemia (propionyl CoA carboxylase deficiency);
  - \_\_\_\_\_ (ii) Methylmalonic acidemia (multiple enzymes);
  - \_\_\_\_\_ (iii) Malonic Aciduria;
  - \_\_\_\_\_ (iv) Isovaleric acidemia (isovaleryl CoA dehydrogenase deficiency);
  - \_\_\_\_\_ (v) 2-Methylbutyryl CoA dehydrogenase deficiency;
  - \_\_\_\_\_ (vi) Isobutyryl CoA dehydrogenase deficiency;
  - \_\_\_\_\_ (vii) 2-Methyl-3-OH-butyryl-CoA dehydrogenase deficiency;
  - \_\_\_\_\_ (viii) Glutaric acidemia type 1 (glutaryl CoA dehydrogenase deficiency);
  - \_\_\_\_\_ (ix) 3-Methylcrotonyl CoA carboxylase deficiency;
  - \_\_\_\_\_ (x) 3-Ketothiolase deficiency;
  - \_\_\_\_\_ (xi) 3-Hydroxy-3-methyl glutaryl CoA lyase deficiency;
  - \_\_\_\_\_ (xii) Holocarboxylase synthase (multiple carboxylases) deficiency;
  - \_\_\_\_\_ (i) Cystic Fibrosis;
  - \_\_\_\_\_ (j) Severe Combined Immunodeficiency syndrome; and
  - \_\_\_\_\_ (k) Disorders of Creatine Metabolism and
  - \_\_\_\_\_ (l) Spinal Muscular Atrophy

**R438-15-5. Responsibility for Collection of the First Specimen.**

- \_\_\_\_\_ (1) If the newborn is born in an institution, the institution must collect and submit an appropriate specimen, unless the newborn is transferred to another institution prior to 48 hours of age.
- \_\_\_\_\_ (2) If the newborn is born outside of an institution, the practitioner or other person primarily responsible for providing assistance to the mother at the birth must arrange for the collection and submission of an appropriate specimen.
- \_\_\_\_\_ (3) If there is no other person in attendance of the birth, the parent or legal guardian must arrange for the collection and submission of an appropriate specimen.
- \_\_\_\_\_ (4) If the newborn is transferred to another institution prior to 48 hours of age, the receiving health institution must collect and submit an appropriate specimen.

**R438-15-6. Timing of Collection of First Specimen.**

\_\_\_\_\_ The first specimen shall be collected between 24 and 48 hours of the newborn's life. Except:

- \_\_\_\_\_ (1) If the newborn is discharged from an institution before 48 hours of age, an appropriate specimen must be collected within four hours of discharge.
- \_\_\_\_\_ (2) If the newborn is to receive a blood transfusion or dialysis, the appropriate specimen must be collected immediately

\_\_\_\_\_ before the procedure, except in emergency situations where time does not allow for collection of the specimen. If the newborn receives a blood transfusion or dialysis prior to collecting the appropriate specimen the following must be done:

- \_\_\_\_\_ (a) Repeat the collection and submission of an appropriate specimen 7-10 days after last transfusion or dialysis for a second screening specimen;
- \_\_\_\_\_ (b) Repeat the collection and submission of an appropriate specimen 120 days after last transfusion or dialysis for a first screening specimen.

**R438-15-7. Parent Education.**

\_\_\_\_\_ The person who has responsibility under Section R438-15-5 shall inform the parent or legal guardian of the required collection and submission and the disorders screened. That person shall give the second half of the Newborn Screening form to the parent or legal guardian with instructions on how to arrange for collection and submission of the second specimen.

**R438-15-8. Timing of Collection of the Second Specimen.**

\_\_\_\_\_ A second specimen shall be collected between 7 and 28 days of age.

- \_\_\_\_\_ (1) The parent or legal guardian shall arrange for the collection and submission of the appropriate second specimen through an institution, medical home/practitioner, or local health department.
- \_\_\_\_\_ (2) If the newborn's first specimen was obtained prior to 24 hours of age, the second specimen shall be collected by fourteen days of age.
- \_\_\_\_\_ (3) If the newborn is hospitalized beyond the seventh day of life, the institution shall arrange for the collection and submission of the appropriate second specimen.

**R438-15-9. Criteria for Appropriate Specimen.**

- \_\_\_\_\_ (1) The institution or medical home/practitioner collecting the appropriate specimen must:
  - \_\_\_\_\_ (a) Use only a Newborn Screening form purchased from the Department. The fee for the Newborn Screening form is set by the Legislature in accordance with Section 26-1-6;
  - \_\_\_\_\_ (b) Correctly store the Newborn Screening form;
  - \_\_\_\_\_ (c) Not use the Newborn Screening form beyond the date of expiration;
  - \_\_\_\_\_ (d) Not alter the Newborn Screening form in any way;
  - \_\_\_\_\_ (e) Complete all information on the Newborn Screening form. If the infant is being adopted, the following may be omitted: infant's last name, birth mother's name, address, and telephone number. Infant must have an identifying name, and a contact person must be listed;
  - \_\_\_\_\_ (f) Apply sufficient blood to the filter paper;
  - \_\_\_\_\_ (g) Not contaminate the filter paper with any foreign substance;
  - \_\_\_\_\_ (h) Not tear, perforate, scratch, or wrinkle the filter paper;
  - \_\_\_\_\_ (i) Apply blood evenly to one side of the filter paper and be sure it soaks through to the other side;
  - \_\_\_\_\_ (j) Apply blood to the filter paper in a manner that does not cause caking;
  - \_\_\_\_\_ (k) Collect the blood in such a way as to not cause serum or tissue fluids to separate from the blood;
  - \_\_\_\_\_ (l) Dry the specimen properly;

(m) Not remove the filter paper from the Newborn Screening form.

(2) Submit the completed Newborn Screening form to the Utah Department of Health, Newborn Screening Laboratory, 4431 South 2700 West, Taylorsville, Utah 84119.

(a) The Newborn Screening form shall be placed in an envelope large enough to accommodate it without folding the form.

(b) If mailed, the Newborn Screening form shall be placed in the U.S. Postal system within 24 hours of the time the appropriate specimen was collected.

(c) If hand-delivered, the Newborn Screening form shall be delivered within 48 hours of the time the appropriate specimen was collected.

#### **R438-15-10. Abnormal Result.**

(1)(a) If the Department finds an abnormal result consistent with a disease state, the Department shall send written notice to the medical home/practitioner noted on the Newborn Screening form.

(b) If the Department finds an indeterminate result on the first screening, the Department shall determine whether to send a notice to the medical home/practitioner based on the results on the second screening specimen.

(2) The Department may require the medical home/practitioner to collect and submit additional specimens for screening or confirmatory testing. The Department shall pay for the initial confirmatory testing on the newborn requested by the Department. The Department may recommend additional diagnostic testing to the medical home/practitioner. The cost of additional testing recommended by the Department is not covered by the Department.

(3) The medical home/practitioner shall collect and submit specimens within the time frame and in the manner instructed by the Department.

(4) As instructed by the Department or the medical home/practitioner, the parent or legal guardian of a newborn identified with an abnormal test result shall promptly take the newborn to the Department or medical home/practitioner to have an appropriate specimen collected.

(5) The medical home/practitioner who makes the final diagnosis shall complete a diagnostic form and return it to the Department within 30 days of the notification letter from the Department.

#### **R438-15-11. Inadequate or Unsatisfactory Specimen, or QNS Specimen.**

If the Department finds an inadequate or unsatisfactory specimen, or QNS specimen, the Department shall inform the institution or medical home/practitioner noted on the Newborn Screening form.

(1) The institution or medical home/practitioner that submitted the inadequate or unsatisfactory, or QNS specimen shall submit an appropriate specimen in accordance with Section R438-15-9. The responsible institution or medical home/practitioner shall collect and submit the new specimen within two days of notice, and the responsible institution or medical home/practitioner shall label the form for testing as directed by the Department.

(2) The parent or legal guardian of a newborn identified with an inadequate or unsatisfactory specimen or QNS specimen shall promptly take the newborn to the institution or medical home/practitioner to have an appropriate specimen collected.

#### **R438-15-12. Testing Refusal.**

A parent or legal guardian may refuse to allow the required testing for religious reasons only. The medical home/practitioner or institution shall file in the newborn's record documentation of refusal, reason, education of family about the disorders, and a signed waiver by both parents or legal guardian. The practitioner or institution shall submit a copy of the refusal to the Utah Department of Health, Newborn Screening Program, P.O. Box 144710, Salt Lake City, UT 84114-4710.

#### **R438-15-13. Access to Medical Records.**

(1) The Department shall have access to the medical records of a newborn in order to identify medical home/practitioner, reason appropriate specimen was not collected, or to collect missing demographic information.

(2) The institution shall enter the Newborn Screening form number, also known as the Birth Record Number, into the Vital Records database and the Newborn Hearing Screening database.

#### **R438-15-14. Noncompliance by Parent or Legal Guardian.**

If the medical home/practitioner or institution has information that leads it to believe that the parent or legal guardian is not complying with this rule, the medical home/practitioner or institution shall report such noncompliance as medical neglect to the Department.

#### **R438-15-15. Confidentiality and Related Information.**

(1) The Department initially releases test results to the institution of birth for first specimens and to the medical home/practitioner, as noted on the Newborn Screening form, for the second specimen.

(2) The Department notifies the medical home/practitioner noted on the Newborn Screening form as provided in Section R438-15-10(1) of any results that require follow up.

(3) The Department releases information to a medical home/practitioner or other health practitioner on a need to know basis. Release may be orally, by a hard copy of results or available electronically by authorized access.

(4) Upon request of the parent or guardian, the Department may release results as directed in the release.

(5) All requests for test results or records are governed by Utah Code Title 26, Chapter 3.

(6) The Department may release information in summary, statistical, or other forms that do not identify particular individuals.

(7) A testing laboratory that analyzes newborn screening samples for the Department may not release information or samples without the Department's express written direction.

#### **R438-15-16. Blood Spots.**

(1) Blood spots become the property of the Department.

(2) The Department includes in parent education materials information about the Department's policy on the retention and use of residual newborn blood spots.

(3) The Department may use residual blood spots for newborn screening quality assessment activities.

(4) The Department may release blood spots for research upon the following:

(a) The person proposing to conduct the research applies in writing to the Department for approval to perform the research. The

application shall include a written protocol for the proposed research, the person's professional qualifications to perform the proposed research, and other information if needed and requested by the Department. When appropriate, the proposal will then be submitted to the Department's Internal Review Board for approval.

(b) The Department shall de-identify blood spots it releases unless it obtains informed consent of a parent or guardian to release identifiable samples.

(c) All research must be first approved by the Department's Internal Review Board.

**R438-15-17. Retention of Blood Spots.**

(1) The Department retains blood spots for a minimum of 90 days.

(2) Prior to disposal, the Department shall de-identify and autoclave the blood spots.

**R438-15-18. Reporting of Disorders.**

If a diagnosis is made for one of the disorders screened by the Department that was not identified by the Department, the medical home/practitioner shall report it to the Department.

**R438-15-19. Statutory Penalties.**

As required by Subsection 63G-3-201(5): Any medical home/practitioner or institution responsible for submission of a newborn screen that violates any provision of this rule may be assessed a civil money penalty as provided in Section 26-23-6.

**KEY: health care, newborn screening**

**Date of Enactment or Last Substantive Amendment: 2017**

**Authorizing, and Implemented or Interpreted Law: 26-1-6; 26-1-30; 26-10-6**

Insurance, Administration  
**R590-267**  
Personal Injury Protection Relative  
Value Study Rule

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 42298

FILED: 11/01/2017

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The change updates the conversion factors and publications for use in 2018.

**SUMMARY OF THE RULE OR CHANGE:** The change adds conversion factors and publications for physicians and dentists to use when determining the reasonable value of services provided to patients on or after 01/01/2018, and removes the factors and publications that were to be used from 2014 through 2015.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Subsection 31A-2-201(3) and Subsection 31A-22-307(2)

**MATERIALS INCORPORATED BY REFERENCE:**

- ◆ Updates Relative Values for Dentists, published by Optum 360, 2017
- ◆ Updates Relative Values for Physicians, published by Optum 360, 2017

**ANTICIPATED COST OR SAVINGS TO:**

◆ **THE STATE BUDGET:** The Department of Insurance (Department) will be required to purchase two hard copies of the RVD 2017 at \$260 each and two copies of the RVP 2017 at \$330 each. These publications are incorporated by reference. One copy will be maintained by the Department and one copy will be maintained by the Office of Administrative Rules per rulemaking requirements.

◆ **LOCAL GOVERNMENTS:** There will be no cost or savings to local governments. The rule covers the method by which providers determine the reasonable value of services they provide to consumers.

◆ **SMALL BUSINESSES:** Medical, dental, and chiropractic offices that provide services for individuals insured in auto accidents may purchase individually, or as a group, the RVD 2017 or RVP 2017 publication that is incorporated by reference in the rule. The cost of the RVD 2017 is \$260 for a hard copy. The cost of the RVP 2017 is \$330 for a hard copy. By using the publication with the conversion factors in the rule, they will be able to determine the reasonable charges for services they provide to those injured in automobile accidents.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Auto insurers, or those they contract with to service their claims, and health care providers may purchase the RVD 2017 or RVP 2017 publication that is incorporated by reference in the rule. The cost of the RVD 2017 is \$260 for a hard copy. The cost of the RVP 2017 is \$330 for a hard copy. By using the publication with the conversion factors in the rule, they will be able to determine the reasonable charges of medical and dental services they are required to reimburse providers for treatment under personal injury protection coverage in Utah.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** Affected persons may purchase the RVD 2017 or RVP 2017 publication that is incorporated by reference in the rule. The cost of the RVD 2017 is \$260 for a hard copy, while the RVP 2017 is \$330 for a hard copy. The Department is sensitive to this compliance cost and it expects to arrange a 50% discount for purchasers with a Utah address, as has been arranged in prior years, to help ameliorate any adverse costs on small businesses. Additionally, as required by rulemaking guidelines, both publications will be available for review by affected persons at the Insurance Department and the Office of Administrative Rules at no charge.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: I. WHETHER A FISCAL IMPACT TO BUSINESS IS EXPECTED AS A RESULT OF THE PROPOSED RULE AND, IF SO, A DESCRIPTION OF WHY: A number of businesses will have a fiscal impact as a result of this rule. Small businesses (including medical, dental, and chiropractic offices) and larger businesses (such as auto and health insurers) may choose to purchase the RVD 2017 or RVP 2017 publication that is incorporated by reference in the rule. The cost of the RVD 2017 is \$260 for a hard copy. The cost of the RVP 2017 is \$330 for a hard copy. The Department is sensitive to this compliance cost and it expects to arrange a 50% discount for purchasers with a Utah address, as has been arranged in prior years, to help ameliorate any adverse costs on small businesses. Additionally, as required by rulemaking guidelines, both publications will be available for review by affected persons at the Insurance Department and the Office of Administrative Rules at no charge. II. AN ESTIMATE OF THE TOTAL NUMBER OF BUSINESS ESTABLISHMENTS IN UTAH EXPECTED TO BE IMPACTED: Approximately 4,061 businesses in Utah may be impacted by the rule. This includes physician, dental, and chiropractic offices, as well as medical and auto insurers. III. AN ESTIMATE OF THE SMALL BUSINESS ESTABLISHMENTS IN UTAH EXPECTED TO BE IMPACTED: Approximately 3,896 small businesses in Utah may be impacted by the rule. This includes physician, dental, and chiropractic offices which generally have fewer than 50 employees. The Department is sensitive to this compliance cost and it expects to arrange a 50% discount for purchasers with a Utah address, as has been arranged in prior years, to help ameliorate any adverse costs on small businesses. Additionally, as required by rulemaking guidelines, both publications will be available for review by affected persons at the Insurance Department and the Office of Administrative Rules at no charge. IV. A DESCRIPTION OF THE SOURCES OF COST OR SAVINGS AS WELL AS THE EXPECTED NET SAVINGS OR COST TO BUSINESS ESTABLISHMENTS AND SMALL BUSINESS ESTABLISHMENTS AS A RESULT OF THE PROPOSED RULE OVER A ONE-YEAR PERIOD, IDENTIFYING ONE-TIME AND ONGOING COSTS: Affected persons may purchase the RVD 2017 or RVP 2017 publication that is incorporated by reference in the rule. The cost of the RVD 2017 is \$260 for a hard copy, while the RVP 2017 is \$330 for a hard copy. Small businesses (physicians, dentists, chiropractors) are likely to purchase one publication or the other, depending on their specialization. The net one-time cost for small businesses as a whole may be \$1,166,890. Larger businesses (insurers) may purchase both publications. The net one-time cost for larger businesses as a whole may be \$97,350. The net one-time cost for all affected persons (small businesses and large businesses) may be \$1,264,240. However, the Department expects to arrange a 50% discount for purchasers with a Utah address, as has been arranged in prior years. This discount will reduce the expected costs significantly. It is also important to note that the Department makes its copies of the RVD and RVP available to any

affected parties for free viewing in the Department's offices. V. DEPARTMENT HEAD'S COMMENTS ON THE ANALYSIS: This analysis represents the Insurance Department's best estimate of the maximum fiscal impact this rule amendment may have on businesses. Because the analysis did not include the expected 50% discount, the actual impact is expected to be much lower. Affected persons are also welcome to review both publications at the Department's offices at no cost.

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 12/15/2017

THIS RULE MAY BECOME EFFECTIVE ON: 12/22/2017

AUTHORIZED BY: Steve Gooch, Information Specialist

**Appendix: Regulatory Impact Analysis for Small and Non-Small Businesses**

	FY 2018	FY 2019	FY 2020
<b>Fiscal Costs</b>			
State Government	\$1,180	\$0	\$1,180
Local Government	\$0	\$0	\$0
Small Businesses	\$1,166,890	\$0	\$1,166,890
Non-Small Businesses	\$97,350	\$0	\$97,350
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Costs:</b>	<b>\$1,265,420</b>	<b>\$0</b>	<b>\$1,265,420</b>
<b>Fiscal Benefits</b>			
State Government	\$0	\$0	\$0
Local Government	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0

Other Persons	\$0	\$0	\$0
<b>Total Fiscal Benefits:</b>	\$0	\$0	\$0
<b>Net Fiscal Benefits:</b>	-\$1,265,420	\$0	-\$1,265,420

The provisions of the rule are in effect for 2018 and 2019. It is expected that businesses will purchase the RVP or RVD in FY 2018, and will not have any additional costs in FY 2019. The rule will be amended for 2020 using updated data, and using updated versions of the RVP and RVD.

In performing the thorough fiscal analysis, the Department used the following NAICS classifications:  
 621111 -- Offices of Physicians (except Mental Health Specialists)  
 621210 -- Offices of Dentists  
 621310 -- Offices of Chiropractors  
 524126 -- Direct Property and Casualty Insurance Carriers  
 524114 -- Direct Health and Medical Insurance Carriers

**R590. Insurance, Administration.**

**R590-267. Personal Injury Protection Relative Value Study Rule.**

**R590-267-1. Authority.**

This rule is promulgated by the insurance commissioner pursuant to Subsections 31A-2-201(3) and 31A-22-307(2).

**R590-267-2. Purpose.**

(1) The purpose of this rule is to establish a reasonable value of services and accommodations for the diagnosis, care, recovery, or rehabilitation of an injured person under automobile personal injury protection coverage as described in Subsection 31A-22-307(1)(a).

(2) As required by Subsection 31A-22-307(2), the reasonable value is based on the 75th percentile of medical, dental, and chiropractic charges, as they presently exist in the most populous county in this State.

**R590-267-3. Scope.**

This rule applies to services and accommodations provided:

- (1) under automobile personal injury protection coverage as described in Subsection 31A-22-307(1)(a); and
- (2) on or after January 1, 2014.

**R590-267-4. Definitions.**

(1) As used in this rule "Conversion Factor" means a multiplier used to convert the relative value unit or units of a service or a procedure to a reimbursement rate.

(2) As used in this rule "RVD [2015]2017" means [2015]2017 Edition of the Relative Values for Dentists published by Optum360, 2525 Lake Park Blvd., Salt Lake City, UT 84120; phone: (800) 464-3649; email: customerassistance@optum.com; website: www.optumcoding.com.

(3) As used in this rule "RVD [2013]2015" means [2013]2015 Edition of the Relative Values for Dentists published by [Relative Values Studies, Inc., 12301 N. Grant St., Suite 230, Thornton, CO, 80241; phone: (866) 310-7874; email:

info@rvsdata.com; website: www.rvsdata.com]Optum360, 2525 Lake Park Blvd., Salt Lake City, UT 84120; phone: (800) 464-3649; email: customerassistance@optum.com; website: www.optumcoding.com.

(4) As used in this rule "RVP [2015]2017" means [2015]2017 Edition of the Relative Values for Physicians published by Optum360, 2525 Lake Park Blvd., Salt Lake City, UT 84120; phone: (800) 464-3649; email: customerassistance@optum.com; website: www.optumcoding.com.

(5) As used in this rule "RVP [2013]2015" means [2013]2015 Edition of the Relative Values for Physicians published by Optum 360, 2525 Lake Park Blvd., Salt Lake City, UT 84120; phone: (800) 464-3649; email: customerassistance@optum.com; website: www.optumcoding.com.

(6) As used in this rule "Relative Value Unit" means a numerical value assigned to a medical or dental procedure as published in RVP and RVD respectively.

(7) The publications identified in Subsections R590-267-4(2), (3), (4), and (5) are hereby incorporated by reference within this rule.

**R590-267-5. Conversion Factors.**

(1)(a) The following conversion factors shall be used with RVP [2015]2017 to determine the reasonable value of medical services or accommodations provided on or after January 1, [2016]2018:

- (i) anesthesia, [97.13]99.27;
- (ii) surgery, [200.00]225.90;
- (iii) radiology, [35.84]37.50;
- (iv) pathology, [24.29]25.00;
- (v) medicine, [11.67]13.00;
- (vi) evaluation and management, [13.16]14.65.

(b) The conversion factor used with RVD [2015]2017 to determine the reasonable value of dental services or accommodations provided on or after January 1, [2016]2018 shall be [60.00]63.00.

(2)(a) The following conversion factors shall be used with RVP [2013]2015 to determine the reasonable value of medical services or accommodations provided from January 1, [2014]2016 through December 31, [2015]2017:

- (i) anesthesia, [91.57]97.13;
- (ii) surgery, [180.00]200.00;
- (iii) radiology, [35.18]35.84;
- (iv) pathology, [23.85]24.29;
- (v) medicine, [10.87]11.67;
- (vi) evaluation and management, [11.85]13.16.

(b) The conversion factor used with RVD [2013]2015 to determine the reasonable value of dental services or accommodations provided from January 1, [2014]2016 through December 31, [2015]2017 shall be [55.00]60.00.

**R590-267-6. Fee Schedule.**

The reasonable value of any service or accommodation shall be calculated by multiplying the relative value unit assigned to the service or accommodation by the applicable conversion factor prescribed in R590-267-5.

**R590-267-7. Penalties.**

A person found to be in violation of this rule shall be subject to penalties as provided under Section 31A-2-308.



**R590-267-8. 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: relative value study**

**Date of Enactment or Last Substantive Amendment:** ~~[January 1, 2016]~~2017

**Authorizing, and Implemented or Interpreted Law:** 31A-2-201(3); 31A-22-307(2)

**Insurance, Administration  
R590-271-1  
Authority**

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 42276

FILED: 10/30/2017

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The change removes the reference to Section 31A-22-613.5 which was repealed in H.B. 336, Health Reform Amendments, passed during the 2017 General Session.

**SUMMARY OF THE RULE OR CHANGE:** The only change in the rule is to remove reference to Section 31A-22-613.5, which was repealed in H.B. 336 (2017). However, the Department still has rulemaking authority for the provisions of this rule which were previously cited in the rule.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 31A-2-216

**ANTICIPATED COST OR SAVINGS TO:**

◆ **THE STATE BUDGET:** There are no anticipated cost or savings to the state budget. The change only removes one of the references of statutory scope for the authority to promulgate the rule.

◆ **LOCAL GOVERNMENTS:** There are no anticipated cost or savings to local governments. The change only removes one of the references of statutory scope for the authority to promulgate the rule.

◆ **SMALL BUSINESSES:** There are no anticipated cost or savings to small businesses. The change only removes one of the references of statutory scope for the authority to promulgate the rule.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There are no anticipated cost or savings to any other persons. The change only removes one of the references of statutory scope for the authority to promulgate the rule.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** There are no compliance costs as a result of this amendment. The change only removes one of the references of statutory scope for the authority to promulgate the rule. It requires no action to be taken by any persons.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** After conducting a thorough analysis, it was determined that this proposed rule will not result in a fiscal impact to businesses. **V. DEPARTMENT HEAD'S COMMENTS ON THE ANALYSIS:** This change was necessary because of legislative action taken during the 2017 General Session. The effects of the change only apply to the Department and will have no fiscal impact on it or any other persons in the state.

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

INSURANCE  
ADMINISTRATION  
ROOM 3110 STATE OFFICE BLDG  
450 N MAIN ST  
SALT LAKE CITY, UT 84114-1201  
or at the Office of Administrative Rules.

**DIRECT QUESTIONS REGARDING THIS RULE TO:**

◆ Steve Gooch by phone at 801-538-3803, by FAX at 801-538-3829, or by Internet E-mail at [sgooch@utah.gov](mailto:sgooch@utah.gov)

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 12/15/2017

THIS RULE MAY BECOME EFFECTIVE ON: 12/22/2017

AUTHORIZED BY: Steve Gooch, Information Specialist

**R590. Insurance, Administration.****R590-271. Data Reporting for Consumer Quality Comparison.****R590-271-1. Authority.**

This rule is promulgated pursuant to Subsection[s] 31A-2-216[~~and 31A-22-613.5~~] wherein the commissioner [~~is directed to educate consumers and to adopt a rule for purposes of reporting transparency information~~]may adopt rules to educate health care consumers by producing or collecting and disseminating education materials to consumers.

**KEY: data, data reporting, insurance**

**Date of Enactment or Last Substantive Amendment:** ~~[June 22, 2015]~~2017

**Authorizing, and Implemented or Interpreted Law:** 31A-2-216[~~;~~ 31A-22-613.5]

**Judicial Performance Evaluation  
Commission, Administration  
R597-5  
Electronic Meetings**

**NOTICE OF PROPOSED RULE**

(New Rule)

DAR FILE NO.: 42262

FILED: 10/25/2017

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The purpose of this rule is to establish procedures for the public bodies created in Title 63M, Chapter 7, and Title 77, Chapter 32, to hold open meetings by electronic means.

**SUMMARY OF THE RULE OR CHANGE:** This rule establishes procedures for the public bodies created in Title 63M, Chapter 7, and Title 77, Chapter 32, to hold open meetings by electronic means.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 52-4-207

**ANTICIPATED COST OR SAVINGS TO:**

♦ **THE STATE BUDGET:** There are no anticipated costs or savings to the state budget. This rule simply establishes procedures for the public bodies created in Title 63M, Chapter 7, and Title 77, Chapter 32, to hold open meetings by electronic means.

♦ **LOCAL GOVERNMENTS:** There are no anticipated costs or savings to local governments. This rule simply establishes procedures for the public bodies created in Title 63M, Chapter 7, and Title 77, Chapter 32, to hold open meetings by electronic means.

♦ **SMALL BUSINESSES:** There are no anticipated costs or savings to small businesses. This rule simply establishes procedures for the public bodies created in Title 63M, Chapter 7, and Title 77, Chapter 32, to hold open meetings by electronic means.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There are no anticipated costs or savings to persons other than small businesses, businesses, or local government. This rule simply establishes procedures for the public bodies created in Title 63M, Chapter 7, and Title 77, Chapter 32, to hold open meetings by electronic means.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** There are no anticipated compliance costs for affected persons. The rule establishes procedures for the public bodies created in Title 63M, Chapter 7, and Title 77, Chapter 32, to hold open meetings by electronic means.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:**

There are no fiscal impacts that this rule may have on businesses. This rule simply establishes procedures for the public bodies created in Title 63M, Chapter 7, and Title 77, Chapter 32, to hold open meetings by electronic means.

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

JUDICIAL PERFORMANCE EVALUATION  
COMMISSION

ADMINISTRATION

ROOM B-330 SENATE BUILDING

420 N STATE ST

SALT LAKE CITY, UT 84114

or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Jennifer Yim by phone at 801-538-1652, or by Internet E-mail at [jjim@utah.gov](mailto:jjim@utah.gov)

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 12/15/2017

THIS RULE MAY BECOME EFFECTIVE ON: 12/22/2017

AUTHORIZED BY: John Ashton, Chair

**R597. Judicial Performance Evaluation Commission, Administration.**

**R597-5. Electronic Meetings.**

**R597-5-1. Authority and Purpose.**

(1) This rule is authorized by Section 52-4-207(2)(a) which requires any public body that convenes or conducts an electronic meeting to adopt a rule governing the use of electronic meetings.

(2) The purpose of this rule is to establish procedures for the public bodies created in Title 63M, Chapter 7 and Title 77, Chapter 32 to hold open meetings by electronic means.

**R597-5-2. Procedures.**

(1) The following provisions govern any meeting at which one or more commissioners appear telephonically or electronically pursuant to Utah Code Section 52-4-207:

(a) If one or more members of the commission may participate electronically or telephonically, public notices of the meeting shall so indicate. In addition, the notice shall specify the anchor location where the members of the commission not participating electronically or telephonically will be meeting and where interested persons and the public may attend, monitor, and participate in the open portions of the meeting.

(b) Notice of the meeting and the agenda shall be posted at the anchor location. Written or electronic notice shall also be provided to at least one newspaper of general circulation within the state and to a local media correspondent. These notices shall be provided at least 24 hours before the meetings.

(c) Notice of the possibility of an electronic meeting shall be given to the commissioners at least 24 hours before the meeting. In addition, the notice shall describe how a commissioner may participate in the meeting electronically or telephonically.

(d) When notice is given of the possibility of a commissioner appearing electronically or telephonically, any commissioner may do so and shall be counted as present for purposes of a quorum and may fully participate and vote on any matter coming before the commission. At the commencement of the meeting, or at such time as any commissioner initially appears electronically or telephonically, the chair shall identify for the record all those who are appearing telephonically or electronically. Votes by members of the commission who are not at the physical location of the meeting shall be confirmed by the chair.

(e) The anchor location, unless otherwise designated in the notice, shall be at the Commission on Criminal and Juvenile Justice, located in the Utah State Capitol Complex, in suite 330 of the Senate Building, Salt Lake City, Utah. The anchor location is the physical location from which the electronic meeting originates or from which the participants are connected. In addition, the anchor location shall have space and facilities so that interested persons and the public may attend, monitor, and participate in the open portions of the meeting.

**KEY: electronic meetings, procedures**

**Date of Enactment or Last Substantive Amendment: 2017**

**Authorizing, and Implemented or Interpreted Law: 52-4-207**

**Labor Commission, Adjudication**  
**R602-3-3**  
**Procedure for Requesting Approval**

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 42240

FILED: 10/17/2017

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The purpose of this rule change is to clarify the procedure for requesting approval of assignment of benefits.

**SUMMARY OF THE RULE OR CHANGE:** This rule change makes it clear that the Transferee shall provide the Transferor an explanation of the proposed transfer in writing and that a listing of any deductions be provided as well.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 34A-1-301 et seq. and Section 34A-2-422 and Section 34A-4-304 and Section 63G-4-102 et seq. and Subsection 34A-1-104(1) and Subsection 63G-3-201(2)

**ANTICIPATED COST OR SAVINGS TO:**

- ◆ THE STATE BUDGET: There are not cost or savings as this change only clarifies the existing requirements.
- ◆ LOCAL GOVERNMENTS: There are not cost or savings as this change only clarifies the existing requirements.
- ◆ SMALL BUSINESSES: There are not cost or savings as this change only clarifies the existing requirements.
- ◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:

There are not cost or savings as this change only clarifies the existing requirements.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** There are not cost or savings as this change only clarifies the existing requirements.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** There are not cost or savings as this change only clarifies the existing requirements.

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

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

**DIRECT QUESTIONS REGARDING THIS RULE TO:**

◆ Christopher Hill by phone at 801-530-6113, by FAX at 801-530-6390, or by Internet E-mail at chill@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 12/15/2017

THIS RULE MAY BECOME EFFECTIVE ON: 12/22/2017

AUTHORIZED BY: Jaceson Maughan, Commissioner

**R602. Labor Commission, Adjudication.**

**R602-3. Procedure and Standards for Approval of Assignment of Benefits.**

**R602-3-3. Procedure for Requesting Approval.**

A. Petition. The transferee shall fully complete the Commission's "Petition for Approval of Transfer of Payment Rights" form. The transferee shall then file the completed petition with the Commission's Adjudication Division. The Adjudication Division shall return to the transferee any petition that is not fully completed, signed, and accompanied with all required documentation.

B. Documentation. Subsection 34A-2-422(3)(b)(ii)(A) requires that the transferor of workers' compensation payment rights receive adequate notice of the workers' compensation benefits proposed to be transferred, as well as an explanation of the financial consequences of, and alternatives to, the proposed transfer. The Commission will therefore require the following documentation to accompany every Petition for Approval of Transfer of Payment Rights.

1. Notice and explanation. The transferee shall provide ~~[written notice and explanation of the proposed transfer to the transferor]~~ to the transferor an explanation of the proposed transfer, in writing, with receipt confirmed by the transferor's signature.

a. The notice and explanation must be in plain language. If the transferor is of limited English proficiency, the notice and explanation must also be provided in writing in the transferor's native language.

b. The notice and explanation must contain each of the following items in full detail:

- i. A description of the specific workers' compensation payment rights proposed to be transferred;
- ii. An explanation of the legal effect of the transfer;
- iii. An explanation of all alternatives to the proposed transfer; and
- iv. A recommendation that the transferor obtain independent professional advice regarding the advisability of the proposed transfer and the terms of the proposed transfer.

2. Disclosure of financial information. The transferee shall provide written disclosure of financial information regarding the proposed transfer to the transferor, with receipt confirmed by the transferor's signature.

a. The disclosure of financial information must be in plain language. If the transferor is of limited English proficiency, the disclosure must also be provided in writing in the transferor's native language.

b. The disclosure of financial information must contain each of the following items full detail:

- i. The amount and due date of each payment to be transferred;
- ii. The sum of all payments to be transferred;
- iii. The present value of the payments to be transferred, computed in the same manner and using the same discount rate by which future annuity payments are discounted to present value for federal estate tax purposes;
- iv. The gross amount payable by the transferee in exchange for the payments to be transferred;
- v. The implied annual interest rate that the transferor would be paying if the transfer were viewed as a loan to the transferor of the net amount payable by the transferee, to be paid in installments corresponding to the transferred payments.
- vi. An itemized listing for any amount to be deducted from the gross payment, with detailed explanation of the reason for such deduction and the method for computing the deduction;
- vii. The net amount to be paid to the transferee;
- viii. The amount and method of calculation of any penalties or liquidated damages for which the transferor might be liable under the transfer agreement; and
- ix. A statement of the tax consequences of the transfer.

3. Source of workers' compensation payment rights. The transferee shall provide an authenticated copy of the document(s) that establish the transferor's right to the workers' compensation payment rights that are proposed to be transferred.

4. All agreements between the transferor and transferee. All agreements between the transferor and transferee must be in writing and signed by both the transferor and the transferee. The transferee will provide true and correct copies of all such documents.

C. Notice to other interested parties. After the Adjudication Division has received a petition for approval of transfer of payment rights, and has determined that the petition is complete and is supported by all necessary documentation, the Division will mail copies of the petition and supporting documentation to the following:

1. Each party and attorney who participated in the underlying workers' compensation claim;
2. If the payment right to be transferred arises under a structured workers' compensation settlement, the issuer and owner of the annuity contract that funds the settlement;

3. Any other party having rights or obligations with respect to the payment rights proposed to be transferred;

4. An ombudsman designated by the Industrial Accidents Division for receipt of such petitions; and

5. Any other individual or entity the Division believes may have an interest in the proposed transfer.

D. Hearing. All Petitions for Approval of Transfer of Payment Rights will be assigned to the Director of the Adjudication Division for hearing.

1. The Director will conduct a formal evidentiary hearing on each petition to determine whether the petition should be approved. The hearing will be conducted in accordance with the requirements of the Utah Administrative Procedures Act.

2. No hearing on the merits of a petition will be scheduled prior to 60 days after the notices required by III.C of this rule have been mailed to all parties entitled to such notice.

3. Notice of hearing on the merits of a petition shall be provided to the transferor, the transferee, their attorneys, and all parties listed in III.C.1 through 4 of this rule.

4. The Director will conduct the hearing in such manner as the Director deems proper to obtain all information that may be material to approval or rejection of the proposed transfer.

E. Decision. After hearing, the Director will issue a written decision approving or denying the petition. The Director may approve a petition only if the Director finds:

1. The petition has been submitted in proper form with all required documentation;

2. The notice and explanation required by III.B.1 of this rule and the disclosure of financial information required by III.B.2 of this rule are correct, adequate, and understood by the transferor;

3. The agreement(s) between the transferor and transferee does not include any abusive provisions that are against the transferor's best interests. "Abusive provisions" include, but are not limited to, the following:

a. The transferor's confession of judgment or consent to entry of judgment;

b. Choice of forum or choice of law provisions requiring resolution of disputes in a forum other than the courts and administrative agencies of the State of Utah, or under the laws of a jurisdiction other than Utah; or

c. Requirements that transferors indemnify transferees or reimburse transferees for costs or expenses incurred in disputes between transferors and transferees.

4. The proposed transfer is in the best interest of the transferor, specifically taking into account:

a. The transferor's need for a continuing source of income to provide for future necessities;

b. The needs of the transferor's dependents for a continuing source of support from the transferor to provide for future necessities;

c. Whether the transferor's intended uses of the funds obtained as a result of the transfer are prudent and consistent with the underlying purposes of the workers' compensation system;

d. Whether the transferor possesses the ability to manage, preserve and properly apply the funds to be obtained through the transfer; and

e. Whether other alternatives exist that will better meet the legitimate needs of the transferor and/or satisfy the objectives of the workers' compensation system.

F. Appeal. Any interested party who has participated in the formal evidentiary hearing conducted pursuant to III.D of this rule may request agency review of the Director's decision by following the procedures established in Section 63G-4-301 of the Utah Administrative Procedures Act and Section 34A-1-303 of the Utah Labor Commission Act.

**KEY: workers' compensation, administrative procedures, hearings, settlements**

**Date of Enactment or Last Substantive Amendment: [February 7, 2008]2017**

**Notice of Continuation: October 22, 2012**

**Authorizing, and Implemented or Interpreted Law: 34A-1-104(1); 34A-1-301 et seq.; 34A-4-304; 34A-2-422; 63G-3-201(2); 63G-4-102 et seq.**

## Labor Commission, Industrial Accidents R612-300-4 General Method for Computing Medical Fees

### NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 42253

FILED: 10/20/2017

#### RULE ANALYSIS

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The purpose of this amendment is to adopt, with modifications, the Optum 2017 Essential Resource-Based Relative Value Schedule (RBRVS), 2017 1st Quarter Update, and to adjust the conversion factors regarding certain medical specialties.

**SUMMARY OF THE RULE OR CHANGE:** The amendment incorporates, by reference, current versions of the Resource-Based Relative Value Scale (RBRVS) and adjusts the conversion factors related to the practice of anesthesiology from \$57 to \$62 per unit, surgery 20000 codes, codes 49505 through 49525, and all 60000 codes from \$62 to \$65 per unit, and all "other" surgery codes from \$40 to \$43 per unit.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 34A-1-104 and Section 34A-2-201

#### MATERIALS INCORPORATED BY REFERENCE:

- ◆ Updates Optum 2017 The Essential RBRVS, published by Optum, 2017

#### ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** The proposed amendment will impose no additional administrative or enforcement costs on the Labor Commission, which is the state agency charged with administering and enforcing Utah's workers' compensation system. The National Council on Compensation Insurance projects that overall workers'

compensation costs will increase by 0.3% as a result of the adoption of the new conversion factors. The Commission presumes that this increase will be passed on to the State in increased workers' compensation insurance premiums.

◆ **LOCAL GOVERNMENTS:** The National Council on Compensation Insurance projects that overall workers' compensation costs will increase by 0.3% as a result of the adoption of the new conversion factors. The Commission presumes that this increase will be passed on to local governments in increased workers' compensation insurance premiums.

◆ **SMALL BUSINESSES:** The National Council on Compensation Insurance projects that overall workers' compensation costs will increase by 0.3% as a result of the adoption of the new conversion factors. The Commission presumes that this increase will be passed on to all employers, including small businesses, in increased workers' compensation insurance premiums.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** The National Council on Compensation Insurance projects that overall workers' compensation costs will increase by 0.3% as a result of the adoption of the new conversion factors. The Commission presumes that this increase will be passed on to all employers in increased workers' compensation insurance premiums.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** Workers' compensation insurance carriers and those providing medical services to injured workers will be affected by the proposed amendment. Because the RBRVS and current procedural training (CPT) systems are already used throughout the health care industry, insurance carriers, and medical providers already receive and use updates to those systems. The Commission does not anticipate that the updates required by this rule amendment will result in any additional compliance costs for those entities.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** The workers' compensation system uses the same relative value (RBRVS) and coding (CPT) systems that are generally used throughout the health industry. Periodically, the RBRVS and CPT systems are updated. It is therefore necessary for the Commission to also adopt those changes and adjust its conversion factors relating to certain medical specialties in order to: 1) avoid confusion; and 2) provide adequate payment for medical care provided to injured workers. This year, the modification to the conversion factors will result in increased payments for some medical services. These increases will very likely be factored in to workers' compensation insurance premiums but may be offset by reduction in the RBRVS values.

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

LABOR COMMISSION  
INDUSTRIAL ACCIDENTS  
HEBER M WELLS BLDG

160 E 300 S  
SALT LAKE CITY, UT 84111-2316  
or at the Office of Administrative Rules.

**DIRECT QUESTIONS REGARDING THIS RULE TO:**

- ◆ Christopher Hill by phone at 801-530-6113, by FAX at 801-530-6390, or by Internet E-mail at [chill@utah.gov](mailto:chill@utah.gov)
- ◆ Ron Dressler by phone at 801-530-6841, by FAX at 801-530-6804, or by Internet E-mail at [rdressler@utah.gov](mailto:rdressler@utah.gov)

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 12/15/2017

THIS RULE MAY BECOME EFFECTIVE ON: 12/22/2017

AUTHORIZED BY: Jaceson Maughan, Commissioner

**R612. Labor Commission, Industrial Accidents.**

**R612-300. Workers' Compensation Rules - Medical Care.**

**R612-300-4. General Method For Computing Medical Fees.**

A. Adoption of "CPT" and "RBRVS." The Labor Commission hereby adopts and by this reference incorporates:

"Optum 201[6] The Essential RBRVS, 201[6] 1st Quarter [Emergency] Update," designated as [~~1761/RBRCU/U1779R-RBRC15/RBRC/U1779R, RBRC17/U1787 and U1787R~~] ("RBRVS" hereafter).

B. Medical fees calculated according to the RBRVS relative value unit assigned to each CPT code. Unless some other provision of these rules specifies a different method, the RBRVS is to be used in conjunction with the "conversion factors" established in subsection C. of this rule to calculate payments for medical care provided to injured workers.

C. Conversion Factors. Fees for medical care of injured workers shall be computed by determining the relative value unit ("RVU") assigned by the RBRVS to a CPT code and then multiplying that RVU by the following conversion factors for specific medical specialties:

1. Anesthesiology (1 unit per 15 minutes of anesthesia): \$[57]65.00;
2. Medicine (Evaluation and Medicine Codes 99201 - 99204 and 99211-99214): \$50.00;
3. Pathology and Laboratory: \$56.00;
4. Radiology: \$58.00;
5. Restorative Services: \$50.00;
6. Surgery (all 20000 codes, codes 49505 thru 49525, and all 60000 codes): \$6[2]5.00;
7. Other Surgery: \$4[0]3.00.

D. Fees for Medical care not addressed by CPT/RBRVS, or requiring unusual treatment.

1. The payor and medical provider may establish and agree to a reasonable fee for medical care of an injured worker if:

- a. neither the CPT/RBRVS or any other provision of these rules address the medical care in question; or
- b. application of CPT/RBRVS or other provisions of these rules would result in an inadequate fee due to extraordinary difficulty of treatment.

2. If the medical provider and payor cannot agree to a reasonable fee in such cases, the provider can request a hearing before the Commission's Adjudication Division to establish a reasonable fee.

**KEY: workers' compensation, fees, medical practitioners, nurse practitioners**

**Date of Enactment or Last Substantive Amendment: [~~December 22, 2016~~]2017**

**Authorizing, and Implemented or Interpreted Law: 34A-1-104; 34A-2-201**

**Labor Commission, Industrial Accidents  
R612-400-5**

**Premium Rates for the Uninsured  
Employers' Fund and the Employers'  
Reinsurance Fund**

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 42254

FILED: 10/20/2017

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** Workers' compensation insurance premiums in Utah include assessments to fund the Employers' Reinsurance Fund (ERF) and the Uninsured Employers' Fund (UEF). These assessment rates are reviewed annually and amended as appropriate in order to ensure the funds remain viable and are fully funded. The proposed changes establish these assessment rates for the 2018 calendar year.

**SUMMARY OF THE RULE OR CHANGE:** This rule update establishes the premium rates for 2018 at the current rate of 0.25% for the UEF and 3.0% for the ERF. These are the same rates as the previous year.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Subsection 59-9-101(2)

**ANTICIPATED COST OR SAVINGS TO:**

◆ **THE STATE BUDGET:** There are no anticipated costs or savings to the state budget since the rates will be the same as the previous year.

◆ **LOCAL GOVERNMENTS:** There are no anticipated costs or savings to local governments since the rates will be the same as the previous year.

◆ **SMALL BUSINESSES:** There are no anticipated costs or savings to small businesses since the rates will be the same as the previous year.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There are no anticipated costs or savings to any other persons since the rates will be the same as the previous year.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for affected persons since the rates will be the same as the previous year.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There is no anticipated fiscal impact from the rule update since the rates will be the same as the previous year.

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

LABOR COMMISSION  
INDUSTRIAL ACCIDENTS  
HEBER M WELLS BLDG  
160 E 300 S  
SALT LAKE CITY, UT 84111-2316  
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
♦ Ron Dressler by phone at 801-530-6841, by FAX at 801-530-6804, or by Internet E-mail at rdressler@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 12/15/2017

THIS RULE MAY BECOME EFFECTIVE ON: 12/22/2017

AUTHORIZED BY: Jaceson Maughan, Commissioner

**R612. Labor Commission, Industrial Accidents.**  
**R612-400. Workers' Compensation Insurance, Self-Insurance and Waivers.**  
**R612-400-5. Premium Rates for the Uninsured Employers' Fund and the Employers' Reinsurance Fund.**

A. Pursuant to Section 59-9-101(2), Section 59-9-101.3 and 34A-2-202 the workers' compensation premium rates effective January 1, 201[7]8, as established by the Labor Commission, shall be:

1. 0.25% for the Uninsured Employers' Fund;
2. 3.0% for the Employers' Reinsurance Fund;

B. The premium rates are a percentage of the total workers' compensation insurance premium income as detailed in Section 59-9-101(2)(a).

**KEY: workers' compensation, insurance, rates, waivers**  
**Date of Enactment or Last Substantive Amendment: [November 28, 2016]2017**  
**Authorizing, and Implemented or Interpreted Law: 59-9-101(2)**

Labor Commission, Occupational  
Safety and Health  
**R614-1-4**  
Incorporation of Federal Standards

**NOTICE OF PROPOSED RULE**  
(Amendment)

DAR FILE NO.: 42264  
FILED: 10/25/2017

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this rule change is to incorporate the most current Federal standards for 29 CFR 1910.6 through the end part of 1910 and 29 CFR 1926.6 and 1926.20 through the end of part 1926, which Utah enforces.

SUMMARY OF THE RULE OR CHANGE: This rule change incorporates the 07/01/2017 edition of 29 CFR 1910.6 through the end of part 1910 except for 29 CFR 1910.1024 and 29 CFR 1910.1053 and 29 CFR 1926.6 and 1926.20 through the end of part 1926 except for 29 CFR 1926.1124 and 29 CFR 1926.1153.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Title 34A, Chapter 6

MATERIALS INCORPORATED BY REFERENCE:

- ♦ Updates 29 CFR 1910.6 and 1910.21 through the end of 1910, published by Government Printing Office, 07/01/2017
- ♦ Updates 29 CFR 1926.6 and 1926.20 through the end of 1926, published by Government Printing Office, 07/01/2017

ANTICIPATED COST OR SAVINGS TO:

♦ THE STATE BUDGET: A small number of state government entities where the specific fall protection, personal protective equipment, or training will be required may be affected by the cost of equipment and training which may add up to more than \$1,000. Exact cost cannot be established because many state government entities do not have employees that work at heights and will not be affected by this rule. State government entities that are affected will have a very wide range of employees that would need training and equipment to comply with this rule, so the exact cost cannot be established.

♦ LOCAL GOVERNMENTS: A small number of local government entities where the specific fall protection, personal protective equipment, or training will be required may be affected by the cost of equipment and training which may add up to more than \$1,000. Exact cost cannot be established because many local governments do not have employees that work at heights and will not be affected by this rule. Local governments that are affected will have a very wide range of employees that would need training and equipment to comply with this rule, so the exact cost cannot be established.

♦ SMALL BUSINESSES: A small number of small businesses where the specific fall protection, personal protective equipment, or training will be required may be affected by the cost of equipment and training which may add up to more

than \$1,000. Exact cost cannot be established because many small businesses do not have employees that work at heights and will not be affected by this rule. Small businesses that are affected will have a very wide range of employees that would need training and equipment to comply with this rule, so the exact cost cannot be established.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** A small number of persons other than small businesses, businesses, and local government entities may be affected where the specific fall protection, personal protective equipment, or training will be required may be affected by the cost of equipment and training which may add up to more than \$1,000. Exact cost cannot be established because many persons other than small businesses, businesses, and local government entities do not have employees that work at heights and will not be affected by this rule. Persons other than small businesses, businesses, and local government entities that are affected will have a very wide range of employees that would need training and equipment to comply with this rule, so the exact cost cannot be established.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** Possible cost for fall protection training and equipment. Exact cost cannot be established because many entities do not have employees that work at heights and will not be affected by this rule. Entities that are affected will have a very wide range of employees that would need training and equipment to comply with this rule, so the exact cost cannot be established.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** This rule clarifies some requirements for fall protection training and equipment use in General Industry settings. Exact cost cannot be established because many entities do not have employees that work at heights and will not be affected by this rule. Entities that are affected will have a very wide range of employees that would need training and equipment to comply with this rule, so the exact cost cannot be established.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:  
LABOR COMMISSION  
OCCUPATIONAL SAFETY AND HEALTH  
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:

◆ Cameron Ruppe by phone at 801-530-6898, or by Internet E-mail at [cruppe@utah.gov](mailto:cruppe@utah.gov)  
◆ Christopher Hill by phone at 801-530-6113, by FAX at 801-530-6390, or by Internet E-mail at [chill@utah.gov](mailto:chill@utah.gov)

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 12/15/2017

THIS RULE MAY BECOME EFFECTIVE ON: 12/22/2017

AUTHORIZED BY: Jaceson Maughan, Commissioner

**R614. Labor Commission, Occupational Safety and Health.**

**R614-1. General Provisions.**

**R614-1-4. Incorporation of Federal Standards.**

A. The following federal occupational safety and health standards are hereby incorporated:

1. 29 CFR 1904, July 1, 2015, is incorporated by reference, except the workplace fatality, injury and illness reporting requirements found in 29 CFR 1904.1, 1904.2, 1904.7 and 1904.39. Workplace fatalities, injuries and illnesses shall be reported pursuant to the more specific Utah standards in Utah Code Ann. Subsection 34A-6-301(3)(b)(2) and the Utah Administrative Code R614-1-5(C)(1).

2. 29 CFR 1908, July 1, 2015, is incorporated by reference.

3. 29 CFR 1910.6 and 1910.21 through the end part of 1910, July 1, 201[5], are incorporated by reference, except 29 CFR 1910.1024 and 29 CFR 1910.1053.

4. 29 CFR 1926.6 and 1926.20 through the end of part 1926, of the July 1, 201[5], edition are incorporated by reference, except 29 CFR 1926.1124 and 29 CFR 1926.1153.

**KEY:** safety

**Date of Enactment or Last Substantive Amendment:** [~~December 28, 2015~~]2017

**Notice of Continuation:** October 22, 2012

**Authorizing, and Implemented or Interpreted Law:** 34A-6

**Natural Resources, Water Resources  
R653-9  
Electronic Meetings**

**NOTICE OF PROPOSED RULE**

(New Rule)

DAR FILE NO.: 42257

FILED: 10/23/2017

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** Section 52-4-207 (Open and Public Meetings Act) requires a public body to adopt a resolution, rule, or ordinance in order to hold electronic or telephonic meetings. This new rule will fulfill that requirement.

**SUMMARY OF THE RULE OR CHANGE:** This new rule will detail the parameters and requirements for the Utah Board of Water Resources to hold meetings electronically or telephonically.



STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 52-4-207

ANTICIPATED COST OR SAVINGS TO:

- ◆ THE STATE BUDGET: The state budget will not be affected by this new rule as there is no cost associated with it.
- ◆ LOCAL GOVERNMENTS: Local governments will not be affected by this rule as there is no cost associated with it.
- ◆ SMALL BUSINESSES: Small businesses will not be affected by this rule as there is no cost associated with it.
- ◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: No persons shall be affected by this rule as there is no cost associated with it.

COMPLIANCE COSTS FOR AFFECTED PERSONS: No compliance costs.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule will have no fiscal impact on any business.

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

NATURAL RESOURCES  
 WATER RESOURCES  
 ROOM 310  
 1594 W NORTH TEMPLE  
 SALT LAKE CITY, UT 84116-3154  
 or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ Barbara Allen by phone at 801-538-72352, by FAX at 801-538-7279, or by Internet E-mail at barbaraallen@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 12/15/2017

THIS RULE MAY BECOME EFFECTIVE ON: 12/22/2017

AUTHORIZED BY: Eric Millis, Director

**R653. Natural Resources, Water Resources.**

**R653-9. Electronic Meetings.**

**R653-9-1. Electronic Meetings.**

(1)(a) Utah Code Section 52-4-207 authorizes a public body to convene or conduct an electronic meeting provided written procedures are established for such meetings. This rule establishes procedures for conducting Board of Water Resources (Board) meeting by electronic means.

(b) An electronic meeting is a public meeting convened or conducted by means of a conference using electronic communications.

(2) The following provisions govern any meeting at which one or more Board members appear telephonically or electronically pursuant to Section 52-4-207:

(a) If one or more Board members participate in a public meeting electronically or telephonically, public notices of the meeting shall specify:

(i) the Board members participating in the meeting electronically and how they will be connected to the meeting.

(ii) the anchor location where interested persons and the public may attend, monitor, and participate in the open portions of the meeting;

(iii) the meeting agenda; and

(iv) the date and time of the meeting.

(b) Written or electronic notice of the meeting and the agenda shall be posted or provided no less than 24 hours prior to the meeting:

(i) at the anchor location;

(ii) on the Utah Public Notice website; and

(iii) to at least one newspaper of general circulation within the state or to a local media correspondent.

(c) A request to hold an electronic meeting must be made by a Board member and approved by the chair, or vice chair in the chair's absence.

(d) Notice of the possibility of an electronic meeting shall be given to Board members at least 24 hours before the meeting, and the notice shall describe how a Board member may participate in the meeting electronically or telephonically.

(e) When notice is given of the possibility of a Board member appearing electronically or telephonically, any Board member may do so and shall be counted as present for purposes of a quorum and may fully participate and vote on any matter coming before the Board.

(i) At the commencement of the meeting, or at such time as any Board member initially appears electronically or telephonically, the chair shall identify for the record all those who are appearing telephonically or electronically.

(ii) Votes by members of the Board who are not at the physical location of the meeting shall be confirmed by the chair.

(f) The anchor location, unless otherwise designated in the notice, shall be at the Division of Water Resources, Room 314, 1594 West North Temple, Salt Lake City, Utah.

(i) The anchor location is the physical location from which the electronic meeting originates or from which the participants are connected.

(ii) The anchor location shall have space and facilities so that interested persons and the public may attend, monitor, and participate in the open portions of the meeting.

**KEY: electronic meetings**

**Date of Enactment or Last Substantive Amendment: 2017**

**Authorizing, and Implemented or Interpreted Law: 52-4-207**

Pardons (Board of), Administration  
**R671-201**  
 Original Hearing Schedule and Notice

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 42295

FILED: 11/01/2017

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is to define how and when an offender is notified of original hearings.

SUMMARY OF THE RULE OR CHANGE: The purpose of this amendment is to define how and when an offender is notified of original hearings, clarifies no original hearing for death sentences, consideration of offenders with life without parole, and defines terms of "administrative review" and different types of hearings.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Art VII Sec 12 and Section 77-27-5 and Section 77-27-7 and Section 77-27-9

ANTICIPATED COST OR SAVINGS TO:

♦ THE STATE BUDGET: There is no anticipated cost or savings because the original hearing schedule and notice do not have a fiscal impact on the state budget.

♦ LOCAL GOVERNMENTS: There is no anticipated cost or savings because the original hearing schedule and notice do not have a fiscal impact on local governments.

♦ SMALL BUSINESSES: There is no anticipated cost or savings because the original hearing schedule and notice do not have a fiscal impact on small businesses.

♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: There is no anticipated cost or savings because the change does not affect or impact any individual, partnership, corporation, association, governmental entity, or public or private organization.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There is no anticipated cost or savings because the change does not have a fiscal impact on affected persons.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There are no anticipated fiscal impacts of the change on businesses.

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

PARDONS (BOARD OF)  
ADMINISTRATION  
ROOM 300  
448 E 6400 S  
SALT LAKE CITY, UT 84107-8530  
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Bev Uipi by phone at 801-261-6446, or by Internet E-mail at buipi@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 12/15/2017

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:

♦ 12/06/2017 08:00 AM, Board of Pardons and Parole, 448 E 6400 S, Suite 300, Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 12/22/2017

AUTHORIZED BY: Chyleen Arbon, Chair

**R671. Pardons (Board of), Administration.****R671-201. Original Hearing Schedule and Notice.****R671-201-1. Schedule and Notice.**

(1)(a) The Board shall schedule the month and year of an offender's original hearing, and provide notice to the offender, [W]within [six]6 months of [an]the offender's commitment to prison[the Board shall give notice of the month and year in which the inmate's original hearing will be conducted].

(b)(i) [A minimum of seven days prior notice should be given regarding the specific day and approximate time of such hearing.]No original hearing may be scheduled for any offender whose prison commitment includes a sentence of death.

(ii) The Board may only consider parole for an offender whose prison commitment includes a sentence of Life Without Parole, pursuant to UCA Subsection 77-27-9(6).

(2) For purposes of this Rule, the following terms are defined:

(a) "Administrative Review" means the process by which the Board, by majority vote, reviews, deliberates, and schedules the month and year for an offender's original hearing.

(b) "Homicide [e]Offense [e]Commitment"[, for purposes of this rule,] means a prison commitment to serve a sentence for a conviction of aggravated murder (if the sentence includes the possibility of parole), murder, felony murder, manslaughter, child abuse homicide, negligent homicide, automobile homicide, homicide by assault, any attempt, conspiracy or solicitation to commit any of these offenses, [and] or any other offense, regardless of title, description or severity, when it is known at the time of sentencing that the offense conduct resulted in the death of any person.

(b)(c) "Sexual [e]Offense [e]Commitment"[, for purposes of this rule,] means a prison commitment to serve a sentence for a conviction of any crime for which an offender is defined as a kidnap offender pursuant to Utah Code Ann. Subsection 77-41-102(9); or for which an offender is defined as a sex offender pursuant to Utah Code Ann. Subsection 77-41-102(16); or any attempt, conspiracy or solicitation to commit any of the offenses listed in those sections.

(3) Within 6 months of an offender's commitment to prison, the Board shall conduct an administrative review and schedule a future date for an offender's original hearing, if the offender is committed to prison to serve a sentence for any:

(a) [A]homicide offense commitment[s] eligible for parole[shall be routed to the Board as soon as practicable for the determination of the month and year for an original hearing.];

(b) [The Board shall determine, by majority vote, the month and year of an original hearing for an offender serving a homicide

~~offense commitment.]~~ commitment which includes a sentence of 25 years to life:

(c) commitment imposed if the offender is younger than 18 years of age at the time of prison commitment; or

(d) commitment imposed if the offender was younger than 18 years of age at the time the offense was committed.

(4) ~~[In setting]~~ When scheduling an original hearing [for a homicide offense commitment,] by administrative review, if the Board [shall only] obtains and consider additional information which was not available to the court or offender prior to or at the time of sentencing, the additional information shall be provided to the offender, who shall be afforded a minimum of 21 days to consider and respond to the additional information prior to the Board making a decision that schedules an original hearing.

~~[(d) Homicide offense commitments not eligible for parole, including sentences of life without parole or death, may not be scheduled for original hearings.~~

~~(e)](5)~~ When scheduling an original hearing by administrative review, [if] if the offender [is] was less than 18 years of age at the time of the [homicide] commitment offense and the offense is eligible for parole, the original hearing shall be scheduled no later than 15 years after the date of sentencing.

~~[(4) If the offender is less than 18 years of age at the time of commitment and the offense is eligible for parole, the case shall be routed to the Board as soon as practicable for the determination, by majority vote, of the month and year for an original hearing.~~

~~(5)](6)~~ If an administrative review is not used to schedule an offender's original hearing pursuant to this rule, [When an offender's prison commitment does not include a homicide offense commitment, an offender is eligible to have an] the original hearing [before the Board] shall be scheduled as follows:

(a) after the service of [fifteen] 12 years [for first degree felony commitments] if [when] the most severe sentence imposed [and being served] is for a first degree felony with a minimum [a] sentence [greater than] of 15 years to life [excluding enhancements].;

(b) after the service of [-seven] 7 years if the most severe sentence imposed is for a first degree felony [commitments when the most severe sentence imposed and being served is] with a minimum sentence of 10 years to life [or 15 years to life, excluding enhancements].;

(c) after the service of [three] 3 years for [all] any [other] first degree felony [commitments.] if the most severe sentence imposed is greater than 3 years to life but less than 10 years to life;

(d) after the service of [-twelve months] 1 year if the most [serious offense of incarceration] severe sentence imposed is for:

(i) ~~[a second degree felony sexual offense commitment; or~~  
 (ii) ~~] a first degree felony and the sentence [which] is [three] for 3 years to life [-]; or~~

~~(ii) a second degree felony sexual offense commitment;~~

(e) after the service of [six] 6 months if the most severe sentence imposed is for:

(i) all other second degree felony commitments; or

~~(f)](ii) [After the service of six months if the most serious offense of incarceration is -] a third degree felony sexual offense commitment [-];~~

~~(g)](f) [A] after the service of [three] 3 months if the most severe sentence imposed is for [all] any other third degree felony [and] or class A misdemeanor commitments.~~

~~[(6)](7)](a) An offender may request in writing that their original appearance and hearing before the Board be [scheduled other than as provided by this rule.] continued. The [An offender's] request shall specify the [extraordinary circumstances or] reasons [which give rise to] supporting the request. The Board may grant or deny the offender's request in its sole discretion.~~

~~[(b)](8) The Board may [in its discretion,] depart from the schedule as provided by this rule if:~~

~~[(+)](a) an offender requests a delay or continuance [due to extraordinary circumstances];~~

~~[(+)](b) an offender has unadjudicated criminal charges pending at the time a hearing would normally be [scheduled] held;~~

~~[(+)](c) a Class A misdemeanor commitment has expired prior to an original hearing; or~~

~~[(+)](d) the Board determines that other unusual or extraordinary circumstances impact the [setting] scheduling of an original hearing.~~

**KEY: parole, inmates, hearings**

**Date of Enactment or Last Substantive Amendment: [October 31, 2016] 2017**

**Notice of Continuation: September 22, 2014**

**Authorizing, and Implemented or Interpreted Law: Art. VII Sec. 12; 77-27-5; 77-27-7; 77-27-9**

## Pardons (Board of), Administration **R671-202** Notification of Hearings

### NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 42294

FILED: 11/01/2017

### RULE ANALYSIS

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The purpose of this amendment is to change minor verbiage and grammar to clearly define how an offender and the public are notified of the hearing.

**SUMMARY OF THE RULE OR CHANGE:** These changes define how an offender shall be notified of the type and purpose of a personal appearance hearing, and define how public notices are posted.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Subsection 63G-3-201(2) and Subsection 77-27-7(1) and Subsection 77-27-9(4)(a)

**ANTICIPATED COST OR SAVINGS TO:**

♦ **THE STATE BUDGET:** There is no anticipated cost or savings because the notification of hearing does not have a fiscal impact on the state budget.

♦ **LOCAL GOVERNMENTS:** There is no anticipated cost or savings because the notification of hearing does not have a fiscal impact on local governments.

♦ **SMALL BUSINESSES:** There is no anticipated cost or savings because the notification of hearing does not have a fiscal impact on small businesses.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There is no anticipated cost or savings because the change does not affect or impact any individual, partnership, corporation, association, governmental entity, or public or private organization.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** There is no anticipated cost or savings because the change does not have a fiscal impact on affected persons.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** There are no anticipated fiscal impacts of the change on businesses.

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

PARDONS (BOARD OF)  
ADMINISTRATION  
ROOM 300  
448 E 6400 S  
SALT LAKE CITY, UT 84107-8530  
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Bev Uipi by phone at 801-261-6446, or by Internet E-mail at buipi@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 12/15/2017

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:

♦ 12/06/2017 08:00 AM, Board of Pardons and Parole, 448 E 6400 S, Suite 300, Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 12/22/2017

AUTHORIZED BY: Chyleen Arbon, Chair

**R671. Pardons (Board of), Administration.**

**R671-202. Notification of Hearings.**

**R671-202-1. Notification.**

(1)(a) An offender ~~will~~ shall be notified of the date, time, ~~and~~ place, and type or purpose of a personal appearance hearing at least seven calendar days in advance of the hearing, except in extraordinary circumstances ~~, and will be advised as to the purpose of the hearing~~.

(b) In extraordinary circumstances, the hearing may be conducted without the seven day notification~~;~~.

(c) ~~or the~~ An offender may waive this notice requirement.

(2) Public notice of Board hearings ~~will also~~ shall be posted one week in advance on the Board's website (www.bop.utah.gov).[

~~Open public hearings are regularly scheduled by the Board at the various correctional facilities throughout the state.]~~

**KEY: parole, inmates**

**Date of Enactment or Last Substantive Amendment:** ~~[October 4, 2012]~~ 2017

**Notice of Continuation:** January 30, 2017

**Authorizing, and Implemented or Interpreted Law:** 63G-3-201(2); 77-27-7(1); 77-27-9(4)(a)

**Pardons (Board of), Administration**

**R671-203**

**Victim Input and Notification**

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 42297

FILED: 11/01/2017

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The purpose of this amendment is to define victim, victim representative, notification, hearing attendance, victim statement and testimony, and victim impact hearings.

**SUMMARY OF THE RULE OR CHANGE:** This change defines a victim, and victim representation, and pursuant to Subsection 77-27-13(4), victim impact statements are required to be sent to the Board by other municipalities. The change clarifies a victim's right to attend hearings, and rights to victim impact hearings.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Art I Sec 28 and Section 77-27-1 et seq. and Section 77-27-9.5 and Section 77-37-3 and Section 77-37-4 and Section 77-38-1 et seq. and Subsection 63G-3-201(3) and Subsection 77-27-9(4)

**ANTICIPATED COST OR SAVINGS TO:**

♦ **THE STATE BUDGET:** There is no anticipated cost or savings because the victim input and notification do not have a fiscal impact on the state budget.

♦ **LOCAL GOVERNMENTS:** There is no anticipated cost or savings because the victim input and notification do not have a fiscal impact on local governments.

♦ **SMALL BUSINESSES:** There is no anticipated cost or savings because the victim input and notification do not have a fiscal impact on small businesses.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There is no anticipated cost or savings because the change

does not affect or impact any individual, partnership, corporation, association, governmental entity, or public or private organization.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There is no anticipated cost or savings because the change does not have a fiscal impact on affected persons.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There are no anticipated fiscal impacts on businesses.

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

PARDONS (BOARD OF)  
ADMINISTRATION  
ROOM 300  
448 E 6400 S  
SALT LAKE CITY, UT 84107-8530  
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Bev Uipi by phone at 801-261-6446, or by Internet E-mail at buipi@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 12/15/2017

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:

◆ 12/06/2017 08:00 AM, Board of Pardons and Parole, 448 E 6400 S, Suite 300, Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 12/22/2017

AUTHORIZED BY: Chyleen Arbon, Chair

**R671. Pardons (Board of), Administration.**

**R671-203. Victim Input and Notification.**

**R671-203-1. General Provisions.**

For purposes of Utah Administrative Code, Title R671 and all rules contained therein:

(1) "Victim" means:

(a) A natural person against whom an offender, as a principal, accomplice or party to the offense, committed a criminal offense for which a conviction was entered and for which the Board of Pardons and Parole (Board) has jurisdiction;

(b) A natural person originally named in an allegation of criminal conduct who is not a victim of the offense of Board jurisdiction to which the defendant entered a negotiated plea of guilty; or

(c) A victim representative as provided herein.

(2) "Victim Representative" means: a person designated by a victim or by this rule to represent a victim during Board processes, hearings, or communications.

(3) Pursuant to Utah Code Ann. Subsection 77-27-13(2) [statute], the Department of Corrections shall provide the Board [of

Pardons] with all available information in its records or possession concerning the impact a crime may have had upon the victim or victim's family.

(4)(a) Pursuant to Utah Code Ann. Subsection 77-27-13(5) (a), within 30 days from the date of sentencing [statute,] the prosecutor of the case [and upon request of the Board, any other law enforcement official] responsible for an offender's arrest, conviction, and sentence, shall forward to the Board any [to the Board a] victim impact statement in its possession [referring] that refers to any physical, mental, or economic loss suffered by the victim or victim's family.

(b) Upon request of the Board pursuant to Utah Code Ann. Subsection 77-27-13(4), any other law enforcement official responsible for an offender's arrest, prosecution, conviction, sentence, supervision or incarceration, shall forward to the Board any victim impact statement in its possession that refers to any victim contact information or any physical, mental, or economic loss suffered by the victim or victim's family. [If a victim does not wish to give testimony or is unable to do so, a victim representative may be appointed by the victim, or if the victim is a minor, by the victim's parent(s) or lawful guardian or custodian, to speak on the victim's behalf. A family member of the victim may also testify if the victim is deceased as a result of the offense or if the victim is a child.]

"Victim" for purposes of this Rule means:

A. Any person, of any age, against whom an offender committed a felony or class A misdemeanor offense either personally or as a party to the offense, for which a prison sentence was imposed or for which the hearing is being held;

B. In the discretion of the Board, any person, of any age, against whom a related crime or act is alleged to have been perpetrated or attempted;

C. Any victim originally named in an allegation of criminal conduct who is not a victim of the offense to which the defendant entered a negotiated plea of guilty; and

D. Any victim representative and family member as provided herein.

"Victim Representative" means a person who is designated by the victim or designated by the Board, who represents the victim in the best interests of the victim.]

(5) [A] No victim or victim representative [who is] appearing at a hearing [where photographic equipment is being used by the media, will not] may be photographed without the approval of the victim, victim representative, and the [individual] presiding [at the] hearing official.

(6)(a) Victims are encouraged to:

(i) visit the Board's website (bop.utah.gov) as soon as possible to obtain information about Board procedures; and

(ii) provide information to the Board for future notifications.

(b) The Board shall maintain information in written form and on its website (bop.utah.gov) for victims about Board procedures, victim notification, attending hearings, submitting victim impact information, and testifying at hearings.

(7) Victims may contact the Board [of Pardons], after any parole hearing, for information concerning the outcome of that hearing. Victims [are advised that they] may also contact the [Utah State Prison Records Unit Supervisor] Department of Corrections for information on offender releases.

(8) All persons attending hearings must comply with the security and clearance regulations of the facility where the hearing is held. These regulations include picture identification, appropriate

dress, and no contraband. Contraband for this purpose includes but is not limited to purses/bags, cell phones, and other electronic devices. Visitors should arrive at the facility 15 to 20 minutes prior to the scheduled hearing to allow adequate time for the security clearance.

**R671-203-2. Victim Representative.**

(1) If a victim does not wish to give testimony or is unable to do so, a victim representative may be designated to speak on the victim's behalf.

(a) If a victim over the age of 18 desires to designate a victim representative, the victim may make that designation on the record at a hearing, or in a notarized statement filed with the Board prior to or at a hearing.

(b) If a victim is under the age of 18, a victim's parent, guardian, or custodian may represent the victim during Board processes, hearings, and communications.

(c) If a victim is deceased, a family member, or the victim's personal representative as appointed by a court, may be designated as the victim's representative.

(2) A victim representative must, at all times, act according to the instructions, and in the best interests, of the victim.

(3) Notwithstanding any provision of this rule, or any designation, an offender, offender's co-defendant, or offender's attorney may not act as a victim representative in matters before the Board in which the offender was convicted of causing any injury or damage to the victim.

**R671-203-2]3. Notification.**

~~[A-]~~(1) Notice of an offender's original parole hearing shall be ~~[timely sent]~~ given to ~~[the]~~ a victim as soon as practicable at the victim's ~~[his]~~ most recent address of record ~~[with]~~ as provided to the Board. The notice shall include:

~~[(1)]~~(a) the date~~[-time,]~~ and location of the hearing;

~~[(2)]~~(b) ~~[a clear statement of the reason for-]~~ the type of hearing, and the cases or ~~[including all]~~ offenses involved;

~~[(3)]~~(c) a list of or reference to the statutes and rules applicable to ~~[the]~~ a victim's participation in the hearing;

~~[(4)]~~(d) the address and telephone number of ~~the Board employee~~ ~~[an office or person the victim]~~ who may be contacted for further explanation of ~~[the-]~~ procedures regarding victim participation in the hearing;

~~[(5)]~~(e) specific information about how, when, and where the victim may obtain the results of the hearing; and

~~[(6)]~~(f) notification that the victim must maintain current contact information with the Board in order to receive future notifications of hearings affecting ~~[the]~~ a specific offender's incarceration or parole.

~~[B-]~~(2) If ~~[the]~~ a victim is deceased, or the Board is otherwise unable to contact the victim, the Board shall make reasonable efforts to notify the victim's immediate family of the hearing.

~~[C-]~~(3)(a) Following ~~[the-]~~ notice of the original hearing, a victim may elect to receive notice of any future ~~[parole grant]~~ hearing~~[- parole revocation hearing or re-hearing]~~ as defined by Utah Code Ann. Subsection 77-38-2(5)(g) and Utah Administrative Code Section R671-203-4.

(b) In order to ~~[do so]~~ receive notice of these future hearings, the victim shall notify the Board of the desire to receive

future notices, and shall thereafter maintain current contact information with the Board.

~~[D-]~~(4) If a ~~[For]~~ victim~~[s-who]~~ elects to receive future notices, ~~[the Board will mail such]~~ the notice shall be sent to the victim's ~~[last current address of record or-]~~ most recent contact information as provided to the Board.

**R671-203-3]4. Right to Attend ~~[-Right to]~~ and Testify.**

(1) Pursuant to Utah Code Ann. Subsection 77-38-2(5)(g), ~~[As used in this section,-]~~ "hearing" means a public hearing at which the offender is present, and which concerns whether to grant parole or other form of discretionary release from imprisonment~~[hearing for a parole grant or revocation, or a rehearing of either of these if the offender is present].~~

(2) A victim may attend any hearing regarding the offender.

(3) A victim may testify during any hearing regarding the ~~[impact of the offense(s) upon the victim, and may present any concerns or statements regarding any decision to be made regarding the offender]~~ offender.

(4) ~~A~~ ~~[The]~~ victim may request a re-scheduling or continuance of the hearing if travel or other significant conflict prohibits their attendance at the hearing.

**R671-203-4]5. Victim Statements and Testimony.**

~~[A-]~~(1) A victim, victim representative or victim's family member (if the victim is a child~~[-]~~ or deceased ~~[or unable to attend due to physical incapacity]~~), may testify regarding the impact of the offense(s) upon the victim, any restitution claimed, and may present any concerns or statements regarding any decision to be made regarding the offender.

~~[B-]~~(2) The testimony may be presented as a written statement, which may also be read aloud, if the presenter desires; or as oral testimony.

~~[C-]~~(3) Oral testimony at hearings ~~[will]~~ may be limited ~~[to five minutes in length per victim or representative]~~ in order to accommodate the hearing calendar.

(4) If a deceased victim's family member testifies, testimony ~~[should]~~ may be limited to one family ~~[representative]~~ member from the victim's marital family (i.e. spouse or children) and~~[or]~~ one family ~~[representative]~~ member from the victim's nuclear/extended family (i.e. parent, sibling or grandparent).

(5) In ~~[Under]~~ exceptional or extraordinary circumstances a victim or victim representative may ~~[formally petition the Board to-]~~ request that additional testimony be permitted.

~~[D-]~~(6)(a) A victim may present testimony during the hearing outside the presence of the offender. ~~[The offender will be excused from the hearing room so that the victim can give testimony;]~~ However, the offender shall be permitted~~[may be able]~~ to hear the victim's testimony and respond during the hearing~~[speak, depending on the facility where the hearing is conducted].~~

(b) If a victim presents testimony during a victim impact hearing held separately from an original hearing or rehearing, an audio recording of ~~[F]~~ the victim's testimony ~~[will]~~ shall be ~~[recorded or otherwise-]~~ made available to the offender. ~~[At the conclusion of the testimony, the offender will be returned to the hearing room, and the Board will allow the offender to respond. A separate hearing will not be scheduled to allow for testimony outside the presence of the offender.]~~

~~[E:]~~(7) Victims who desire to testify at hearings shall notify the Board as far in advance of the hearing as possible so that appropriate arrangements can be made and adequate time allocated.

~~[F:]~~(8) Victims or representatives ~~[should]~~ are encouraged to bring a written copy of their ~~[remarks]~~ testimony to the hearing or send a copy to the Victim Coordinator for the Board file.

~~[G:]~~ ~~In cases where multiple victims desire to testify, the Board may reschedule the hearing to accommodate the extra time required to hear all victims. If Board business is not concluded by 5:00 p.m. on a hearing day, all remaining hearings may be rescheduled and visitors required to return.~~(9)(a) Any person aggrieved by the conduct of the offender, who is not a victim as defined by this rule, may submit a written statement regarding any impact to the person from the offender's conduct.

(b) Other than protected identifying information, including but not limited to address, email, and phone numbers, information submitted to the Board is disclosed to the offender pursuant to legal requirements.

#### **R671-203-~~5~~6. Victim Impact Hearings.**

~~[A:]~~(1) ~~[In any case where]~~ If an offender's original parole hearing is scheduled ~~[set by Board administrative determination]~~ more than three years from the offender's commitment to prison, the victim or victim representative ~~[-as defined by R671-203-1,]~~ may request that the Board conduct a Victim Impact hearing, in order to preserve victim impact testimony ~~[and victim statements]~~ for future use and reference by the Board.

(2) The Board may also conduct a Victim Impact hearing if a hearing, as defined by Utah Code Ann. Subsection 77-38-2(5)(g) and Utah Administrative Code Section R671-203-4, is to be held outside the State of Utah because the offender is housed in another state.

~~[B:]~~(3)(a) The sole purpose of a Victim Impact hearing held pursuant to R671-203-6(1) is to afford an opportunity for victim impact testimony ~~[and victim statements]~~ to be made in cases where an offender's original hearing is scheduled more than three years following commitment to prison, so that the victim is not denied an opportunity to participate in the offender's original hearing, simply because of the passage of time between the offender's commitment to prison and original hearing.

(b) A Victim Impact hearing is not a substitute for an original hearing.

(c) A Victim Impact hearing held pursuant to R671-203-6(1) will not result in a review, re-scheduling, or re-determination of [an] a previously determined original hearing date.

(d) Victim Impact hearings are for the convenience of victims, and may take the place of the victim's attendance and testimony at an out of state hearing.

~~[C:]~~(4) Victims who request, and for whom Victim Impact hearings are conducted, retain all rights afforded pursuant to constitutional provision, statute or Board rule, including: the right to notice of the original hearing and any future hearings ~~[-as provided by R671-203-1 and R671-203-2];~~ the right to attend any hearing for the offender ~~[-as provided by R671-203-1 and R671-203-3];~~ and the right to testify and make future statements to the Board at ~~[an] any~~ hearing for the offender ~~[-as provided by R671-203-1 and R671-203-4].~~

~~[D:]~~(5) ~~[Upon such a request from a victim, the Board shall schedule and conduct a victim impact hearing.]~~ In scheduling and conducting a Victim Impact hearing:

~~[(+)]~~(a) All notice provisions of this Rule ~~[R671-202-1 and R671-203 et seq.]~~ shall apply.

(2)(b) All victim appearance, testimony and statement provisions of R671-203 shall apply.

(3)(c) Unless the offender is housed in an out of state prison, the offender shall be present, pursuant to the provisions of R671-301, and shall be afforded an opportunity to respond to the victim's testimony ~~[-or statement]~~. However, this is not an opportunity for the offender to discuss [his/her] the conviction, sentence or potential release.

(4)(6) The Victim Impact hearing shall be recorded, pursuant to the provisions of R671-304.

#### **KEY: victims of crimes**

**Date of Enactment or Last Substantive Amendment:** ~~[October 4, 2012]~~ **2017**

**Notice of Continuation:** January 30, 2017

**Authorizing, and Implemented or Interpreted Law:** Art. I, Sec. 28; 77-27-9.5; 77-37-3; 77-37-4; 77-38-1 et seq.; 63G-3-201(3); 77-27-1 et seq.; 77-27-9(4)

## Pardons (Board of), Administration **R671-206** Competency of Offenders

### NOTICE OF PROPOSED RULE

(New Rule)

DAR FILE NO.: 42296

FILED: 11/01/2017

### RULE ANALYSIS

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The purpose of this rule is to define incompetence for Board proceedings.

**SUMMARY OF THE RULE OR CHANGE:** The proposed rule defines incompetence, or if a hearing official questions an offender's competence for Board proceedings.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 77-15-2 and Section 77-15-3 and Section 77-15-5 and Section 77-27-2 and Section 77-27-7

#### ANTICIPATED COST OR SAVINGS TO:

♦ **THE STATE BUDGET:** There is no anticipated cost or savings because the competency of offenders does not have a fiscal impact on the state budget.

♦ **LOCAL GOVERNMENTS:** There is no anticipated cost or savings because the competency of offenders does not have a fiscal impact on local governments.

♦ **SMALL BUSINESSES:** There is no anticipated cost or savings because the competency of offenders does not have a fiscal impact on small businesses.

◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: There is no anticipated cost or savings because the proposed rule does not affect or impact any individual, partnership, corporation, association, governmental entity, or public or private organization.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There is no anticipated cost or savings because the proposed rule does not have a fiscal impact on affected persons.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There are no anticipated fiscal impacts on businesses.

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

PARDONS (BOARD OF)  
ADMINISTRATION  
ROOM 300  
448 E 6400 S  
SALT LAKE CITY, UT 84107-8530  
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Bev Uipi by phone at 801-261-6446, or by Internet E-mail at buipi@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 12/15/2017

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:

◆ 12/06/2017 08:00 AM, Board of Pardons and Parole, 448 E 6400 S, Suite 300, Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 12/22/2017

AUTHORIZED BY: Chyleen Arbon, Chair

**R671. Pardons (Board of), Administration.**

**R671-206. Competency of Offenders.**

**R671-206-1. Incompetence for Board Proceedings Defined.**

For purposes of the proceedings of the Board of Pardons and Parole (Board), an offender is incompetent to proceed if the offender is suffering from a mental disorder or intellectual disability resulting in either:

(1) an inability to have a rational and factual understanding of a pending Board hearing; or

(2) an inability to consult with counsel and participate in a hearing with a reasonable degree of rational understanding.

**R671-206-2. Stay to Determine Offender Competence.**

(1) If a Board member or hearing official, Department of Corrections (Department) agent or employee, counsel for the State, or counsel for an offender has reason to believe that an offender may be incompetent as defined herein or as defined in UCA 77-15-2, all

proceedings shall be stayed pending a decision by the Board regarding the offender's competence.

(2) A stay of proceedings under this rule does not toll any time served nor does it affect an offender's sentence expiration date.

**R671-206-3. Proceedings When Competence Is Questioned.**

If there is reason to believe that an offender is or may be incompetent, the Board may:

(1) request a mental health evaluation from the Department or a private mental health expert to assist in determining whether the offender is competent or is likely to become competent while housed in the custody of the Department;

(2) appoint one or more contract psychologists to examine the offender and report in writing to the Board, specifically addressing the issue of competency, as defined herein and in UCA Subsection 77-27-7(5); or

(3) request that the Board's counsel from the Attorney General's office file a petition on behalf of the Board with the district court for a competency hearing pursuant to UCA Section 77-15-3.

**R671-206-4. Determination of Competence.**

If the Board or the district court, pursuant to UCA Section 77-15-3, determines the offender is competent, the Board shall proceed with scheduled hearings or other actions.

**KEY: criminal competency**

**Date of Enactment or Last Substantive Amendment: 2017**

**Authorizing, and Implemented or Interpreted Law: 77-15-2; 77-15-3; 77-15-5; 77-27-2; and 77-27-7.**

Public Safety, Administration  
**R698-11**  
Submission and Testing of Sexual  
Assault Kits

**NOTICE OF PROPOSED RULE**

(New Rule)

DAR FILE NO.: 42269

FILED: 10/26/2017

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is authorized under Section 76-5-609, as a result of the passage of H.B. 200 during the 2017 General Session. The Department of Public Safety (Department) is required to make rules, after consultation with the Bureau of Forensic Services (Bureau) to establish procedures and requirements for the submission and testing of all sexual assault kits, and to establish goals for the completion of analysis and classification of all sexual assault kit submissions.

SUMMARY OF THE RULE OR CHANGE: The rule: establishes requirements for the packaging of evidence submitted to the Bureau for analysis, and the documentation



to be submitted with the evidence; outlines the types of cases for which sexual assault evidence will be analyzed, and criteria to be used in order to determine whether the analysis will be conducted or declined; establishes criteria for the Bureau to use in determining whether to expedite the analysis of evidence; and establishes the goals for classification and completion of analysis of sexual assault kit submissions.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 76-5-609

ANTICIPATED COST OR SAVINGS TO:

◆ THE STATE BUDGET: The Bureau has had procedures in place for the submission of sexual assault kits prior to the passage of H.B. 200 (2017). Due to the requirement that law enforcement agencies submit all sexual assault kits to the Bureau for testing effective 07/01/2018 as a result of the passage of H.B. 200, it is anticipated that the Bureau could potentially receive an additional 800 sexual assault kits per year. As reflected in the fiscal note prepared for H.B. 200, it is anticipated that the cost to purchase 800 additional unused sexual assault kit for use by law enforcement and sexual assault nurse examiners would be approximately \$14 per kit. In addition, the Bureau anticipates that it will need to hire 17 additional staff members at an anticipated personnel cost of approximately \$1,669,505 per year, and anticipated operating costs of \$464,778 per year, which includes the cost of DNA testing supplies (\$284,144) and sexual assault kits (800 x \$14 = \$11,200).

◆ LOCAL GOVERNMENTS: There is no anticipated cost or savings to local governments because the rule does not change any of the procedures currently in place for the submission of sexual assault kits to the Bureau for analysis. In addition, local governments are not assessed a fee for the testing of the sexual assault kits, and is provided unused kits by the Bureau for the purpose of completing a sexual assault investigation and submission of the evidence gathered from the victim.

◆ SMALL BUSINESSES: There is no anticipated cost or savings to small businesses because the Bureau obtains sexual assault kit supplies through a state contract with Tri-Tech Forensics, located in the state of North Carolina.

◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: There is no anticipated cost or savings to hospitals where a sexual assault nurse examiner conducts an examination and submits a sexual assault kit to a law enforcement agency for investigation because hospitals are provided with unused kits by the Bureau for the purposes of completing a sexual assault examination and submission of the evidence gathered from the victim to the local law enforcement agency.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There is no anticipated cost or savings to victims of sexual assault for whom a kit has been submitted because a victim of sexual assault is not assessed a fee for the submission or analysis of a sexual assault kit.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule change will not result in an anticipated cost or savings to small businesses or other businesses within the state of Utah.

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

PUBLIC SAFETY  
ADMINISTRATION  
CALVIN L RAMPTON COMPLEX  
4501 S 2700 W 1ST FLR  
SALT LAKE CITY, UT 84119-5994  
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Kim Gibb by phone at 801-556-8198, by FAX at 801-964-4482, or by Internet E-mail at kgibb@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 12/15/2017

THIS RULE MAY BECOME EFFECTIVE ON: 12/22/2017

AUTHORIZED BY: Keith Squires, Commissioner

**R698. Public Safety Administration.**

**R698-11. Submission and Testing of Sexual Assault Kits.**

**R698-11-1. Authority.**

This rule is authorized under Section 76-5-609.

**R698-11-2. Purpose.**

The purpose of this rule is to establish procedures for the submission and testing of sexual assault kits, requirements regarding information and evidence to be submitted as a part of each sexual assault kit submission, and goals for the completion of analysis and classification of sexual assault kit submissions.

**R698-11-3. Definitions.**

(1) Terms used in this rule are defined in Section 53-1-102 and 53-10-102.

(2) In addition:

(a) "bureau" means the Bureau of Forensic Services within the Department of Public Safety established in Section 53-10-201; and

(b) "DNA" means deoxyribonucleic acid.

**R698-11-4. Sexual Assault Kit Submission.**

(1)(a) Sexual assault kits submitted to the bureau for analysis shall be packaged in accordance with the Utah Bureau of Forensic Services Evidence Handbook.

(b) Sexual assault kits that do not meet the packaging guidelines in the Utah Bureau of Forensic Evidence Handbook shall be returned to the submitting entity without analysis.

(c) A sexual assault kits may be re-submitted after it has been repackaged in accordance with the Utah Bureau of Forensic Services Evidence Handbook.

(2) The bureau shall only accept sexual assault kits that meet the criteria for analysis in R698-11-5.

(3) Sexual assault kits submitted to the bureau for analysis shall be accompanied by the Sexual Assault Examination documentation provided by the medical personnel conducting the examination.

**R698-11-5. Sexual Assault Kit Analysis.**

(1) The bureau shall analyze sexual assault kits in the following types of cases:

(a) criminal investigations and prosecutions.

(2) The bureau shall only analyze sexual assault kits:

(a) which have been collected by means utilized and validated by the bureau; and

(b) that are of sufficient quality and quantity to be analyzed.

(3) Sexual assault kits submitted to the bureau for analysis shall be examined by the bureau to determine the number of samples in a given case on which it will perform identification, comparison or analysis.

(4)(a) The bureau shall give priority to current and active cases over cold cases.

(b) An entity seeking to have a sexual assault kit analyzed by the bureau may submit a request to expedite the analysis to the section manager.

(c) The bureau shall consider the following factors when determining whether to expedite the analysis of the sexual assault kit:

(i) there exists an immediate threat to public safety;

(ii) a court date is scheduled and imminent; or

(iii) a person is detained pending laboratory results.

(5) The submitting entity shall make reasonable efforts to provide the bureau with comparison standards, such as:

(a) comparison standards for DNA analysis from all available potential sources.

**R698-11-6. Laboratory Goals and Classifications.**

(1) The bureau shall classify sexual assault kit submissions as follows:

(a) first priority if an immediate threat to public safety exists;

(b) second priority if a court date is scheduled and imminent; or

(c) third priority for all other cases.

(2) The goal for completion of analysis of sexual assault kit submissions is as follows:

(a) within 30 days from the date of submission for first priority cases;

(b) within 60 days from the date of submission for second priority cases; and

(c) within 180 days from the date of submission for third priority cases.

**KEY: sexual assault kits, sexual assault kit analysis**

**Date of Enactment or Last Substantive Amendment: 2017**

**Authorizing, and Implemented or Interpreted Law: 76-5-609**

**Public Safety, Fire Marshal**  
**R710-14**  
**Food Truck Licensing and Regulation**

**NOTICE OF PROPOSED RULE**

(New Rule)

DAR FILE NO.: 42261

FILED: 10/24/2017

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** This rule was written and approved by the Utah Fire Prevention Board to comply with Subsection 53-7-204(1)(b)(x). In this subsection, the Board is directed by law to subject to the state fire code, make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act; and establish criteria for the fire safety inspection of a food truck.

**SUMMARY OF THE RULE OR CHANGE:** This rule establishes definitions for terms used in the rule, sets qualifications for those that can perform a fire safety inspection of a food truck, establishes an inspection procedure and criteria, establishes an inspection check list for uniformity, specifies criteria for an approval sticker, and adds the requirement for a liquefied petroleum gas detector.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Subsection 11-56-04(4)(a) and Subsection 53-7-204(1)(b)(x)

**ANTICIPATED COST OR SAVINGS TO:**

◆ **THE STATE BUDGET:** This rule will have no affect on state budget. No new requirements have been added to state agencies. The cost of the sticker used to indicate compliance will be absorbed in the current State Fire Marshal budget.

◆ **LOCAL GOVERNMENTS:** No new requirements have been imposed on local governments. The fire safety inspection is part of the business license requirement and was being done previous to this rule. This rule establishes definitions for terms used in the rule, sets qualifications for those that can perform a fire safety inspection of a food truck, establishes an inspection procedure and criteria, establishes an inspection check list for uniformity, specifies criteria for an approval sticker, and adds the requirement for a liquefied petroleum gas detector.

◆ **SMALL BUSINESSES:** The cost of a portable liquefied petroleum gas detector for this application, based on searches on Amazon and Google, runs between \$20 and \$185. It is anticipated that the average cost per food truck will be \$100. It is estimated that there are 318 small business food trucks in the state with an impact of \$31,800.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** No one other than food truck owner/operators will be affected by

this rule. This rule establishes definitions for terms used in the rule, sets qualifications for those that can perform a fire safety inspection of a food truck, establishes an inspection procedure and criteria, establishes an inspection check list for uniformity, specifies criteria for an approval sticker, and adds the requirement for a liquefied petroleum gas detector. It is estimated that 29 food trucks operated by companies, other than small businesses, will have an impact of \$2,900.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** This rule adds the requirement for a liquefied petroleum gas detector to be installed in each food truck. All other requirements for fire safety in food trucks are currently in state law. The cost of a portable liquefied petroleum gas detector for this application, based on searches on Amazon and Google, runs between \$20 and \$185. It is anticipated that the average cost per food truck will be \$100. As these devices are simple to install, no installation costs have been added to the cost of the detector. It is anticipated that this will only impact small businesses. The Fire Marshal's office is not aware of any business with more than 50 employees operating a food truck. Chain restaurants operating food trucks are individual franchises as far as the Fire Marshal's office is able to ascertain: 1) direct fiscal cost -- \$100 each totaling \$34,700; 2) indirect fiscal cost -- not applicable; 3) direct non-fiscal cost -- not applicable; 4) indirect non-fiscal cost -- not applicable; 5a) direct fiscal benefit -- this device has the potential to alert the owner/operator to a catastrophic problem before it becomes an emergency. Repairs are likely to be as simple as tightening a loose gas line fitting. This could easily result in a savings to the owner of over \$100,000; 5b) the retailer selling the detector will profit from the sale; 6) indirect fiscal benefit -- this device has the potential to alert the owner/operator to a catastrophic problem before it becomes an emergency. This preserves the value of wages to the employees and protects the tax base for the community; 7) direct non-fiscal benefit -- this device has the potential to alert the owner/operator to a catastrophic problem before it becomes an emergency. Explosions in food trucks with gas leaks have resulted in injury and death. The cost of potential medical bills and possibly funerals is impossible to calculate. It is safe to say that these costs would be well in excess of \$100; 8) indirect non-fiscal benefit -- this device has the potential of saving lives both of the owner/ operator and the public.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** This rule was written and approved by the Utah Fire Prevention Board to comply with Subsection 53-7-204(1)(b) (x). In this subsection, the Board is directed by law to make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act establishing criteria for the fire safety inspection of a food truck. This rule establishes definitions for terms used in the rule, sets qualifications for those that can perform a fire safety inspection of a food truck, establishes an inspection procedure and criteria, establishes an inspection check list for uniformity, specifies criteria for an approval sticker, and adds the requirement for a liquefied

petroleum gas detector. The anticipated cost for each food truck resulting from this rule is \$100. The Fire Marshal's Office has contacted Salt Lake, Utah, Davis, Weber, and Morgan County Health departments for a count of food trucks in their areas. Their information indicates that there are 249 small businesses operating 292 food trucks in these counties. The Fire Marshal's Office used Firm Find data to estimate the number of food trucks in the rest of the state. The Fire Marshal's Office estimates that there are 24 small businesses operating 26 food trucks in the rest of the state. Other than small businesses, there are 6 companies operating 29 additional food trucks in the state. The total estimated impact on small businesses in the state is \$31,800. Impact on other companies operating food trucks is estimated at \$2,900. **DEPARTMENT HEAD'S COMMENTS ON THE ANALYSIS:** The above analysis represents the Department of Public Safety's best estimate as to the fiscal impact this rule amendment will have on business.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:  
 PUBLIC SAFETY  
 FIRE MARSHAL  
 ROOM 302  
 5272 S COLLEGE DR  
 MURRAY, UT 84123-2611  
 or at the Office of Administrative Rules.

**DIRECT QUESTIONS REGARDING THIS RULE TO:**  
 ♦ Coy Porter by phone at 801-284-6358, by FAX at 801-284-6351, or by Internet E-mail at coyporter@utah.gov  
 ♦ Kim Gibb by phone at 801-556-8198, by FAX at 801-964-4482, or by Internet E-mail at kgibb@utah.gov  
 ♦ Ted Black by phone at 801-284-6352, or by Internet E-mail at tblack@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 12/15/2017

THIS RULE MAY BECOME EFFECTIVE ON: 12/22/2017

AUTHORIZED BY: Coy Porter, State Fire Marshal

**Appendix: Regulatory Impact Analysis for Small and Non-Small Businesses**

	FY 2018	FY 2019	FY 2020
<b>Fiscal Costs</b>			
State Government	\$0	\$0	\$0
Local Government	\$0	\$0	\$0
Small Businesses	\$31,800	\$0	\$0
Non-Small Businesses	\$2,900 per truck	\$0	\$0
Other Persons	\$0	\$0	\$0

<b>Total Fiscal Costs:</b>	\$100 per truck	\$0	\$0
<b>Fiscal Benefits</b>			
State Government	\$0	\$0	\$0
Local Government	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Benefits:</b>	\$0	\$0	\$0
<b>Net Fiscal Benefits:</b>	\$0	\$0	\$0

**R710. Public Safety, Fire Marshal.**

**R710-14. Food Truck Licensing and Regulation.**

**R710-14-1. Purpose.**

The purpose of this rule is to establish criteria for the fire safety inspection of a food truck.

**R710-14-2. Authority.**

This rule is authorized by Subsections 53-7-204(1)(b)(x) and 11-56-104(4)(a).

**R710-14-3. Definitions.**

(1) "Authority Having Jurisdiction (AHJ)" means the State Fire Marshal, his duly authorized deputies, or the local fire enforcement authority;

(2) "board" means Utah Fire Prevention Board;

(3) "certified inspector" means a person who meets the qualifications listed in this Rule to conduct food truck fire safety inspections;

(4) "inspection" means a fire safety inspection of a food truck; "food truck" means the definition found in Section 11-56-102(3);

(5) "food truck operator" means the definition found in Section 11-56-102(5);

(6) "LPG" means liquefied petroleum gas; and

(7) "SFM" means State Fire Marshal or authorized deputy.

**R710-14-4. Certified Inspector Qualifications.**

(1) Only a certified inspector may conduct an inspection.

(2) A certified inspector shall be affiliated with a AHJ as an employee.

(3) A certified inspector shall hold a current Utah State Inspector 1 certificate and complete the food truck fire safety inspection training approved by the SFM.

**R710-14-5. Inspection Procedures and Criteria.**

(1) The AHJ shall use the inspection check list approved by the Board.

(2) A food truck shall comply with the following standards to pass inspection:

(a) no patrons are allowed inside the food truck;

(b) patron seating may not be located within any food truck or mobile or temporary cooking vehicle;

(c) gas fired appliances shall be secured to the food truck;

(d) generators may be used according to their listing and are not required to be mounted on the food truck; and

(e) a listed LPG liquid petroleum gas detector shall be installed in the truck at floor level near the cooking equipment.

(3) The AHJ may re-inspect a food truck, after it has passed an inspection, for the following items:

(a) damage to truck or equipment;

(b) removal or replacement of appliances or other equipment;

(c) additions to the food truck that were not included in the original inspection;

(d) remodel of the food truck;

(e) issues not included in the original inspection such as:

(i) free standing LPG tanks;

(ii) generator location;

(iii) cooking outside;

(iv) exterior seating; or

(v) truck placement;

(f) parking and location;

(g) cleanliness issues that create a potential fire hazard such as an accumulation of grease;

(h) imminent hazards to life or property; or

(i) current tag on fire extinguishing system.

(4) If a food truck passes an inspection, the AHJ will provide the food truck operator with a fire safety inspection sticker.

**R710-14-6. Inspection Stickers.**

(1) The SFM will provide inspection stickers to an AHJ. No other stickers may be used to indicate approval.

(2) The food truck operator shall place the inspection sticker inside the rear most door of the food truck.

(3) The inspection sticker is valid for one year from the date of the inspection.

**R710-14-7. Conflicts.**

In the event where separate requirements pertain to the same situation in the same code, or between different codes as adopted, the more restrictive requirement shall govern, as determined by the AHJ.

**KEY: fire prevention, food trucks**

**Date of Enactment or Last Substantive Amendment: 2017**

**Authorizing, and Implemented or Interpreted Law: 53-7-204; 11-56-104(4)(a)**

**Public Safety, Highway Patrol**  
**R714-510**  
**24-7 Sobriety Program**

**NOTICE OF PROPOSED RULE**

(New Rule)

DAR FILE NO.: 42277

FILED: 10/30/2017

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The purpose of this rule is to establish criteria and procedures for a law enforcement agency to participate in a 24-7 sobriety program. The rule is authorized by Section 41-6a-515.5 as a result of the passage of H.B. 250 during the 2017 General Session.

**SUMMARY OF THE RULE OR CHANGE:** The rule establishes the manner in which a participant in a 24-7 Sobriety Program will submit to required chemical testing, the apparatus to be used for testing, applicable fees to be assessed for participation in the 24-7 Sobriety Program and testing under the program, criteria for a data management technology plan, a sanction schedule for program non-compliance, and the process for piloting alternate components of the 24-7 Sobriety Program.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 41-6a-515.5

**ANTICIPATED COST OR SAVINGS TO:**

◆ **THE STATE BUDGET:** It is anticipated that the Department of Public Safety (DPS) will incur approximately \$30,000 in one-time personnel costs in order to establish the pilot program, and get it up and running.

◆ **LOCAL GOVERNMENTS:** The Weber County Sheriff's Office is the agency selected to participate for the purposes of implementation of the 24-7 Sobriety Program pilot as authorized by H.B. 250 (2017). They have selected Scram Systems as their vendor to provide data management technology services for implementation of the program. The anticipated cost for this service will be minimum contract amount of \$15,000 annually, with a potential for additional fees depending on the usage of the system. Anticipated costs for staffing for the Weber County Sheriff's Office for the purposes of implementing the program is \$70,000 annually. Anticipated costs for purchase of three additional portable breath testers is \$327 each for a total of \$981. In addition, other alcohol testing supplies such as testing straws are \$45 per case of 250 at an estimated 100 program participants who will be required to test twice daily. It is anticipated that there will be approximately 100 program participants annually, who will be assessed a one time enrollment fee of \$30, and a fee of \$2 two times a day for alcohol testing, which DPS estimates may result in a revenue to the Weber County Sheriff's Office in the amount of \$3,400 annually. Costs for Urinalysis tests are \$47.75 per case of 25, 4 panel tests, and

\$94.25 per case of 25, 10 panel tests. At this time DPS is unable to determine how many of the program participants might be required to submit to drug testing in order to participate in the program.

◆ **SMALL BUSINESSES:** The Weber County Sheriff's Office obtains their portable breath testing units (PBTs), and other testing supplies through State of Utah Best Value Cooperative Contracts. The rule change will not have an impact on small businesses other than the vendor from whom purchases are made through a state contract, which will see a slight increase in the number of supplies purchased from them.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Persons that are ordered by a judge to participate in a 24-7 Sobriety Program after being convicted for DUI will be required to appear at a testing location twice a day and submit to a chemical test between the hours of 6 to 8 am and 6 to 8 pm. Persons that participate in the 24-7 Sobriety Program will be able to maintain a valid driver license. This may help some individuals to maintain employment or continue to take care of other personal responsibilities. If a person participating in a 24-7 Sobriety Program is determined to be out of compliance with the requirements of the program, they may serve jail time as a result, or they may be removed from the program and have their driver license suspended. Based on 24-7 Sobriety Program statistics provided by the state of South Dakota from 10/10/2006 to 05/18/2017, 75% of their participants were fully compliant. At this time, DPS is unable to determine the number of participants that will become out of compliance with the program.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:**

Persons that are ordered by a judge subsequent to a DUI conviction to participate in a 24-7 Sobriety Program will be required to pay a one-time \$30 fee for enrollment in the 24-7 Sobriety Program, and testing fees to be determined based on the type of testing that will be conducted. For breath alcohol testing, the person will be required to pay \$2 per test twice a day. For urine or oral fluid testing in connection with a drug-related DUI conviction, the person will be required to pay \$6 per test administered at a frequency determined by the judge. In the event an individual is ordered to use transdermal alcohol monitoring in connection with the 24-7 Sobriety Program, a fee of \$7.55 per day will be assessed. Persons that participate in the 24-7 Sobriety Program will be able to maintain a valid driver license. This may help some individuals to maintain employment or continue to take care of other personal responsibilities.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:**

The enactment of this rule should not have an impact on businesses. The Weber County Sheriff's Office purchases testing supplies from a single vendor through a state contract. The vendor that supplies are purchased from will have a positive fiscal impact due to the slight increase in supplies that will be needed in order to implement the program. The above analysis and summary reflects DPS's best estimate regarding the impact the rule change will have on businesses.

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

PUBLIC SAFETY  
HIGHWAY PATROL  
CALVIN L RAMPTON COMPLEX  
4501 S 2700 W  
SALT LAKE CITY, UT 84119-5994  
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Kim Gibb by phone at 801-556-8198, by FAX at 801-964-4482, or by Internet E-mail at kgibb@utah.gov  
♦ Steven Winward by phone at 801-550-6163, or by Internet E-mail at swinward@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 12/15/2017

THIS RULE MAY BECOME EFFECTIVE ON: 12/22/2017

AUTHORIZED BY: Steven Winward, Captain

**R714. Public Safety, Highway Patrol.**

**R714-510. 24-7 Sobriety Program.**

**R714-510-1. Authority.**

This rule is authorized by Subsection 41-6a-515.5(7).

**R714-510-2. Purpose.**

The purpose of this rule is to establish criteria and procedures for a law enforcement agency to participate in a 24-7 sobriety program.

**R714-510-3. Definitions.**

(1) Definitions used in the rule are found in Sections 41-6a-102, and 41-6a-515.5.

(2) In addition:

(a) "24-7 Sobriety Program Committee" or "committee" means a committee comprised of members from the Department of Public Safety, the Department of Technology Services, the Administrative Office of the Courts, and the participating law enforcement agency for the purpose of establishing criteria and procedures for a 24-7 sobriety program.

**R714-510-4. Manner of Testing.**

(1) An individual participating in a 24-7 program for in person alcohol testing shall:

(a) appear at the designated law enforcement agency or testing site twice a day, both between the hours of 6-8 am and 6-8 pm;

(b) submit to a portable breath test; and

(i) if the portable breath test result indicates alcohol consumption, submit to an Intoxilyzer test for a confirmation result; and

(c) pay the required testing fee for each test administered.

(2) An individual participating in a 24-7 program for drug testing shall:

(a) appear at the designated law enforcement agency or testing site on a random basis as requested;

(b) submit to required drug testing; and

(c) pay the required testing fee for each test administered.

(3) An individual may be ordered to participate in a 24-7 program through the use of transdermal alcohol monitoring if:

(a) the individual has completed a screening for risk assessment and is determined to be a low risk offender; or

(b) the judge hearing the case has determined that the individual qualifies for a hardship exception based on criteria outlined in Subsection 41-6a-515.5(3)(e).

**R714-510-5. Apparatus to be Used for Testing.**

(1) The following apparatus are acceptable for use in a 24-7 sobriety program:

(a) portable breath test;

(b) Intoxilyzer test;

(c) urine test;

(d) oral fluid test; and

(e) blood test.

**R714-510-6. Participation and Testing Fees.**

(1) A law enforcement agency that participates in a 24-7 sobriety program may require payment of a testing fee by a person participating in the program as follows:

(a) \$30.00 user fee for enrollment in the 24-7 sobriety program;

(b) \$2.00 for each portable breath test or Intoxilyzer test administered;

(c) \$6.00 for each urine or oral fluid drug test administered; and

(d) \$7.55 per day for the use of transdermal alcohol monitoring;

**R714-510-7. Data Management Technology Plan.**

(1) A law enforcement agency that participates in a 24-7 sobriety program must use a data management technology plan approved by the department to manage the following:

(a) testing;

(b) data access;

(c) fees;

(d) fee payments; and

(e) any required reports.

**R714-510-8. Sanction Schedule for Program Noncompliance.**

(1) A person who tests positive for alcohol or drugs under a 24-7 sobriety program may be subject to the following:

(a) jail commitment of 8 hours for the first occurrence;

(b) jail commitment of 16 hours for the second occurrence;

(c) jail commitment of 24 hour for the third occurrence;

(d) appear before judge, may be removed from program for the fourth occurrence.

(1) A person who fails to appear for a required test may be subject to the following:

(a) jail commitment of 12 hours for the first occurrence;

(b) jail commitment of 24 hours for the second occurrence;

(c) jail commitment of 48 hour for the third occurrence;

(d) appear before judge, may be removed from program for the fourth occurrence.

**R714-510-9. Process for Piloting Alternate Components of the 24-7 Sobriety Program.**

(1) The 24-7 Sobriety Program Committee may evaluate and pilot alternate components of the 24-7 sobriety program.

(2) Upon evaluation and determination of the committee that an alternate component of the 24-7 Sobriety Program is deemed effective, the committee may incorporate the alternate component into the 24-7 Sobriety Program.

**KEY: 24-7 Sobriety Program, sobriety testing**

**Date of Enactment or Last Substantive Amendment: 2017**

**Authorizing, and Implemented or Interpreted Law: 41-6a-515.5**

Public Safety, Criminal Investigations  
and Technical Services, Criminal  
Identification  
**R722-300**  
Concealed Firearm Permit and  
Instructor Rule

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 42258

FILED: 10/23/2017

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The amendment updates statutory citations, includes provisions contained in H.B. 198, from the 2017 General Session, and allows an online course for Concealed Firearm Permit (CFP) instructor certification renewal.

**SUMMARY OF THE RULE OR CHANGE:** All statutory citations have been updated. With the passage of H.B. 198 (2017), 18 to 20-year olds are now eligible to apply for a provisional CFP. This amendment includes the procedures for application. The availability of an online course for CFP instructor certification renewal is now addressed with the proposed changes.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Title 53, Chapter 5, Part 7

**ANTICIPATED COST OR SAVINGS TO:**

- ◆ **THE STATE BUDGET:** There is no aggregate anticipated cost or savings to the state budget.
- ◆ **LOCAL GOVERNMENTS:** There is no aggregate anticipated cost or savings to local governments.
- ◆ **SMALL BUSINESSES:** There is no aggregate anticipated cost or savings to small businesses.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Applicants for the Provisional CFP will be required to pay costs associated with the issuance of the permit and other

related services provided (fingerprint-based criminal history background checks). CFP instructors renewing their certification will save travel expenses with the offering of the online course.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** Applicants for the Provisional CFP will be required to pay costs associated with the issuance of the permit and other related services provided (fingerprint-based criminal history background checks).

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:**

**I. WHETHER A FISCAL IMPACT TO BUSINESS IS EXPECTED AS A RESULT OF THE PROPOSED RULE AND, IF SO, A DESCRIPTION OF WHY:** This proposed rule amendment addresses the following changes: 1) acceptance of applications for the provisional permit (no earlier than 60 days prior to eligibility) for those 18 to 20-years of age, will have no impact on small businesses; 2) fees collected under Section 53-10-108 will have no impact on small businesses; 3) acceptance of proof of out-of-state permit for the provisional permit (18 to 20-years of age) will have no impact on small businesses; 4) nonsubstantive changes for statutory citations will have no impact on small businesses; 5) the ability to receive online training for a Concealed Firearm Instructor Certification renewal will have an impact on small businesses, instructors will no longer have to pay travel expenses to attend on-site, in person training for renewals; 6) that a provisional CFP may not be renewed once the permittee reaches the age of 21 will have no impact on small businesses; and 7) the instruction and training of those who are applying for the provisional CFP will have an impact on small businesses, those who are instructors will be able to collect fees for the instruction and training of these applicants.

**II. AN ESTIMATE OF THE TOTAL NUMBER OF BUSINESS ESTABLISHMENTS IN UTAH EXPECTED TO BE IMPACTED:** Zero since only small businesses will be impacted.

**III. AN ESTIMATE OF THE SMALL BUSINESS ESTABLISHMENTS IN UTAH EXPECTED TO BE IMPACTED:** As of 09/01/2017 there are currently 803 Utah instructors certified to provide the instruction and training for the provisional CFP who will be impacted, in that they will have the opportunity to provide the instruction and training for a larger base of applicants. These instructors are generally contractors who provide the instruction and training and are not part of a larger organization. The employee count is usually very small.

**IV. A DESCRIPTION OF THE SOURCES OF COST OR SAVINGS AS WELL AS THE EXPECTED NET SAVINGS OR COST TO BUSINESS ESTABLISHMENTS AND SMALL BUSINESS ESTABLISHMENTS AS A RESULT OF THE PROPOSED RULE OVER A ONE-YEAR PERIOD, IDENTIFYING ONE-TIME AND ONGOING COSTS:** There will be no savings for small business establishments since there will be costs associated with: 1) the certification/licensing process to become an instructor (\$35 training registration and \$50 for instructor certification) which is one-time cost; 2) the recertification/renewal costs (\$35 training registration and \$25 for renewal of instructor

certification) will be an ongoing cost; 3) the cost for overhead (i.e. venue, material costs, etc.) (variable costs) is an ongoing cost every three years; and 4) the costs for travel to receive the training and to teach the classes (variable) is an ongoing cost. There will, however, be the opportunity for increased revenues from the collection of fees for the instruction and training provided by the certified concealed firearm instructors. There will be a cost savings to instructors recertifying/renewing with the ability to receive the training via online methods will eliminate the cost of travel to the training facility. V. DEPARTMENT HEAD'S COMMENTS ON THE ANALYSIS (RATHER THAN THE IMPACT): The above analysis represents the Department of Public Safety's perspective regarding the fiscal impact this rule amendment will have on businesses.

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

PUBLIC SAFETY  
CRIMINAL INVESTIGATIONS AND TECHNICAL  
SERVICES, CRIMINAL IDENTIFICATION  
3888 W 5400 S  
TAYLORSVILLE, UT 84118  
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Alice Moffat by phone at 801-965-4939, by FAX at 801-965-4944, or by Internet E-mail at aerickso@utah.gov  
◆ Kim Gibb by phone at 801-556-8198, by FAX at 801-964-4482, or by Internet E-mail at kgibb@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 12/15/2017

THIS RULE MAY BECOME EFFECTIVE ON: 12/22/2017

AUTHORIZED BY: Alice Moffat, Bureau Chief

**R722. Public Safety, Criminal Investigations and Technical Services, Criminal Identification.**

**R722-300. Concealed Firearm Permit and Instructor Rule.**

**R722-300-1. Purpose.**

The purpose of this rule is to establish procedures whereby the bureau administers the Concealed Firearms Act in accordance with Title 53, Chapter 5, Part 7.

**R722-300-2. Authority.**

This rule is authorized by Subsection 53-5-704(17) which provides that the commissioner may make rules necessary to administer Title 53, Chapter 5.

**R722-300-3. Definitions.**

(1) Terms used in this rule are defined in Sections 53-5-702, 53-5-711, 76-10-501.

(2) In addition:

(a) "applicant" means an individual seeking to obtain or renew a permit, a temporary permit, an instructor certification, or an LEOJ permit from the bureau;

(b) "certified firearms instructor" means an individual certified by the bureau pursuant to Subsection 53-5-704(9) who can certify that an applicant meets the general firearm familiarity requirement under Subsection 53-5-704(8);

(c) "certified firearms instructor official seal" means a red, self-inking stamp containing the information required in Subsection 53-5-704(11)(a)(iii) which meets the design requirements described on the bureau's website;

(d) "crime of violence" means a crime under the laws of this state, any other state, the United States, or any district, possession, or territory of the United States which has, as an element, the use, threatened use, or attempted use of physical force or a dangerous weapon;

(e) "felony" means a crime under the laws of this state, any other state, the United States, or any district, possession, or territory of the United States for which the penalty is a term of imprisonment in excess of one year;

(f) "FBI" means the Federal Bureau of Investigation;

(g) "instructor certification" means a concealed firearm instructor certification issued by the bureau pursuant to Subsection 53-5-704(9);

(h) "LEOJ permit" means a permit to carry a concealed firearm issued to a judge or law enforcement official by the bureau pursuant to Section 53-5-711;

(i) "nonresident" means a person who:

(i) does not live in the state of Utah; or

(ii) has established a domicile outside Utah, as that term is defined in Section 41-1a-202.

(j) "NRA" means the National Rifle Association;

(k) "offense involving domestic violence" means a crime under the laws of this state, any other state, the United States, or any district, possession, or territory of the United States involving any of the conduct described in:

(i) Section 77-36-1; or

(ii) 18 U.S.C Subsection 921(a)(33);

(l) "offense involving moral turpitude" means a crime under the laws of this state, any other state, the United States, or any district, possession, or territory of the United States involving conduct which:

(i) is done knowingly contrary to justice, honesty, or good morals;

(ii) has an element of falsification or fraud; or

(iii) contains an element of harm or injury directed to another person or another's property;

(m) "offense involving the use of alcohol" means a crime under the laws of this state, any other state, the United States, or any district, possession, or territory of the United States involving any of the conduct described in:

(i) Section [32A-12-209]32B-4-409;

(ii) Section [32A-12-220]32B-4-421;

(iii) Subsection 41-6a-501(2) related to the use of alcohol;

(iv) Section 41-6a-526; or

(v) Section 76-10-528 related to carrying a dangerous weapon while under the influence of alcohol;

(n) "offense involving the unlawful use of narcotics or controlled substances" means:

(i) any offense listed in Subsection 41-6a-501(2) involving the use of a controlled substance;

(ii) any offense involving the use or possession of any controlled substance found in Title 58, Chapters 37, 37a, or 37b; or



(iii) the crime of carrying a dangerous weapon while under the influence of a controlled substance pursuant to Section 76-10-528;

(o) "past pattern of behavior involving unlawful violence" means verifiable incidents, regardless of whether there has been an arrest or conviction, that would lead a reasonable person to believe that an individual has a violent nature and would be a danger to themselves or others, including an attempt or threat to commit suicide;

(p) "permit" means a permit to carry a concealed firearm issued by the bureau pursuant to Section 53-5-704 or 53-5-704.5;

(q) "POST" means the Utah Department of Public Safety, Division of Peace Officer Standards and Training;

(r) "revocation" means the permanent deprivation of a permit, instructor certification, or certificate of qualification, however revocation does not preclude an individual from applying for a new permit, instructor certification, or certificate of qualification if the reason for revocation no longer exists;

(s) "suspension" means the temporary deprivation, for a specified period of time, of a permit, instructor certification, or certificate of qualification; and

(t) "temporary permit" means a temporary permit to carry a concealed firearm issued by the bureau pursuant to Section 53-5-705.

#### **R722-300-4. Application for a Permit to Carry a Concealed Firearm.**

(1)(a) An applicant seeking to obtain a permit shall submit a completed permit application packet to the bureau.

(i) The bureau may not accept an application more than 60 days prior to the applicant's date of permit eligibility.

(b) The permit application packet shall include:

(i) a written application form provided by the bureau with the address of the applicant's permanent residence;

(ii) a photocopy of a state-issued driver license or identification card;

(iii) one recent color photograph of passport quality which contains the applicant's name written on the back of the photograph, unless the applicant submitted a photo which meets these requirements to the bureau within the previous three years;

(iv) one completed FBI applicant fingerprint card (Form FD-258) with the applicant's legible fingerprints;

~~(v) [a non-refundable processing fee in the form of cash, check, money order, or credit card, which consists of the fee established by Sections 53-5-704 and 53-5-707, along with the FBI fingerprint processing fee]~~non-refundable fees as required under Sections 53-5-707, 53-5-707.5, and 53-10-108, and a fee for services provided by the FBI to conduct a federal background check as provided in Subsections 53-5-707(6)(a) and 53-5-707.5(4)(a), in the form of cash, check, money order, or credit card;

(vi) evidence indicating that the applicant has general familiarity with the types of firearms to be concealed as required by Subsection 53-5-704(6)(d);

(vii) any mitigating information that the applicant wishes the bureau to consider when determining whether the applicant meets the qualifications set forth in Subsection 53-5-704(2)(a); and

~~(viii) a copy of the applicant's current concealed firearm or weapon permit or provisional concealed firearm or weapon permit issued by the applicant's state of residency [if the applicant is a nonresident who resides in a state that recognizes the validity of the Utah permit or has reciprocity with Utah's concealed firearm permit law]~~pursuant to Subsections 53-5-704(4)(a) and 53-5-704.5(3)(a),

unless the applicant is an active duty service member who presents orders requiring the active duty service member to report for duty in Utah or an active duty service member spouse who presents the active duty service member's orders requiring the service member to report for duty in Utah.

(2) An applicant may establish evidence of general familiarity with the types of firearms to be concealed as required in Subsection 53-5-704(6)(d) by submitting a signed certificate, issued within one year of the date of the application, bearing a certified firearms instructor's official seal, certifying that the applicant has completed the required firearms course of instruction established by the bureau.

(3) If the applicant is employed as a law enforcement officer, the applicant:

(a) may not be required to pay the application fee; and

(b) may establish evidence of general familiarity with the types of firearms to be concealed as required in Subsection 53-5-704(6)(d) by submitting documentation from a law enforcement agency located within the state of Utah indicating that the applicant has successfully completed the firearm qualification requirements of that agency within the last five years.

(4)(a) Upon receipt of a complete permit application packet, the bureau shall conduct a thorough background investigation to determine if the applicant meets the requirements found in Subsections 53-5-704(2) and (3).

(b) The background investigation shall consist of the following:

(i) sending the fingerprint card to the FBI for a review of the applicant's criminal history record pursuant to Section 53-5-706; and

(ii) verifying the accuracy of the information provided in the application packet through a search of local, state and national records which may include, but is not limited to, the following:

(A) the Utah Computerized Criminal History database;

(B) the National Crime Information Center database;

(C) the Utah Law Enforcement Information Network;

(D) state driver license records;

(E) the Utah Statewide Warrants System;

(F) juvenile court criminal history files;

(G) expungement records maintained by the bureau;

(H) the National Instant Background Check System;

(I) the Utah Gun Check Inquiry Database;

(J) Immigration and Customs Enforcement records; and

(K) Utah Department of Corrections Offender Tracking System; and

(L) the Mental Gun Restrict Database.

(5)(a) If the background check indicates that an applicant does not meet the qualifications set forth in Subsection 53-5-704(2)(a), the bureau shall consider any mitigating circumstances submitted by the applicant.

(b) If the applicant does not meet the qualifications set forth in Subsection 53-5-704(2)(a) because the applicant has been convicted of a crime, the bureau may find that mitigating circumstances exist if the applicant was not convicted of a registerable sex offense, as defined in Subsection ~~[77-27-21.5(1)(n);]~~ 77-41-102(17) and the following time periods have elapsed from the date the applicant was convicted or released from incarceration, parole, or probation, whichever occurred last:

(i) five years in the case of a class A misdemeanor;

(ii) four years in the case of a class B misdemeanor; or

(iii) three years in the case of any other misdemeanor or infraction.

(c) Notwithstanding any other provision, the bureau may not grant a permit if the applicant does not meet the qualifications in Subsection 53-5-704(2)(a)(viii).

(6)(a) If the bureau determines that the applicant meets the requirements found in Subsections 53-5-704(2) and 53-5-704(3), the bureau shall issue a permit to the applicant within 60 days.

(b) The permit shall be mailed to the applicant at the address listed on the application.

(7)(a) If the bureau determines that the applicant does not meet the requirements found in Subsections 53-5-704(2), ~~53-5-704(3)~~, and 53-5-704(~~(3)~~)(4), the bureau shall mail a letter of denial to the applicant, return receipt requested.

(b) The denial letter shall state the reasons for denial and indicate that the applicant has a right to request a review hearing before the board by filing a petition for review within 60 days as provided in Subsection 53-5-704(16).

#### **R722-300-5. Application for a Concealed Firearms Instructor Certification.**

(1)(a) An applicant seeking to be certified as a Utah concealed firearms instructor shall submit a completed instructor certification application packet to the bureau.

(b) The instructor certification application packet shall include:

(i) a written instructor certification application form provided by the bureau with the applicant's residential or physical address and public contact information;

(ii) a photocopy of a state-issued driver license or identification card;

(iii) one recent color photograph of passport quality which contains the applicant's name written on the back of the photograph, unless the applicant submitted a photo which meets these requirements to the bureau within the previous [~~three~~] five years;

(iv) a photocopy of a valid Utah concealed firearm permit;  
~~\_\_\_\_\_ [(+) ](v)~~ a non-refundable processing fee in the form of cash, check, money order, or credit card;

~~\_\_\_\_\_ [(+) ](vi)~~ evidence that the applicant has completed a firearm instructor training course from the NRA or POST, or received training equivalent to one of these courses, as required by Subsection 53-5-704(9)(a)(iii); and

(vii) evidence that the applicant has completed the course of instruction provided under the direction of the bureau and passed the certification test provided in Subsection 53-5-704(9)(c), within one year of the date of the application.

(2)(a) An applicant who has not completed a firearm instructor training course from the NRA or POST, may meet the requirement in R722-300-5(1)(b)(v) by providing evidence that the applicant has completed a firearm instructor training course that is at least eight hours long and includes the following training components:

(i) instruction and demonstration on:

(A) the safe, effective, and proficient use and handling of firearms;

(B) firearm draw strokes;

(C) the safe loading, unloading and storage of firearms;

(D) the parts and operation of a handgun;

(E) firearm ammunition and ammunition malfunctions, including misfires, hang fires, squib loads, and defensive/protection ammunition vs. practice ammunition;

(F) firearm malfunctions, including failure to fire, failure to eject, feed way stoppage and failure to go into battery;

(G) shooting fundamentals, including shooter's stance, etc.; and

(H) firearm range safety rules; and

(ii) a practical exercise with a proficiency qualification course consisting of not less than 30 rounds and a required score of 80% or greater to pass.

(b) The evidence required in R722-300-5(2)(a) shall include a copy of the:

(i) course completion certificate showing the date the course was completed and the number of training hours completed; and

(ii) training curriculum for the course completed.

(3)(a) If the bureau determines that an applicant meets the requirements found in Subsection 53-5-704(9), the bureau shall issue an instructor certification to the applicant.

(b) An instructor certification identification card shall be mailed to the applicant at the residential or physical address listed on the application.

(4)(a) If the bureau determines that the applicant does not meet the requirements found in Subsection 53-5-704(9), the bureau shall mail a denial letter to the applicant, return receipt requested.

(b) The denial letter shall state the reasons for denial and indicate that the applicant has a right to request a review hearing before the board by filing a petition for review within 60 days as provided in Subsection 53-5-704(16).

#### **R722-300-6. Renewal of a Concealed Firearms Permit or Concealed Firearms Instructor Certification.**

(1)(a) An applicant seeking to renew a permit or an instructor certification shall submit a completed renewal packet to the bureau.

(b) The renewal packet for an applicant seeking to renew a permit shall include:

(i) a written renewal form provided by the bureau with the current address of the applicant's permanent residence;

(ii) a copy of the applicant's current concealed firearm or weapon permit or provisional concealed firearm or weapon permit issued by the applicant's state of residency pursuant to Subsections 53-5-704(4)(a) and 53-5-704.5(3)(a), unless the applicant is an active duty service member who presents orders requiring the active duty service member to report for duty in Utah or an active duty service member spouse who presents the active duty service member's orders requiring the service member to report for duty in Utah;

~~\_\_\_\_\_ [(+) ](iii)~~ one recent color photograph of passport quality which contains the applicant's name written on the back of the photograph, unless the licensee submitted a photo which meets these requirements to the bureau within the previous [~~three~~] five years; and

~~\_\_\_\_\_ [(+) ](iv)~~ a non-refundable processing fee in the form of cash, check, money order, or credit card, unless the applicant is an active duty service member who presents orders requiring the active duty service member to report for duty in Utah or an active duty service member spouse who presents the active duty service member's orders requiring the service member to report for duty in Utah.

(c) The renewal packet for an applicant seeking to renew an instructor certification shall include:

(i) a written renewal form provided by the bureau with the applicant's residential or physical address and the applicant's public contact information;

(ii) one recent color photograph of passport quality which contains the applicant's name written on the back of the photograph, unless the applicant submitted a photo which meets these requirements to the bureau within the previous three years;

(iii) a photocopy of a valid Utah concealed firearm permit;

~~(iii)~~(iv) a non-refundable processing fee in the form of cash, check, money order, or credit card; and

~~(iv)~~(v) evidence that the instructor has completed the course of instruction provided under the direction of the bureau and passed the certification test provided in Subsection 53-5-704(9)(c), within one year of the date of the application.

(A) The course of instruction for instructor certification renewal may be completed in person or via an online training course administered by the bureau.

(2) A renewal packet may be submitted no earlier than 60 days prior to the expiration of a current permit or certification.

(3)(a) A fee will be collected for renewal packets submitted on a permit or an instructor certification that has been expired for more than 30 days but less than one year.

(b) Renewal packets for a permit or an instructor certification which has been expired for more than one year will not be accepted and the applicant will have to re-apply for a permit or an instructor certification.

(4) When renewing a permit or an instructor certification the bureau shall conduct a background investigation.

(5)(a) If the bureau determines that the applicant meets the requirements to renew a permit or an instructor certification, the bureau shall mail the renewed permit or instructor certification identification card to the applicant.

(b) The renewed permit or instructor certification identification card shall be mailed to the applicant at the address listed on the renewal application.

(6)(a) If the bureau determines that the applicant does not meet the requirements to renew a permit or an instructor certification, the bureau shall mail a denial letter to the applicant, return receipt requested.

(b) The denial letter shall state the reasons for denial and indicate that the applicant has a right to request a review hearing before the board by filing a petition for review within 60 days as provided in Subsection 53-5-704(16).

(7) Provisional permits issued pursuant to Section 53-5-704.5 may not be renewed.

**R722-300-7. Application for a Temporary Permit to Carry a Concealed Firearm.**

(1)(a) In order to obtain a temporary permit an applicant shall submit a completed permit application packet to the bureau as provided by R722-300-4.

(b) In addition, the applicant shall provide written documentation to establish extenuating circumstances which would justify the need for a temporary permit to carry a concealed firearm.

(2) When reviewing an application for a temporary permit to carry a concealed firearm the bureau shall conduct the same background investigation as provided in R722-300-4.

(3)(a) If the bureau finds that extenuating circumstances exist to justify the need for a temporary permit, the bureau shall issue a temporary permit to the applicant.

(b) The temporary permit shall be mailed to the applicant at the address listed on the application.

(4) If the bureau finds that the applicant is otherwise eligible to receive a permit under Section 53-5-704, the bureau shall request that the applicant surrender the temporary permit prior to the issuance of the permit under Section 53-5-704.

**R722-300-8. LEOJ Permits.**

(1)(a) In order to obtain an LEOJ permit under Section 53-5-711, an applicant shall submit a completed permit application packet to the bureau as provided by R722-300-4.

(b) In addition, the applicant shall provide written documentation to establish to the satisfaction of the bureau that:

(i) the applicant is a law enforcement official or judge as defined in Section 53-5-711; and

(ii) that the applicant has completed the course of training required by Subsection 53-5-711(2)(b).

(2) When reviewing an application for an LEOJ permit the bureau shall conduct the same background investigation as if the individual were seeking a permit.

(3)(a) If the bureau finds that the applicant meets the requirements found in Subsection 53-5-711(2), the bureau shall issue an LEOJ permit to the applicant.

(b) The LEOJ permit shall be mailed to the applicant at the address listed on the application.

(4)(a) If the bureau finds that the applicant does not meet the requirements found in Subsection 53-5-711(2), the bureau shall mail a denial letter to the applicant, return receipt requested.

(b) The denial letter shall state the reasons for denial and indicate that the applicant has a right to request a review hearing before the board by filing a petition for review within 60 days as provided in Subsection 53-5-704(16).

(5)(a) When the bureau receives notice that an LEOJ permit holder resigns or is terminated from a position as a law enforcement official or judge, the LEOJ permit will be revoked and the bureau shall issue a permit, pursuant to Section 53-5-704, if the former LEOJ permit holder otherwise meets the requirements found in that section.

(b) If a former LEOJ permit holder gains new employment as a law enforcement official or judge, the bureau shall re-issue an LEOJ permit.

**R722-300-9. Suspension or Revocation of a Permit to Carry a Concealed Firearm, Concealed Firearms Instructor Certification, or an LEOJ Permit.**

(1) A permit may be suspended or revoked for any of the following reasons:

(a) the bureau determines that the permit holder does not meet the requirements found in Subsection 53-5-704(2);

(b) the bureau determines that the permit holder has committed a violation under Subsection 53-5-704(3); or

(c) the permit holder knowingly and willfully provided false information on an application for a permit, or a renewal of a permit.

(2) An instructor certification may be suspended or revoked for any of the following reasons:

(a) the bureau determines that the instructor has become ineligible to possess a firearm under Section 76-10-506 or federal law; or

(b) the instructor knowingly and willfully provided false information to the bureau.

(3) An LEOJ permit may be suspended or revoked for any of the following reasons:

(a) the bureau determines that an LEOJ permit holder is no longer employed as a law enforcement official or judge; or

(b) an LEOJ permit holder fails to provide proof of annual requalification by November 30 of each year as required by Section 53-5-711.

(4)(a) If the bureau suspends or revokes a permit, an instructor certification, or an LEOJ permit, the bureau shall mail a notice of agency action to the permit holder, instructor, or LEOJ permit holder, return receipt requested.

(b) The notice of agency action shall state the reasons for suspension or revocation and indicate that the permit holder, instructor, or LEOJ permit holder has a right to request a review hearing before the board by filing a petition for review within 60 days as provided in Subsection 53-5-704(16).

**R722-300-10. Review Hearing Before the Board.**

(1)(a) Review hearings before the board shall be informal and be conducted according to the provisions in Section 63G-4-203.

(b) At the hearing, the bureau shall establish the allegations contained in the notice of agency action by a preponderance of the evidence.

(2) Upon request, an applicant, permit holder, instructor, or LEOJ permit holder who is seeking review before the board is entitled to review all the materials in the bureau's file upon which the bureau intends to use in the hearing.

(3) In accordance with Section 63G-4-209 the board may enter an order of default against an applicant, permit holder, instructor, or LEOJ permit holder who fails to appear at the hearing.

(4) Within 30 days of the date of the hearing the board shall issue an order which:

(a) states the board's decision and the reasons for the board's decision; and

(b) indicates that the applicant, permit holder, instructor, or LEOJ permit holder has a right to appeal the decision of the board by filing a petition for judicial review within 30 days as provided in Section 63G-4-402.

**R722-300-11. Records Access.**

(1)(a) Information, except for the name of certified instructors and their public contact information, provided to the bureau by an applicant shall be considered "private" in accordance with Subsection 63G-2-302(2)(d).

(b) The name of certified instructors and their public contact information shall be considered public information.

(2) Information gathered by the bureau and placed in an applicant's file shall be considered "protected" in accordance with Subsection 63G-2-305(9).

(3) When a permit has been issued to an applicant, the names, address, telephone numbers, dates of birth, and Social Security numbers of the applicant are protected records pursuant to Section 53-5-708.

**KEY: concealed firearm permits, concealed firearm permit instructors**

**Date of Enactment or Last Substantive Amendment: ~~July 8, 2013~~ 2017**

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

**Authorizing, and Implemented or Interpreted Law: 53-5-701 through 53-5-711**

**Public Safety, Criminal Investigations  
and Technical Services, Criminal  
Identification  
R722-350  
Certificate of Eligibility**

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 42259

FILED: 10/23/2017

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The purpose of the rule change is to reference the statutory citations for the fees rather than list the fee amounts.

**SUMMARY OF THE RULE OR CHANGE:** The rule change is to reference the statutory citations for the fees rather than list the fee amounts.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 77-10-104 and Section 77-40-102 and Section 77-40-105 and Section 77-40-106 and Section 77-40-111

**ANTICIPATED COST OR SAVINGS TO:**

◆ **THE STATE BUDGET:** As the purpose of the rule is to reference the statutory citations for the fees rather than list the fee amounts, there is no aggregate anticipated cost or savings to the state budget.

◆ **LOCAL GOVERNMENTS:** As the purpose of the rule is to reference the statutory citations for the fees rather than list the fee amounts, there is no aggregate anticipated cost or savings to local governments.

◆ **SMALL BUSINESSES:** As the purpose of the rule is to reference the statutory citations for the fees rather than list the fee amounts, there is no aggregate anticipated cost or savings to small businesses.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** As the purpose of the rule is to reference the statutory citations for the fees rather than list the fee amounts, there is no aggregate anticipated cost or savings to persons other than small businesses, businesses, or local government entities.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** As the purpose of the rule is to reference the statutory citations for the fees rather than list the fee amounts, there are no compliance costs for affected persons.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** I. WHETHER A FISCAL IMPACT TO BUSINESS IS EXPECTED AS A RESULT OF THE PROPOSED RULE AND, IF SO, A DESCRIPTION OF WHY: This proposed rule amendment addresses the fees that are associated with the application and the Certificate of Eligibility. The purpose of this amendment is to strike specific fees and refer these to the statute citation that includes the fees as part of the established fee schedule. The fees are established in accordance with the process in Section 63J-1-504. II. AN ESTIMATE OF THE TOTAL NUMBER OF BUSINESS ESTABLISHMENTS IN UTAH EXPECTED TO BE IMPACTED: Zero. III. AN ESTIMATE OF THE SMALL BUSINESS ESTABLISHMENTS IN UTAH EXPECTED TO BE IMPACTED: Zero. IV. A DESCRIPTION OF THE SOURCES OF COST OR SAVINGS AS WELL AS THE EXPECTED NET SAVINGS OR COST TO BUSINESS ESTABLISHMENTS AND SMALL BUSINESS ESTABLISHMENTS AS A RESULT OF THE PROPOSED RULE OVER A ONE-YEAR PERIOD, IDENTIFYING ONE-TIME AND ONGOING COSTS: Zero. V. DEPARTMENT HEAD'S COMMENTS ON THE ANALYSIS (RATHER THAN THE IMPACT): The above analysis represents the Department of Public Safety's perspective regarding the fiscal impact this rule amendment will have on businesses.

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

PUBLIC SAFETY  
CRIMINAL INVESTIGATIONS AND TECHNICAL  
SERVICES, CRIMINAL IDENTIFICATION  
3888 W 5400 S  
TAYLORSVILLE, UT 84118  
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Alice Moffat by phone at 801-965-4939, by FAX at 801-965-4944, or by Internet E-mail at aerickso@utah.gov  
♦ Kim Gibb by phone at 801-556-8198, by FAX at 801-964-4482, or by Internet E-mail at kgibb@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 12/15/2017

THIS RULE MAY BECOME EFFECTIVE ON: 12/22/2017

AUTHORIZED BY: Alice Moffat, Bureau Chief

**R722. Public Safety, Criminal Investigations and Technical Services, Criminal Identification.**

**R722-350. Certificate of Eligibility.**

**R722-350-1. Purpose.**

The purpose of these rules is to establish procedures by which a petitioner may seek a certificate of eligibility pursuant to Title 77 Chapter 40. Fees established by the bureau in accordance with Section 77-40-106 to be paid by applicants are available on request.

**R722-350-2. Authority.**

Section 77-40-111 authorizes the department to promulgate rules to implement procedures for the application and issuance of certificates of eligibility.

**R722-350-2. Definitions.**

Terms used in this rule are defined in Section 77-40-102.

**R722-350-3. Application for a Certificate of Eligibility.**

(1)(a) An application for a certificate of eligibility must be made in writing to the bureau by filing out the application form established by the bureau.

(b) An application form must be accompanied by a payment of ~~[\$25.00]~~ the application fee established by the bureau in the form of cash, check, money order, or credit card.

(2)(a) Upon receipt of a completed application form and payment of the application fee, the bureau shall review each criminal episode contained on the petitioner's criminal history, in its entirety, to determine whether the petitioner meets the requirements for a certificate of eligibility found in Sections 77-40-104 and 77-40-105.

(b) In making its determination, the bureau shall also review all federal, state and local criminal records, to which it has access.

(3) If the bureau has insufficient information to determine if the petitioner meets the requirements for a certificate of eligibility, the bureau may request that the petitioner submit additional information.

(4) If the bureau is unable to obtain disposition information regarding the petitioner's criminal history or cannot determine whether the petitioner meets the requirements for a certificate of eligibility found in Sections 77-40-104 and 77-40-105, the bureau shall send a letter to the petitioner, at the address indicated on the application form, indicating that the petitioner may obtain a special certificate for each criminal episode upon the payment of ~~[\$56.00]~~ the issuance fee established by the bureau, per special certificate.

(5) If the bureau determines that the petitioner meets the requirements for the issuance of a certificate of eligibility found in Section 77-40-104, the bureau shall send the certificate of eligibility to the petitioner, at the address indicated on the application form, unless the charges were dismissed pursuant to a plea in abeyance agreement under Title 77, Chapter 2a, Pleas in Abeyance, or a diversion agreement under Title 77, Chapter 2, Prosecution, Screening, and Diversion.

(6) If the bureau determines that the petitioner meets the requirements for the issuance of a certificate of eligibility under any other circumstances, the bureau shall send a letter to the petitioner, at the address indicated on the application form, indicating that the petitioner must pay ~~[\$56.00]~~ the issuance fee established by the bureau for each certificate of eligibility.

(7) If the bureau determines that the petitioner does not meet the criteria for the issuance of a certificate of eligibility, the bureau shall send a letter to the petitioner, at the address indicated on the application form, which describes the reasons why the petitioner's application was denied and notifies the petitioner that the petitioner may seek agency review of the bureau's decision by following the procedures outlined in R722-350-4.

**R722-350-4. Agency Review of a Decision to Deny an Application for a Certificate of Eligibility.**

(1) A petitioner may seek review of the denial of an application for a certificate of eligibility, as provided by Section 63G-4-301, by mailing a written request for review to the bureau within 30 days from the date the denial letter is issued.

(2) The request for review must:

- (a) be signed by the petitioner;
- (b) state the specific grounds upon which relief is requested;
- (c) state the date upon which it was mailed; and
- (d) include documentation which supports the petitioner's request for review.

(3) An employee of the bureau shall be designated to review the petitioner's written request, any accompanying documents supplied by the petitioner, and the materials contained in the application file to determine whether the petitioner meets the requirements for the issuance of a certificate found in Section 77-40-104 and 77-40-105.

(4)(a) Within a reasonable time after receiving the request for review, the bureau shall issue a final written order on review, which shall be mailed to the petitioner at the address indicated on the application.

(b) If upon further review the bureau is unable to determine whether the petitioner meets the requirements for a certificate of eligibility found in Sections 77-40-104 and 77-40-105, the bureau shall send a letter to the petitioner, at the address indicated on the application form, indicating that the petitioner may obtain a special certificate for each criminal episode upon the payment of [~~\$56.00~~]the issuance fee established by the bureau, per special certificate.

(c) If further review indicates that the petitioner meets the requirements for the issuance of a certificate of eligibility found in Section 77-40-104, the bureau shall send a certificate of eligibility to the petitioner, unless the charges were dismissed pursuant to a plea in abeyance agreement under Title 77, Chapter 2a, Pleas in Abeyance, or a diversion agreement under Title 77, Chapter 2, Prosecution, Screening, and Diversion.

(d) If further review indicates that the petitioner meets the requirements for the issuance of a certificate of eligibility under any other circumstances, the order shall indicate that the petitioner must pay [~~\$56.00~~]the issuance fee established by the bureau for each certificate of eligibility.

(e) If further review indicates that the petitioner does not meet the requirements for the issuance of a certificate, the order shall describe the reasons why the bureau's decision was upheld and notify the petitioner that the petitioner's opportunity to review the bureau's decision is limited to review by the district court as described in R722-350-5.

**R722-350-5. Judicial Review.**

A petitioner may seek judicial review of the bureau's final written order on review denying an application for a certificate of eligibility, as provided by Section 63G-4-402, by filing a complaint in

the district court within 30 days from the date that the bureau's final written order is issued.

**KEY: expungement, certificate of eligibility**

**Date of Enactment or Last Substantive Amendment: [~~January 24, 2012~~]2017**

**Notice of Continuation: September 17, 2015**

**Authorizing, and Implemented or Interpreted Law: [~~77-40~~]77-40-111; 77-40-102; 77-40-104; 77-40-105; 77-40-106**

**Public Safety, Criminal Investigations  
and Technical Services, Criminal  
Identification  
R722-380  
Firearm Background Check Information**

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 42260

FILED: 10/23/2017

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The purpose of this amendment is to add verbiage

for the overturn of a denial due to bureau error must be within 30 days of the original background check and to clarify and update procedures on background checks for National Firearms Act (NFA) firearms.

**SUMMARY OF THE RULE OR CHANGE:** This amendment adds language to clarify that the overturn of a denial due to bureau error must be within 30 days of the original background check. This amendment clarifies and updates procedures on background checks for NFA firearms. The language in Subsection R722-380-6(2) has been removed because it is no longer needed. The applicant is no longer required to take the paperwork to the chief law enforcement officer as a result of a Bureau of Alcohol, Tobacco and Firearms (ATF) ruling dated 07/03/2016.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 53-10-201 and Section 76-10-501 and Section 76-10-503 and Section 76-10-526

**ANTICIPATED COST OR SAVINGS TO:**

♦ **THE STATE BUDGET:** There will be no aggregate anticipated cost or savings to the state budget because the proposed change only clarifies and updates procedures on background checks for NFA firearms and adds language to clarify that the overturn of a denial due to bureau error must be within 30 days of the original background check.

♦ **LOCAL GOVERNMENTS:** There will be no aggregate anticipated cost or savings to local governments because the proposed change only clarifies and updates procedures on

background checks for NFA firearms and adds language to clarify that the overturn of a denial due to bureau error must be within 30 days of the original background check.

♦ **SMALL BUSINESSES:** There will be no aggregate anticipated cost or savings to small businesses because the proposed change only clarifies and updates procedures on background checks for NFA firearms and adds language to clarify that the overturn of a denial due to bureau error must be within 30 days of the original background check.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There will be no aggregate anticipated cost or savings to persons other than small businesses, businesses, or local government entities because the proposed change only clarifies and updates procedures on background checks for NFA firearms and adds language to clarify that the overturn of a denial due to bureau error must be within 30 days of the original background check.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** There will be no compliance costs for affected persons because the proposed change only clarifies and updates procedures on background checks for NFA firearms and adds language to clarify that the overturn of a denial due to bureau error must be within 30 days of the original background check.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:**

I. **WHETHER A FISCAL IMPACT TO BUSINESS IS EXPECTED AS A RESULT OF THE PROPOSED RULE AND, IF SO, A DESCRIPTION OF WHY:** Overturn of a denial if the following conditions are met: 1) denial done in error by the bureau; and 2) must be brought to attention within 30 days of the original background check. A background check will be completed by the bureau, upon the request of a dealer, for an NFA firearm which includes silencers, suppressors, fully automatic weapons, and short-barrelled shotguns and rifles. The cost of the background check (\$7.50) is currently billed to the dealer requesting the check, and applications submitted prior to 07/03/2016 are not subject to an additional background check fee (\$7.50).

II. **AN ESTIMATE OF THE TOTAL NUMBER OF BUSINESS ESTABLISHMENTS IN UTAH EXPECTED TO BE IMPACTED:** Ten or fewer (50 plus employees -- Cabela's, Sportsman's Warehouse, Walmart, etc.)

III. **AN ESTIMATE OF THE SMALL BUSINESS ESTABLISHMENTS IN UTAH EXPECTED TO BE IMPACTED:** Approximately 800 FFLs (Federal Firearms Licensees) with less than 50 employees, most have one or two employees.

IV. **A DESCRIPTION OF THE SOURCES OF COST OR SAVINGS AS WELL AS THE EXPECTED NET SAVINGS OR COST TO BUSINESS ESTABLISHMENTS AND SMALL BUSINESS ESTABLISHMENTS AS A RESULT OF THE PROPOSED RULE OVER A ONE-YEAR PERIOD, IDENTIFYING ONE-TIME AND ONGOING COSTS:** There will be small savings to small businesses as: 1) the process to get an NFA firearm has been simplified by the ATF, the process that an employee must go through has been streamlined, and the delays have been shortened creating a savings in employees time; and 2) the cost for the

background check will be the responsibility of the purchaser and not the small business (a one-time cost).

V. **DEPARTMENT HEAD'S COMMENTS ON THE ANALYSIS (RATHER THAN THE IMPACT):** The above analysis represents the Department of Public Safety's perspective regarding the fiscal impact this rule amendment will have on businesses.

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

PUBLIC SAFETY  
CRIMINAL INVESTIGATIONS AND TECHNICAL  
SERVICES, CRIMINAL IDENTIFICATION  
3888 W 5400 S  
TAYLORSVILLE, UT 84118  
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Alice Moffat by phone at 801-965-4939, by FAX at 801-965-4944, or by Internet E-mail at aerickso@utah.gov  
♦ Kim Gibb by phone at 801-556-8198, by FAX at 801-964-4482, or by Internet E-mail at kgibb@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 12/15/2017

THIS RULE MAY BECOME EFFECTIVE ON: 12/22/2017

AUTHORIZED BY: Alice Moffat, Bureau Chief

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**R722. Public Safety, Criminal Investigations and Technical Services, Criminal Identification.**

**R722-380. Firearm Background Check Information.**

**R722-380-1. Authority.**

This rule is authorized by Subsection 76-10-526(11).

**R722-380-2. Definitions.**

(1) "Bureau" means the Utah Bureau of Criminal Identification within the Department of Public Safety established by Section 53-10-201.

(2) "Firearm dealer" means any firearm dealer who is licensed as defined in [Utah Code Ann.] Subsection 76-10-501(7).

(3) "NFA firearm" means a National Firearms Act firearm defined in Title 26 Section 5845 of the United States Code.

**R722-380-3. Verification of Identification.**

(1) For purposes of a criminal history background check as established in Section 76-10-526, the only form of photo identification the bureau shall accept is a driver license or identification card that may be accessed through the issuing state's database and verified as a valid form of identification.

**R722-380-4. Inquiring Into Denial of Firearm Purchase.**

(1)(a) An individual who has been denied the purchase of a firearm by the bureau may inquire why he or she was denied such a purchase by submitting a completed Request for Denial/Research Information form.

(b) The individual may have such denial information released to a third party by submitting a completed Third Party Release Form with a completed Request for Denial/Research Information form.

(2)(a) Within a reasonable time after receiving the completed request form, the [B]bureau shall release denial information regarding why the individual has been denied the purchase of a firearm, which shall be mailed, e-mailed, or faxed to the individual at the address, e-mail address, or fax number indicated on the request form.

(3)(a) A denial of the purchase of a firearm by the bureau may not be overturned except if the denial was done in error by the bureau and no longer than 30 days has passed from the date of the initial background check.

#### **R722-380-5. Law Enforcement Evidence Release.**

(1)(a) A law enforcement agency seeking to obtain background clearance information from the bureau prior to releasing a firearm from custody must submit a completed Law Enforcement Evidence Release Form by mail or fax.

(b) Upon receipt of a completed Law Enforcement Evidence Release Form, the bureau shall conduct a thorough background investigation to determine whether the individual, to whom the firearm will be released, meets the requirements to possess a firearm established under [~~Utah Code Ann.~~] Section 76-10-503 and Title 18 Section 922 of the United State Code.

(c) Upon completion of the background investigation, the bureau shall notify the law enforcement agency by fax or telephone, at the number indicated on the release form, whether the individual, to whom the firearm will be released, may possess a firearm.

#### **R722-380-6. Procedures on Background Checks for NFA Firearms.**

(1)(a) An applicant seeking to transfer or register an NFA firearm according to Title 26 Chapter 53 of the United States Code must complete the Bureau of Alcohol, Tobacco, Firearms, and Explosives Application for Tax Paid Transfer and Registration of Firearm form and submit to a background check by the bureau as provided in [~~Utah Code Ann.~~] Section 76-10-526.

(b) [~~Upon receipt of a request from a firearm dealer to perform the background check, t~~]The bureau shall conduct a thorough background investigation as provided in [~~Utah Code Ann.~~]Section 76-10-526 on the individual receiving the NFA firearm upon receipt of a request from a firearm dealer to perform the background check.

(c) Applications initiated prior to July 3, 2016, are not subject to an additional background fee provided under Section 76-10-526 at the time of receiving the NFA firearm from the firearm dealer. [Once the background check is complete, the Bureau shall provide a transaction number to the firearm dealer.

(2)(a) ~~After the transaction number has been provided by the bureau, the applicant must submit the Application for Tax Paid Transfer and Registration of Firearm to the Chief Law Enforcement Officer within 20 days in order to verify that a background check has been completed by the bureau.~~

~~(b) If the Application for Tax Paid Transfer and Registration of Firearm is not submitted to the Chief Law Enforcement Officer within 20 days after the transaction number has been provided, the individual must re-submit to a background check as provided in~~

~~Section 76-10-503 to obtain a new transaction number from the bureau.]~~

**KEY: firearm purchases, firearm releases, firearm denials, firearm background check information**

**Date of Enactment or Last Substantive Amendment: [July 22, 2015]2017**

**Authorizing, and Implemented or Interpreted Law: 53-10-201; 76-10-526; [76-10-526;]76-10-503; 76-10-501**

## Public Service Commission, Administration **R746-360-4** Application of Fund Surcharges to Customer Billings

### NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 42265

FILED: 10/25/2017

### RULE ANALYSIS

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The reason for these changes is to respond to comments submitted after the Change in Proposed Rule (Filing No. 41644) was filed on 08/15/2017 and made effective on 10/11/2017.

**SUMMARY OF THE RULE OR CHANGE:** The changes include: 1) the definition of "access line" is amended to include consistency with federal law; 2) the ability of a provider to include the surcharge within an end-user's rate plan is clarified; 3) the requirement to remit the surcharge explicitly includes providers of prepaid access lines that permit access to the public telephone network, for services purchased on or after 01/01/2018; 4) a provider may omit the surcharge with respect to: a) any access line that generates revenue that is subject to another state's Utah Universal Public Telecommunications Service Support Fund (UUSF) surcharge, or b) any access line that has not been used to access Utah intrastate telecommunications services during the month in question; and 5) in light of 4), above, the process for an end user to petition the Public Service Commission for a waiver of the surcharge is eliminated.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 54-3-1 and Section 54-4-1 and Section 54-8b-15

**ANTICIPATED COST OR SAVINGS TO:**

◆ **THE STATE BUDGET:** The Public Service Commission and the Division of Public Utilities have been administering the UUSF for many years and have the budget to continue doing



so. The proposed rule amendment will not have a fiscal impact on the state budget.

♦ LOCAL GOVERNMENTS: Local governments are not required to comply with or enforce the rules through which the UUSF is funded. No fiscal impact to local governments is anticipated.

♦ SMALL BUSINESSES: The section that is being amended applies to providers of access lines and connections. This amendment merely clarifies, by making explicit, that providers of prepaid access lines, that permit access to the public telephone network, are subject to the rule.

♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: The proposed amendment does not alter the access charge already imposed by the rule or the persons to whom it applies.

COMPLIANCE COSTS FOR AFFECTED PERSONS: This amendment will result in no new compliance costs because it only clarifies the existing rule.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The proposed amendment simply clarifies what the existing rule already implies, i.e., that providers of prepaid access lines, that permit access to the public telephone network, are subject to the rule's requirements because they are providers of access lines. Consequently, the amendment creates no new fiscal impact.

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

PUBLIC SERVICE COMMISSION  
ADMINISTRATION  
HEBER M WELLS BLDG  
160 E 300 S  
SALT LAKE CITY, UT 84111-2316  
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Michael Hammer by phone at 801-530-6729, or by Internet E-mail at michaelhammer@utah.gov  
♦ Sheri Bintz by phone at 801-530-6714, by FAX at 801-530-6796, or by Internet E-mail at sbintz@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 12/15/2017

THIS RULE MAY BECOME EFFECTIVE ON: 12/22/2017

AUTHORIZED BY: Michael Hammer, Administrative Law Judge

**R746. Public Service Commission, Administration.**

**R746-360. Universal Public Telecommunications Service Support Fund.**

**R746-360-4. Application of Fund Surcharges to Customer Billings.**

(1)(a) "Access line" is defined at Utah Code Subsection 54-8b-2(1) and is used in this rule, R746-360, to the extent consistent with federal law.

(b) For purposes of applying the statutory definition of "access line," the term "connection" is defined at Utah Code Subsection 54-8b-15(1)(c) and is used in this rule, R746-360, to the extent consistent with federal law.

(c)(i) Providers of access lines and providers of connections are hereafter referred to jointly as "providers."

(ii) Access lines and connections are hereafter referred to jointly as "access lines."

(2) Through December 31, 2017, providers shall remit to the Commission 1.65 percent of billed intrastate retail rates.

(3) As of January 1, 2018, the Utah Universal Public Telecommunications Service Support Fund (UUSF) shall be funded as follows.

(a) Unless Subsection R746-360-4(5) applies, providers shall ~~[collect from their end-user customers]~~ remit to the Commission \$0.36 per month per access line that, as of the last calendar day of each month, has a [primary place of use within the State of Utah]place of primary use in Utah in accordance with the Mobile Telecommunications Sourcing Act, 4 U.S.C. Sec. 116 et seq.

(b)(i) "~~[Primary place]~~Place of primary use" means the street address representative of where the customer's use of the telecommunications service primarily occurs.

(ii) A provider of mobile telecommunications service shall consider the customer's ~~[primary]~~place of primary use to be the customer's residential street address or primary business street address.

(iii) A provider of non-mobile telecommunications service shall consider the customer's ~~[primary]~~place of primary use to be:

(A) the customer's residential street address or primary business street address; or

(B) the customer's registered location for 911 purposes.

(c)(+) ~~[The]~~A provider may collect the surcharge ~~[shall apply as]:~~

(i) as an explicit charge to each end-user[-]; or

(ii) ~~[A provider may include the surcharge in an all-inclusive]~~through inclusion of the surcharge within the end-user's rate plan.

(d) A provider that offers a multi-line service shall apply the surcharge to each concurrent real-time voice communication call session that an end-user can place to or receive from the public switched telephone network.

(e) A provider that offers prepaid access lines or connections that permit access to the public telephone network shall remit to the Commission \$0.36 per month per access line for such service (new access lines or connections, or recharges for existing lines or connections) purchased on or after January 1, 2018.

~~\_\_\_\_\_ (4)(a) A provider shall remit to the Commission no less than 98.69 percent of its total monthly surcharge collections.~~

~~(b) A provider may retain a maximum of 1.31 percent of its total monthly surcharge collections to offset the costs of administering this rule.~~

~~(5)(a) [A] Subject to Subsection R746-360-4(5)(b), a provider may omit the UUSF surcharge [in billing] with respect to an access line that[~~

~~\_\_\_\_\_ (i) ] is described in Subsection R746-360-4(3)[;], and;~~

~~[(ii)](i) generates revenue that is subject to a universal service fund surcharge in a state other than Utah for the relevant month for which the provider omits the UUSF surcharge[-]; or~~

~~(ii) for the relevant month for which the provider omits the UUSF surcharge, was not used to access Utah intrastate telecommunications services.~~

~~[(b)(i) An end-user may petition the Commission for a waiver of the surcharge set forth in Subsection R746-360-4(3). Any such petition shall be adjudicated as an informal administrative proceeding.~~

~~\_\_\_\_\_ (ii) An end-user that petitions for a waiver of the surcharge has the burden to provide:~~

~~\_\_\_\_\_ (A) call records demonstrating that, at all times and continuously during the six calendar months preceding the date of petition, the access line being assessed was not used to access Utah intrastate telecommunications services; or~~

~~\_\_\_\_\_ (B) billing records demonstrating that the access line is assessed a universal service fund surcharge in a state other than Utah.~~

~~\_\_\_\_\_ (iii) A provider may not petition the Commission under Subsection R746-360-4(5)(b) for a waiver of the surcharge on behalf of:~~

~~\_\_\_\_\_ (A) a customer; or~~

~~\_\_\_\_\_ (B) a group of customers.~~

~~\_\_\_\_\_ (iv)(A) An exemption granted under Subsection R746-360-4(5)(b) is valid for a period of one calendar year from the date of issuance.~~

~~\_\_\_\_\_ (B) Following the expiration of an exemption, and upon notice from the Commission, the end-user's provider shall assess the UUSF surcharge each month, until such time as the provider is notified by the Commission that a renewed exemption has been granted.~~

~~\_\_\_\_\_ (C) Any assessment remitted to the Commission between the expiration of an exemption and the approval of a petition for renewal of the exemption shall be non-refundable.~~

~~\_\_\_\_\_ (D)(i) The end-user shall bear the sole responsibility to know the expiration date of an exemption granted to the end-user and to ensure that an application for renewal is filed at least 30 days prior to the date of expiration.~~

~~\_\_\_\_\_ (ii) At any proceeding to review a petition for renewal of an exemption, evidence that the end-user was unaware of the expiration date shall be inadmissible.~~

~~\_\_\_\_\_ (iii) A petition for renewal of an exemption is deemed granted unless the Commission issues an order of denial within 30 days of the date on which the petition is filed.]~~

~~\_\_\_\_\_ (b) A provider that omits any UUSF surcharge pursuant to Subsection R746-360-5(a) shall:~~

~~\_\_\_\_\_ (i) maintain documentation for at least 36 months that the omission complied with Subsection R746-360-5(a); and~~

~~\_\_\_\_\_ (ii) consent to any audit of the documentation requested by the:~~

~~\_\_\_\_\_ (A) Commission; or~~

~~\_\_\_\_\_ (B) Division of Public Utilities.~~

**KEY: affordable base rate, public utilities, telecommunications, universal service fund**

**Date of Enactment or Last Substantive Amendment: 2017**

**Notice of Continuation: November 13, 2013**

**Authorizing, and Implemented or Interpreted Law: 54-3-1; 54-4-1; 54-8b-15**

### End of the Notices of Proposed Rules Section

# FIVE-YEAR NOTICES OF REVIEW AND STATEMENTS OF CONTINUATION

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Within five years of an administrative rule's original enactment or last five-year review, the agency is required to review the rule. This review is intended to help the agency determine, and to notify the public, that the administrative rule in force is still authorized by statute and necessary. Upon reviewing a rule, an agency may: repeal the rule by filing a **PROPOSED RULE**; continue the rule as it is by filing a **FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION (REVIEW)**; or amend the rule by filing a **PROPOSED RULE** and by filing a **REVIEW**. By filing a **REVIEW**, the agency indicates that the rule is still necessary.

A **REVIEW** is not followed by the rule text. The rule text that is being continued may be found in the online edition of the *Utah Administrative Code* available at <https://rules.utah.gov/>. The rule text may also be inspected at the agency or the Office of Administrative Rules. **REVIEWS** are effective upon filing.

**REVIEWS** are governed by Section 63G-3-305.

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## Administrative Services, Archives **R17-5** Definitions of Rules in Title R17

### **FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

DAR FILE NO.: 42271  
FILED: 10/27/2017

### **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 rule is enacted under Section 63A-12-104.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: Jim Kichas, Acting Assistant Director, stated that there were no problems at this time with the rules assigned to the Utah State Archives.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The definitions identified in Section R17-5-1 are specific to the Utah State Archives records management and records access information. Without context, it is difficult to understand the use of the word in the law. Therefore, this rule should be continued.

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

346 S RIO GRANDE  
SALT LAKE CITY, UT 84101-1106  
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Nova Dubovik by phone at 801-531-3834, by FAX at 801-531-3867, or by Internet E-mail at [ndubovik@utah.gov](mailto:ndubovik@utah.gov)

AUTHORIZED BY: Kenneth Williams, Director

EFFECTIVE: 10/27/2017

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## Administrative Services, Archives **R17-6** Records Storage and Disposal at the State Records Center

### **FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

DAR FILE NO.: 42272  
FILED: 10/27/2017

### **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 rule is enacted under Subsection 63A-12-104(1). This rule establishes a procedure for the storage and disposal of records at the State Records Center.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: Kendra Yates, Records Analyst

Manager, and Lisa Catano, Records Center Manager, both stated that that the rule and content is current and no proposed revision are needed at this time.

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 a procedure for the storage and disposal of government records at the State Records Center. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:  
 ADMINISTRATIVE SERVICES  
 ARCHIVES  
 346 S RIO GRANDE  
 SALT LAKE CITY, UT 84101-1106  
 or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
 ♦ Nova Dubovik by phone at 801-531-3834, by FAX at 801-531-3867, or by Internet E-mail at ndubovik@utah.gov

AUTHORIZED BY: Kenneth Williams, Director

EFFECTIVE: 10/27/2017

**Administrative Services, Archives  
 R17-7**

**Archival Records Care and Access at  
 the State Archives**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT  
 OF CONTINUATION**  
 DAR FILE NO.: 42270  
 FILED: 10/27/2017

**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 rule is enacted under Subsection 63A-12-104(1). This rule establishes a procedure for the care and access of records in the custody of the state archives, including classification or reclassification.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: Jim Kichas, Acting Assistant Director, stated that there were no problems at this time with the rules assigned to the Utah State Archives.

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 a procedure for the care and access of records in the custody of the state archives, including classification or reclassification. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:  
 ADMINISTRATIVE SERVICES  
 ARCHIVES  
 346 S RIO GRANDE  
 SALT LAKE CITY, UT 84101-1106  
 or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
 ♦ Nova Dubovik by phone at 801-531-3834, by FAX at 801-531-3867, or by Internet E-mail at ndubovik@utah.gov

AUTHORIZED BY: Kenneth Hansen, Deputy Director

EFFECTIVE: 10/27/2017

**Administrative Services, Archives  
 R17-8**

**Application of Microfilm Standards**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT  
 OF CONTINUATION**  
 DAR FILE NO.: 42273  
 FILED: 10/27/2017

**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 rule is enacted under Subsection 63A-12-104(1). This rule establishes a procedure for the microfilming standards of permanent and long-term records.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: Brian Carpenter, Micro-graphics Manager, stated that there were no problems at this time with the rules assigned to the Utah State Archives.

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 a procedure for the

microfilming standards of permanent and long-term records. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:  
ADMINISTRATIVE SERVICES  
ARCHIVES  
346 S RIO GRANDE  
SALT LAKE CITY, UT 84101-1106  
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
♦ Nova Dubovik by phone at 801-531-3834, by FAX at 801-531-3867, or by Internet E-mail at ndubovik@utah.gov

AUTHORIZED BY: Kenneth Williams, Director

EFFECTIVE: 10/27/2017

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**Environmental Quality, Administration**  
**R305-2**  
**Electronic Meeting**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT  
OF CONTINUATION**

DAR FILE NO.: 42266  
FILED: 10/26/2017

**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 52-4-207 of the Open and Public Meetings Act authorizes public bodies to make a rule governing electronic meetings, and requires them to do so before they may hold an electronic meeting.

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 of Environmental Quality (DEQ) has never received a written comment 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 rule is required under Section 52-4-207 for the DEQ boards to hold electronic meetings. Since many members of these boards are from outside of the Salt Lake City area, it is critical that these members be allowed to participate electronically. 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:  
♦ Jenny Potter by phone at 801-536-0095, or by Internet E-mail at jmpotter@utah.gov

AUTHORIZED BY: Alan Matheson, Executive Director

EFFECTIVE: 10/26/2017

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**Environmental Quality, Administration**  
**R305-7**  
**Administrative Procedures**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT  
OF CONTINUATION**

DAR FILE NO.: 42267  
FILED: 10/26/2017

**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 19-1-201(1)(d)(ii)(B) authorizes and requires the Department of Environmental Quality (DEQ) to make rules for procedures that govern special adjudicative proceedings. In 2012, the Legislature passed S.B. 21 (DEQ Boards Revisions) and S.B. 11 (DEQ Adjudicative Proceedings). The bills changed the overall organizational structure of the DEQ. Adjudication was placed under an administrative law judge to make recommendations for dispositive action to the executive director. In addition, S.B. 11 (2012) authorized on-the-record adjudicative review utilizing an appellate-type procedural format rather than a formal trial-type evidentiary hearing for the review of environmental permits.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: This is the first five-year review for this rule. The last substantive amendment was made 11/20/2015 in response to statutory amendments in 2015. DEQ received and responded to written comment received at that time. Comment stated that DEQ could not make rules establishing procedure not explicitly described in the statute.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: DEQ disagreed with the comment. Subsection 19-1-201(1)(d)(ii)(B) provides that DEQ shall make rules for procedures that govern a special adjudicative proceeding. The rule should continue so that the administrative law judge and the parties appearing before the administrative law judge have notice of the procedures and so that DEQ satisfies Subsection 19-1-201(1)(d)(ii)(B).

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:  
♦ Jenny Potter by phone at 801-536-0095, or by Internet E-mail at jmpotter@utah.gov

AUTHORIZED BY: Alan Matheson, Executive Director

EFFECTIVE: 10/26/2017

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**Environmental Quality, Administration**  
**R305-9**  
**Recusal of a Board Member for Conflict of Interest**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**  
DAR FILE NO.: 42268  
FILED: 10/26/2017

**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 Subsection 19-1-201(1)(d)(i)(B) which requires the Department of Environmental Quality (DEQ) to make rules regarding conflict of interest procedures for board members.

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

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Subsection 19-1-201(1)(d)(i)(B) requires DEQ to make rules regarding conflict of interest procedures for board members. 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:  
♦ Jenny Potter by phone at 801-536-0095, or by Internet E-mail at jmpotter@utah.gov

AUTHORIZED BY: Alan Matheson, Executive Director

EFFECTIVE: 10/26/2017

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**Health, Health Care Financing,  
Coverage and Reimbursement Policy**  
**R414-32**  
**Hospital Record-keeping Policy**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**  
DAR FILE NO.: 42237  
FILED: 10/17/2017

**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 26-1-5 grants the Department of Health (Department) the power to adopt, amend, or rescind rules that shall have the force and effect of law. In addition, Section 26-18-3 requires the Department to implement the Medicaid program through administrative rules.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: The Department did not receive any written or oral comments regarding this rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The Department will continue this rule because it establishes hospital record-keeping procedures to document services such as x-rays, laboratory analyses, and patient diagnosis for the promotion of quality and cost effective care for Medicaid members.

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: 10/17/2017

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

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**  
DAR FILE NO.: 42238  
FILED: 10/17/2017

**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 of Health (Department) to implement the Medicaid program through administrative rules, and Title 26, Chapter 35a, sets forth provisions for nursing care facility assessment and reimbursement.

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 did not receive any written or oral comments regarding this rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The Department will continue this rule because it provides rate calculations to reimburse nursing facilities and intermediate care facilities for persons with intellectual disabilities, directs providers to the Quality Improvement Incentive program and application process, and sets forth procedures that facilities must follow to receive Title XIX payments.

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: 10/17/2017

Human Services, Administration  
**R495-861**  
Requirements for Local Discretionary  
Social Services Block Grant Fund

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**  
DAR FILE NO.: 42239  
FILED: 10/17/2017

**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 62A-1-111 authorizes the Department of Human Services (Department) to adopt rules necessary for the provision of social services. Section 62A-1-114 provides that the Department administer the Social Services Block Grant.

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 during and since the last five-year review.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule needs to be continued so that the allocation of the funds can be specifically defined.

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

HUMAN SERVICES  
ADMINISTRATION  
DHS ADMINISTRATIVE OFFICE  
MULTI STATE OFFICE BUILDING  
195 N 1950 W  
SALT LAKE CITY, UT 84116  
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
♦ Janell Hall by phone at 801-538-4143, by FAX at 801-538-4317, or by Internet E-mail at janellhall@utah.gov

AUTHORIZED BY: Ann Williamson, Executive Director

EFFECTIVE: 10/17/2017

**Human Services, Services for People  
with Disabilities  
R539-1  
Eligibility**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT  
OF CONTINUATION**  
DAR FILE NO.: 42256  
FILED: 10/23/2017

**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 62A-5-103 (2)(a) states that the Division of Services for People with Disabilities (DSPD) shall "administer an array of services and supports for persons with disabilities and their families throughout the state" and (2)(b) "make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rule-making Act, that establish eligibility criteria for the services and supports described in Subsection (2)(a)". Subsection 62A-5-105(z)(t) states that DSPD shall "establish and periodically review the criteria used to determine who may receive services from the division and how the delivery of those services is prioritized within available funding". Rules governing eligibility were created to honor these statutes.

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 in support or opposition to the rule were received by DSPD.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Having received no comments in opposition and requiring a continuing, publicly available criteria for determining eligibility for DSPD services, continuation of this rule is justified on the grounds that it meets existing statutes, serves the purpose of DSPD, and has not met any public opposition.

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

HUMAN SERVICES  
SERVICES FOR PEOPLE WITH DISABILITIES  
195 N 1950 W  
THIRD FLOOR  
SALT LAKE CITY, UT 84116  
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
♦ Jolene Hanna by phone at 801-538-4154, or by Internet E-mail at jhanna@utah.gov  
♦ Julene Robbins by phone at 801-538-4521, by FAX at 801-538-3942, or by Internet E-mail at jhjonesrobbins@utah.gov

AUTHORIZED BY: Angella Pinna, Director

EFFECTIVE: 10/23/2017

**Insurance, Administration  
R590-152  
Health Discount Programs and Value  
Added Benefit Rule**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT  
OF CONTINUATION**  
DAR FILE NO.: 42281  
FILED: 11/01/2017

**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 31A-8a-210 specifically authorizes the Insurance Commissioner to issue rules to enforce Chapter 8a, Health Discount Program Consumer Protection Act, and to protect the public interest. The rule allows the Commissioner to license, examine, audit, and



investigate individuals or entities operating or selling health discount programs.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: The Department of Insurance (Department) has received no written comments regarding this rule during the past five years.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule authorizes the Department to license and regulate health discount programs and those who market and operate them. It also allows the Department to review the forms these programs use to ensure that they comply with the law and avoid using words and terms that would give the purchaser the impression that the program is insurance. This should reduce fraud and uncertainty in the market. The rule also requires managers of health discount programs to provide a website so members can view a current list of health discount plan providers. Therefore, this rule should be continued.

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

INSURANCE  
ADMINISTRATION  
ROOM 3110 STATE OFFICE BLDG  
450 N MAIN ST  
SALT LAKE CITY, UT 84114-1201  
or at the 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

AUTHORIZED BY: Steve Gooch, Information Specialist

EFFECTIVE: 11/01/2017

ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Subsection 31A-2-201(3)(a) authorizes the Insurance Commissioner to make rules to implement the provisions of the Insurance Code, Title 31A. Subsection 31A-23a-402(8)(a) authorizes the Insurance Commissioner to implement rules after a finding of fact that determines certain actions to be unfair or deceptive methods of competition in the business of insurance.

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 of Insurance has received no written comments regarding this rule during the past five years.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule is necessary to set forth standards to protect active duty service members of the United States Armed Forces from dishonest and predatory insurance sales practices by declaring certain practices to be false, misleading, deceptive, or unfair. Therefore, this rule should be continued.

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

INSURANCE  
ADMINISTRATION  
ROOM 3110 STATE OFFICE BLDG  
450 N MAIN ST  
SALT LAKE CITY, UT 84114-1201  
or at the 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

AUTHORIZED BY: Steve Gooch, Information Specialist

EFFECTIVE: 11/01/2017

Insurance, Administration  
**R590-242**  
Military Sales Practices

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT  
OF CONTINUATION**

DAR FILE NO.: 42280  
FILED: 11/01/2017

**NOTICE OF REVIEW AND STATEMENT OF  
CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS

Labor Commission, Occupational  
Safety and Health  
**R614-1**  
General Provisions

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT  
OF CONTINUATION**

DAR FILE NO.: 42250  
FILED: 10/19/2017

**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 34A, Chapter 6, establishes the Utah Occupational Safety and Health Division for the purposes of: 1) preserving human resources by providing for the safety and health of workers; and 2) providing a coordinated state plan "as effective as" the Federal OSHA program. Subsection 34A-6-105(1)(c) authorizes the Labor Commission to make all necessary and reasonable rules to implement Title 34A, Chapter 6.

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 during and since the last five-year review of 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 specific rule establishes definitions, incorporates federal standards, establishes other basic safety rules and addresses inspections, confidentiality of information, and penalties. This rule remains necessary to implement the legislative intent underlying the enactment of the Utah Occupational Safety and Health Act, set forth in Section 34A-6-102, of providing for the safety and health of workers and establishing a coordinated state plan as effective as the Federal Occupational Safety and Health program. Therefore, this rule should be continued.

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

LABOR COMMISSION  
 OCCUPATIONAL SAFETY AND HEALTH  
 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:

- ◆ Cameron Ruppe by phone at 801-530-6898, or by Internet E-mail at cruppe@utah.gov
- ◆ Christopher Hill by phone at 801-530-6113, by FAX at 801-530-6390, or by Internet E-mail at chill@utah.gov

AUTHORIZED BY: Jaceson Maughan, Commissioner

EFFECTIVE: 10/19/2017

Labor Commission, Occupational Safety and Health  
**R614-2**  
 Drilling Industry

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

DAR FILE NO.: 42249  
 FILED: 10/19/2017

**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 34A, Chapter 6, establishes the Utah Occupational Safety and Health Division for the purposes of: 1) preserving human resources by providing for the safety and health of workers; and 2) providing a coordinated state plan "as effective as" the Federal OSHA program. Subsection 34A-6-105(1)(c) authorizes the Labor Commission to make all necessary and reasonable rules to implement Title 34A, Chapter 6.

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 during and since the last five-year review of 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 is necessary to establish specific safety and health standards in the drilling industry and related services. Therefore, this rule should be continued.

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

LABOR COMMISSION  
 OCCUPATIONAL SAFETY AND HEALTH  
 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:

- ◆ Cameron Ruppe by phone at 801-530-6898, or by Internet E-mail at cruppe@utah.gov
- ◆ Christopher Hill by phone at 801-530-6113, by FAX at 801-530-6390, or by Internet E-mail at chill@utah.gov

AUTHORIZED BY: Jaceson Maughan, Commissioner

EFFECTIVE: 10/19/2017

Labor Commission, Occupational Safety and Health  
**R614-3**  
Farming Operations Standards

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**  
DAR FILE NO.: 42248  
FILED: 10/19/2017

**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 34A, Chapter 6, establishes the Utah Occupational Safety and Health Division for the purposes of: 1) preserving human resources by providing for the safety and health of workers; and 2) providing a coordinated state plan "as effective as" the Federal OSHA program. Subsection 34A-6-105(1)(c) authorizes the Labor Commission to make all necessary and reasonable rules to implement Title 34A, Chapter 6.

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 during and since the last five-year review of 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 is necessary to establish specific safety standards for farming operations and the safety of employees. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:  
LABOR COMMISSION  
OCCUPATIONAL SAFETY AND HEALTH  
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:  
♦ Cameron Ruppe by phone at 801-530-6898, or by Internet E-mail at cruppe@utah.gov  
♦ Christopher Hill by phone at 801-530-6113, by FAX at 801-530-6390, or by Internet E-mail at chill@utah.gov

AUTHORIZED BY: Jaceson Maughan, Commissioner

EFFECTIVE: 10/19/2017

Labor Commission, Occupational Safety and Health  
**R614-4**  
Hazardous Materials

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**  
DAR FILE NO.: 42247  
FILED: 10/19/2017

**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 34A, Chapter 6, establishes the Utah Occupational Safety and Health Division for the purposes of: 1) preserving human resources by providing for the safety and health of workers; and 2) providing a coordinated state plan "as effective as" the Federal OSHA program. Subsection 34A-6-105(1)(c) authorizes the Labor Commission to make all necessary and reasonable rules to implement Title 34A, Chapter 6.

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 during and since the last five-year review of 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 is necessary to establish specific safety standards for hazardous materials and the safety of employees working with them. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:  
LABOR COMMISSION  
OCCUPATIONAL SAFETY AND HEALTH  
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:  
♦ Cameron Ruppe by phone at 801-530-6898, or by Internet E-mail at cruppe@utah.gov  
♦ Christopher Hill by phone at 801-530-6113, by FAX at 801-530-6390, or by Internet E-mail at chill@utah.gov

AUTHORIZED BY: Jaceson Maughan, Commissioner

EFFECTIVE: 10/19/2017

Labor Commission, Occupational  
 Safety and Health  
**R614-5**  
 Materials Handling and Storage

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT  
 OF CONTINUATION**  
 DAR FILE NO.: 42246  
 FILED: 10/19/2017

**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 34A, Chapter 6, establishes the Utah Occupational Safety and Health Division for the purposes of: 1) preserving human resources by providing for the safety and health of workers; and 2) providing a coordinated state plan "as effective as" the Federal OSHA program. Subsection 34A-6-105(1)(c) authorizes the Labor Commission to make all necessary and reasonable rules to implement Title 34A, Chapter 6.

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 during and since the last five-year review of 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 is necessary to establish specific safety standards for conveyors and the safety of employees using them. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:  
 LABOR COMMISSION  
 OCCUPATIONAL SAFETY AND HEALTH  
 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:  
 ♦ Cameron Ruppe by phone at 801-530-6898, or by Internet E-mail at cruppe@utah.gov  
 ♦ Christopher Hill by phone at 801-530-6113, by FAX at 801-530-6390, or by Internet E-mail at chill@utah.gov

AUTHORIZED BY: Jaceson Maughan, Commissioner

EFFECTIVE: 10/19/2017

Labor Commission, Occupational  
 Safety and Health  
**R614-6**  
 Other Operations

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT  
 OF CONTINUATION**  
 DAR FILE NO.: 42245  
 FILED: 10/19/2017

**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 34A, Chapter 6, establishes the Utah Occupational Safety and Health Division for the purposes of: 1) preserving human resources by providing for the safety and health of workers; and 2) providing a coordinated state plan "as effective as" the Federal OSHA program. Subsection 34A-6-105(1)(c) authorizes the Labor Commission to make all necessary and reasonable rules to implement Title 34A, Chapter 6.

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 during and since the last five-year review of 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 identifies safety procedures for operations such as "crushing, screening, and grinding equipment", "window cleaning", and "industrial railroads" (items that are not covered by Federal standards). This rule is necessary to ensure the safety of employees in workplaces that involve these operations. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:  
 LABOR COMMISSION  
 OCCUPATIONAL SAFETY AND HEALTH  
 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:  
 ♦ Cameron Ruppe by phone at 801-530-6898, or by Internet E-mail at cruppe@utah.gov  
 ♦ Christopher Hill by phone at 801-530-6113, by FAX at 801-530-6390, or by Internet E-mail at chill@utah.gov

AUTHORIZED BY: Jaceson Maughan, Commissioner

EFFECTIVE: 10/19/2017

**Labor Commission, Occupational  
Safety and Health  
R614-7  
Construction Standards**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT  
OF CONTINUATION**

DAR FILE NO.: 42244

FILED: 10/19/2017

**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 34A, Chapter 6, establishes the Utah Occupational Safety and Health Division for the purposes of: 1) preserving human resources by providing for the safety and health of workers; and 2) providing a coordinated state plan "as effective as" the Federal OSHA program. Subsection 34A-6-105(1)(c) authorizes the Labor Commission to make all necessary and reasonable rules to implement Title 34A, Chapter 6.

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 during and since the last five-year review of 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 is necessary to establish specific safety standards for operations in hazardous construction areas such as "roofing", "tar-asphalt operations", and the protection of employees engaged in these operations. Therefore, this rule should be continued.

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

LABOR COMMISSION  
OCCUPATIONAL SAFETY AND HEALTH  
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:

◆ Cameron Ruppe by phone at 801-530-6898, or by Internet E-mail at cruppe@utah.gov

◆ Christopher Hill by phone at 801-530-6113, by FAX at 801-530-6390, or by Internet E-mail at chill@utah.gov

AUTHORIZED BY: Jaceson Maughan, Commissioner

EFFECTIVE: 10/19/2017

**Natural Resources, Water Resources  
R653-6  
Privatization Projects**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT  
OF CONTINUATION**

DAR FILE NO.: 42251

FILED: 10/20/2017

**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 73-10d-6(2) requires a form be submitted; this rule authorizes procedures relating to that requirement.

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

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule is necessary to provide a form for the implementation of Subsection 73-10d-6(s). Therefore, this rule should be continued.

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

NATURAL RESOURCES  
WATER RESOURCES  
ROOM 310  
1594 W NORTH TEMPLE  
SALT LAKE CITY, UT 84116-3154  
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Barbara Allen by phone at 801-538-72352, by FAX at 801-538-7279, or by Internet E-mail at barbaraallen@utah.gov

AUTHORIZED BY: Eric Millis, Director

EFFECTIVE: 10/20/2017

Natural Resources, Water Resources  
**R653-7**  
 Administrative Procedures for Informal Proceedings

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**  
 DAR FILE NO.: 42252  
 FILED: 10/20/2017

**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 adopted in compliance with Sections 63G-4-102, 63G-4-103, 63G-4-104, and 63G-4-201, which govern proceedings affecting the Risk Management Fund.

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

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule must be continued in case of any future adjudicative proceedings with regard to Flaming Gorge water rights that were granted by the Board of Water Resources.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:  
 NATURAL RESOURCES  
 WATER RESOURCES  
 ROOM 310  
 1594 W NORTH TEMPLE  
 SALT LAKE CITY, UT 84116-3154  
 or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
 ♦ Barbara Allen by phone at 801-538-72352, by FAX at 801-538-7279, or by Internet E-mail at [barbaraallen@utah.gov](mailto:barbaraallen@utah.gov)

AUTHORIZED BY: Eric Millis, Director

EFFECTIVE: 10/20/2017

School and Institutional Trust Lands, Administration  
**R850-83**  
 Administration of Previous Sales to Subdivisions of the State

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**  
 DAR FILE NO.: 42275  
 FILED: 10/30/2017

**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 (Trust) to establish rules for the sale of land to subdivisions of the state. This particular rule addresses the process for administering lands which were previously sold under Section 65-1-29 and Subsection 65A-7-4(5), both of which have been repealed, when the provisions of the sale have been violated and the lands revert back to the Trust.

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 since the previous five-year review.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Under Section 65-1-29 and Subsection 65A-7-4(5), both of which have been repealed, trust lands were sold to subdivisions of the state under a determinable fee process whereby the subdivision could purchase lands at a specific price for a specific purpose. If the use of the land changed for any reason, the land automatically reverted back to the Trust. This rule is necessary because it outlines the process whereby a breach of the sale terms is determined and the remedies available to the subdivision and the Trust to cure the breach. 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:

♦ John Andrews by phone at 801-538-5180, by FAX at 801-538-5118, or by Internet E-mail at jandrews@utah.gov

AUTHORIZED BY: David Ure, Director

EFFECTIVE: 10/30/2017

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





## NOTICES OF FIVE-YEAR EXPIRATIONS

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Rulewriting agencies are required by law to review each of their administrative rules within five years of the date of the rule's original enactment or the date of last review (Section 63G-3-305). 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).

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Regents (Board of), University of Utah,  
Commuter Services

**R810-1**

University of Utah Parking Regulations

**FIVE-YEAR REVIEW EXPIRATION**

DAR FILE NO.: 42241

FILED: 10/17/2017

SUMMARY: The five-year review was not filed by the deadline so this rule has expired and will be removed from the Administrative Code as of 10/17/2017.

EFFECTIVE: 10/17/2017

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Regents (Board of), University of Utah,  
Commuter Services

**R810-8**

Vendor Regulations

**FIVE-YEAR REVIEW EXPIRATION**

DAR FILE NO.: 42242

FILED: 10/17/2017

SUMMARY: The five-year review was not filed by the deadline so this rule has expired and will be removed from the Administrative Code as of 10/17/2017.

EFFECTIVE: 10/17/2017

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**End of the Notices of Notices of Five Year Expirations Section**



## NOTICES OF RULE EFFECTIVE DATES

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State law provides for agencies to make their administrative rules effective and enforceable after publication in the *Utah State Bulletin*. In the case of **PROPOSED RULES** or **CHANGES IN PROPOSED RULES** with a designated comment period, the law permits an agency to make a rule effective no fewer than seven calendar days after the close of the public comment period, nor more than 120 days after the publication date. In the case of **CHANGES IN PROPOSED RULES** with no designated comment period, the law permits an agency to make a rule effective on any date including or after the thirtieth day after the rule's publication date, but not more than 120 days after the publication date. If an agency fails to file a **NOTICE OF EFFECTIVE DATE** within 120 days from the publication of a **PROPOSED RULE** or a related **CHANGE IN PROPOSED RULE** the rule lapses.

Agencies have notified the Office of Administrative Rules that the rules listed below have been made effective.

**NOTICES OF EFFECTIVE DATE** are governed by Subsection 63G-3-301(12), Section 63G-3-303, and Sections R15-4-5a and R15-4-5b.

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### Abbreviations

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

### Auditor

Administration  
No. 41844 (AMD): R123-5. Audit Requirements for Audits of Political Subdivisions and Nonprofit Organizations  
Published: 07/15/2017  
Effective: 11/01/2017

### Environmental Quality

Air Quality  
No. 41810 (AMD): R307-335. Degreasing and Solvent Cleaning Operations  
Published: 07/01/2017  
Effective: 10/29/2017

### Health

Disease Control and Prevention, Environmental Services  
No. 42017 (R&R): R392-103. Food Handler Training and Certificate  
Published: 09/01/2017  
Effective: 10/25/2017

Health Care Financing, Coverage and Reimbursement Policy  
No. 42050 (AMD): R414-504-3. Principles of Facility Case Mix Rates and Other Payments  
Published: 09/15/2017  
Effective: 11/01/2017

No. 42051 (NEW): R414-517. Inpatient Hospital Provider Assessments  
Published: 09/15/2017  
Effective: 11/01/2017

Family Health and Preparedness, Licensing  
No. 41961 (AMD): R432-100. General Hospital Standards  
Published: 08/15/2017  
Effective: 10/17/2017

No. 42000 (AMD): R432-300. Small Health Care Facility - Type N  
Published: 09/01/2017  
Effective: 10/17/2017

No. 41964 (AMD): R432-550. Birthing Centers  
Published: 08/15/2017  
Effective: 10/17/2017

No. 41960 (AMD): R432-700. Definitions  
Published: 08/15/2017  
Effective: 10/17/2017

### Human Services

Services for People with Disabilities  
No. 41953 (AMD): R539-1. Eligibility  
Published: 08/15/2017  
Effective: 10/23/2017

### Insurance

Administration  
No. 42041 (NEW): R590-275. Qualified Health Plan Alternate Enrollment  
Published: 09/15/2017  
Effective: 10/23/2017

### Public Service Commission

Administration  
No. 41989 (AMD): R746-1. Public Service Commission Administrative Procedures Act Rule  
Published: 08/15/2017  
Effective: 10/19/2017



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

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The Rules Index is a cumulative index that reflects all effective changes to Utah's administrative rules. The current Index lists changes made effective from January 2, 2017 through November 01, 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 (<https://rules.utah.gov/>).

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## RULES INDEX - BY AGENCY (CODE NUMBER)

### ABBREVIATIONS

AMD = Amendment (Proposed Rule)	LNR = Legislative Nonreauthorization
CPR = Change in Proposed Rule	NEW = New Rule (Proposed Rule)
EMR = 120-Day (Emergency) Rule	NSC = Nonsubstantive Rule Change
EXD = Expired Rule	R&R = Repeal and Reenact (Proposed Rule)
EXP = Expedited Rule	REP = Repeal (Proposed Rule)
EXT = Five-Year Review Extension	5YR = Five-Year Notice of Review and Statement of Continuation
GEX = Governor's Extension	

CODE REFERENCE	TITLE	FILE NUMBER	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
<b>ADMINISTRATIVE SERVICES</b>					
<u>Administration</u>					
R13-3	Americans with Disabilities Act Grievance Procedures	42202	5YR	10/10/2017	2017-21/213
<u>Archives</u>					
R17-5	Definitions of Rules in Title R17	42271	5YR	10/27/2017	Not Printed
R17-6	Records Storage and Disposal at the State Records Center	42272	5YR	10/27/2017	Not Printed
R17-7	Archival Records Care and Access at the State Archives	42270	5YR	10/27/2017	Not Printed
R17-8	Application of Microfilm Standards	42273	5YR	10/27/2017	Not Printed
<u>Debt Collection</u>					
R21-1	Transfer of Collection Responsibility of State Agencies	41374	NSC	04/10/2017	Not Printed
R21-1	Transfer of Collection Responsibility of State Agencies	41743	5YR	06/07/2017	2017-13/229
R21-2	Office of State Debt Collection Administrative Procedures	41376	5YR	03/17/2017	2017-8/59
R21-3	Debt Collection Through Administrative Offset	41377	5YR	03/17/2017	2017-8/59
<u>Facilities Construction and Management</u>					
R23-1	Procurement Rules with Numbering Related to the Procurement Code	41266	5YR	02/01/2017	2017-4/57
R23-3	Planning, Programming, Request for Capital Development Projects and Operation and Maintenance Reporting	40947	AMD	01/20/2017	2016-23/6
R23-3	Planning, Programming, Request for Capital Development Projects and Operation and Maintenance Reporting for State Owned Facilities	41578	AMD	07/12/2017	2017-11/6
R23-3-4	Authorization of Programs	41666	NSC	07/19/2017	Not Printed
R23-4	Suspension/Debarment	42065	5YR	09/07/2017	2017-19/115
R23-5	Contingency Funds	42066	5YR	09/07/2017	2017-19/115
R23-6	Value Engineering and Life Cycle Costing of State Owned Facilities Rules and Regulations	42067	5YR	09/07/2017	2017-19/116
R23-9	Cooperation with Local Government Planning	42068	5YR	09/07/2017	2017-19/116
R23-10	Naming of State Buildings	42069	5YR	09/07/2017	2017-19/117
R23-10	Naming of State Buildings	42084	NSC	09/20/2017	Not Printed
R23-12	Building Code Appeals Process	42064	5YR	09/07/2017	2017-19/118
R23-12	Building Code Appeals Process	42105	NSC	09/29/2017	Not Printed
R23-14	Management of Roofs on State Buildings	42070	5YR	09/07/2017	2017-19/118
R23-19	Facility Use Rules	41267	5YR	02/01/2017	2017-4/57
R23-20	Free Speech Activities	41268	5YR	02/01/2017	2017-4/58

R23-21	Division of Facilities Construction and Management Lease Procedures	42071	5YR	09/07/2017	2017-19/119
R23-24	Capital Projects Utilizing Non-appropriated Funds	42072	5YR	09/07/2017	2017-19/119
R23-24	Capital Projects Utilizing Non-appropriated Funds	42083	NSC	09/29/2017	Not Printed
R23-30	State Facility Energy Efficiency Fund	40946	AMD	01/20/2017	2016-23/11
<u>Finance</u>					
R25-5	Payment of Per Diem to Boards	41796	NSC	06/29/2017	Not Printed
R25-7	Travel-Related Reimbursements for State Employees	41127	EMR	01/06/2017	2017-3/71
R25-7	Travel-Related Reimbursements for State Employees	41147	AMD	03/10/2017	2017-3/2
R25-7	Travel-Related Reimbursements for State Employees	41797	EMR	07/01/2017	2017-13/221
R25-7	Travel-Related Reimbursements for State Employees	41798	AMD	08/07/2017	2017-13/8
R25-14	Payment of Attorney's Fees in Death Penalty Cases	41124	5YR	01/06/2017	2017-3/79
R25-20	Indigent Defense Funds Board, Procedures for Electronic Meetings	41327	5YR	02/21/2017	2017-6/29
<u>Fleet Operations</u>					
R27-1	Definitions	41105	AMD	02/21/2017	2017-2/4
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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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	42272	R17-6	5YR	10/27/2017	Not Printed
	42270	R17-7	5YR	10/27/2017	Not Printed
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	41624	R597-3-3	AMD	07/10/2017	2017-11/168
	41625	R597-3-5	AMD	07/10/2017	2017-11/170
	41026	R597-3-8	AMD	02/17/2017	2016-24/35
	41027	R597-3-9	AMD	02/17/2017	2016-24/35
<u>juvenile confinement in adult jails</u>					
Governor, Criminal and Juvenile Justice (State Commission on)	42054	R356-4	EMR	09/01/2017	2017-18/41
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Governor, Criminal and Juvenile Justice (State Commission on)	42054	R356-4	EMR	09/01/2017	2017-18/41
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Human Services, Juvenile Justice Services	41385	R547-3	5YR	03/27/2017	2017-8/71
	41386	R547-6	5YR	03/27/2017	2017-8/72
	41387	R547-7	5YR	03/27/2017	2017-8/72
	41388	R547-10	5YR	03/27/2017	2017-8/73
	41389	R547-12	5YR	03/27/2017	2017-8/73
	41390	R547-13	5YR	03/27/2017	2017-8/74
	41710	R547-13	AMD	08/01/2017	2017-12/19
	41963	R547-13	AMD	09/26/2017	2017-16/100
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	41710	R547-13	AMD	08/01/2017	2017-12/19
	41963	R547-13	AMD	09/26/2017	2017-16/100
<u>juvenile detention in adult jails</u>					
Governor, Criminal and Juvenile Justice (State Commission on)	42054	R356-4	EMR	09/01/2017	2017-18/41
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	41963	R547-13	AMD	09/26/2017	2017-16/100
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	41371	R70-101	NSC	04/05/2017	Not Printed
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<u>Labor Commission</u>					
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	41637	R600-2-1	NSC	05/31/2017	Not Printed
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	41156	R850-120	5YR	01/12/2017	2017-3/105
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School and Institutional Trust Lands, Administration	41558	R850-160	NEW	06/21/2017	2017-10/139
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	41101	R307-842	AMD	05/09/2017	2017-1/53
	41101	R307-842	CPR	05/09/2017	2017-7/70
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	41101	R307-842	CPR	05/09/2017	2017-7/70
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Commerce, Occupational and Professional Licensing	41436	R156-47b	5YR	04/04/2017	2017-9/41
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	41838	R714-200	5YR	06/19/2017	2017-14/64	
	41839	R714-210	5YR	06/19/2017	2017-14/65	
	41865	R714-230	REP	09/12/2017	2017-14/47	
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Transportation, Preconstruction	42009	R930-3	AMD	10/10/2017	2017-17/202
<u>traffic regulations</u>					
Public Safety, Highway Patrol	41835	R714-110	5YR	06/19/2017	2017-14/62
<u>traffic signs</u>					
Transportation, Operations, Traffic and Safety	41910	R920-1	5YR	07/07/2017	2017-15/35
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Public Safety, Driver License	41128	R708-3	5YR	01/08/2017	2017-3/101
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Human Resource Management, Administration	41281	R477-10	EXT	02/02/2017	2017-5/77
	41537	R477-10	5YR	04/27/2017	2017-10/172
	41507	R477-10	AMD	07/01/2017	2017-10/125
Workforce Services, Administration	41714	R982-601	5YR	05/31/2017	2017-12/42
<u>tramway permits</u>					
Transportation, Operations, Traffic and Safety	41476	R920-50	EXT	04/13/2017	2017-9/53
	41907	R920-50	5YR	07/06/2017	2017-15/37
	42011	R920-50	AMD	10/10/2017	2017-17/192
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Transportation, Operations, Traffic and Safety	41476	R920-50	EXT	04/13/2017	2017-9/53
	41907	R920-50	5YR	07/06/2017	2017-15/37
	42011	R920-50	AMD	10/10/2017	2017-17/192

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	41459	R895-3	AMD	07/28/2017	2017-9/32

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Transportation, Operations, Traffic and Safety	42012	R920-30	NEW	10/10/2017	2017-17/191
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Administrative Services, Finance	41127	R25-7	EMR	01/06/2017	2017-3/71
	41147	R25-7	AMD	03/10/2017	2017-3/2
	41797	R25-7	EMR	07/01/2017	2017-13/221
	41798	R25-7	AMD	08/07/2017	2017-13/8
Environmental Quality, Waste Management and Radiation Control, Radiation	41992	R313-19	AMD	10/13/2017	2017-16/52
	41184	R313-37	5YR	01/17/2017	2017-3/91
Transportation, Preconstruction	42009	R930-3	AMD	10/10/2017	2017-17/202
Transportation, Program Development	41484	R926-2	AMD	06/30/2017	2017-10/144
	41375	R926-4	5YR	03/17/2017	2017-8/84
	41053	R926-13-4	AMD	02/07/2017	2017-1/95
	41329	R926-15-5	NSC	03/14/2017	Not Printed

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	41907	R920-50	5YR	07/06/2017	2017-15/37
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Health, Family Health and Preparedness, Emergency Medical Services	41029	R426-9	AMD	02/01/2017	2016-24/30
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Human Services, Aging and Adult Services	41880	R510-111	5YR	06/30/2017	2017-14/60
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Agriculture and Food, Animal Industry	41471	R58-21	AMD	06/14/2017	2017-9/5
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	41815	R856-4	R&R	08/15/2017	2017-13/201
	41096	R856-5	NEW	03/22/2017	2017-1/88
	41828	R856-5	R&R	08/15/2017	2017-13/207
	41906	R856-5	NSC	08/16/2017	Not Printed
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	41656	R315-265-1	AMD	08/31/2017	2017-11/131	
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Governor, Economic Development, Pete Suazo Utah Athletic Commission	41425	R359-1	5YR	03/30/2017	2017-8/70	
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Environmental Quality, Environmental Response and Remediation	41394	R311-200	5YR	03/27/2017	2017-8/60	
	41395	R311-201	5YR	03/27/2017	2017-8/60	
	41396	R311-202	5YR	03/27/2017	2017-8/61	
	40755	R311-203	AMD	01/03/2017	2016-19/60	
	40755	R311-203	CPR	01/03/2017	2016-23/118	
	41397	R311-203	5YR	03/27/2017	2017-8/62	
	41398	R311-204	5YR	03/27/2017	2017-8/63	
	41399	R311-205	5YR	03/27/2017	2017-8/64	
	41400	R311-206	5YR	03/27/2017	2017-8/64	
	41401	R311-207	5YR	03/27/2017	2017-8/65	
	41402	R311-208	5YR	03/27/2017	2017-8/66	
	41403	R311-209	5YR	03/27/2017	2017-8/66	
	41404	R311-210	5YR	03/27/2017	2017-8/67	
	41405	R311-211	5YR	03/27/2017	2017-8/68	
	41406	R311-212	5YR	03/27/2017	2017-8/69	
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Workforce Services, Administration	41714	R982-601	5YR	05/31/2017	2017-12/42	
<u>unemployment compensation</u>						
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	41520	R994-102	NEW	06/21/2017	2017-10/149	
	41516	R994-106	EXD	04/27/2017	2017-10/179	
	41521	R994-106	NEW	06/21/2017	2017-10/150	
	41517	R994-303	EXD	04/27/2017	2017-10/179	
	41522	R994-303	NEW	06/21/2017	2017-10/152	
	41518	R994-401	EXD	04/27/2017	2017-10/180	
	41523	R994-401	NEW	06/21/2017	2017-10/155	
	41984	R994-401	NSC	08/11/2017	Not Printed	
	41519	R994-402	EXD	04/27/2017	2017-10/180	
	41525	R994-402	NEW	06/21/2017	2017-10/159	
	41427	R994-403-202	AMD	05/30/2017	2017-8/54	
	41686	R994-404	5YR	05/19/2017	2017-12/42	
	41103	R994-405-2	AMD	03/01/2017	2017-1/97	
	41687	R994-406	5YR	05/19/2017	2017-12/43	
	41426	R994-508	AMD	05/30/2017	2017-8/56	
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	40879	R315-15-13	AMD	02/13/2017	2016-21/32	
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Heritage and Arts, Administration	41709	R450-2	5YR	05/31/2017	2017-12/37	
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Science Technology and Research Governing Authority, Administration	41095	R856-4	NEW	03/22/2017	2017-1/85	
	41815	R856-4	R&R	08/15/2017	2017-13/201	
	41096	R856-5	NEW	03/22/2017	2017-1/88	
	41828	R856-5	R&R	08/15/2017	2017-13/207	
	41906	R856-5	NSC	08/16/2017	Not Printed	
	41097	R856-6	NEW	03/22/2017	2017-1/92	
	41829	R856-6	R&R	08/15/2017	2017-13/214	
	41481	R856-7	NEW	08/15/2017	2017-10/141	
<u>Utah Court of Appeals</u>						
Administrative Services, Purchasing and General Services	41552	R33-18	AMD	06/21/2017	2017-10/54	
<u>Utah Law Enforcement Memorial Support Restricted Account</u>						
Public Safety, Administration	41369	R698-9	NEW	06/07/2017	2017-7/32	
<u>Utah Navajo Trust Fund (UNTF)</u>						
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	40893	R661-6	AMD	03/14/2017	2016-22/92	
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<u>Utah Science Technology and Research (USTAR)</u>						
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	41813	R856-3	R&R	08/15/2017	2017-13/195	
<u>Utah Sewer Management Program</u>						
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<u>Utah State Board of Education</u>						
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<u>Utah-based aircraft</u>						
Transportation, Operations, Aeronautics	40937	R914-3	NEW	01/18/2017	2016-23/114	
	41421	R914-3	AMD	05/22/2017	2017-8/53	



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	41685	R746-700	NSC	06/13/2017	Not Printed
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Transportation, Preconstruction	42085	R930-7	5YR	09/12/2017	2017-19/137
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	41931	R746-310	5YR	07/19/2017	2017-16/133
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Public Service Commission, Administration	41337	R746-200-7	AMD	05/15/2017	2017-7/59
	41667	R746-320	5YR	05/17/2017	2017-12/38
	41676	R746-320	NSC	06/13/2017	Not Printed
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Human Resource Management, Administration	41277	R477-7	EXT	02/02/2017	2017-5/76
	41531	R477-7	5YR	04/27/2017	2017-10/170
	41505	R477-7	AMD	07/01/2017	2017-10/113
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Agriculture and Food, Animal Industry	41164	R58-3	5YR	01/12/2017	2017-3/80
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<u>validation</u>					
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	41055	R380-77	NSC	02/01/2017	Not Printed
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	41351	R978-1	AMD	05/09/2017	2017-7/63
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Crime Victim Reparations, Administration	41475	R270-1	AMD	06/07/2017	2017-9/16
	41142	R270-1-20	AMD	03/10/2017	2017-3/9
<u>victims of crimes</u>					
Crime Victim Reparations, Administration	41475	R270-1	AMD	06/07/2017	2017-9/16
	41142	R270-1-20	AMD	03/10/2017	2017-3/9
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Health, Health Care Financing, Coverage and Reimbursement Policy	41422	R414-307	5YR	03/29/2017	2017-8/71

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	42048	R317-1	5YR	08/30/2017	2017-18/59
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Governor, Economic Development, Pete Suazo Utah Athletic Commission	41425	R359-1	5YR	03/30/2017	2017-8/70
<u>wild turkey</u>					
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<u>wildland fire fund</u>					
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	42044	R652-121	5YR	08/28/2017	2017-18/63
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	41153	R657-9	AMD	03/13/2017	2017-3/39
	42024	R657-12	5YR	08/15/2017	2017-17/213
	42166	R657-13	5YR	09/28/2017	2017-20/67
	41149	R657-16	REP	03/13/2017	2017-3/40
	42031	R657-19	EMR	08/17/2017	2017-18/48
	41853	R657-20	AMD	08/21/2017	2017-14/30
	41581	R657-22	5YR	05/03/2017	2017-11/225
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	41098	R657-62	AMD	02/07/2017	2017-1/82
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Health, Family Health and Preparedness, WIC Services	41254	R406-100	5YR	01/30/2017	2017-4/69
	41255	R406-200	5YR	01/30/2017	2017-4/70
	41256	R406-201	5YR	01/30/2017	2017-4/70
	41257	R406-202	5YR	01/30/2017	2017-4/71
	41258	R406-301	5YR	01/30/2017	2017-4/71
<u>wood furniture</u>					
Environmental Quality, Air Quality	41218	R307-343	5YR	01/27/2017	2017-4/67
<u>work-based learning programs</u>					
Education, Administration	41317	R277-916	5YR	02/14/2017	2017-5/64
<u>work-related diseases</u>					
Labor Commission, Occupational Safety and Health	42245	R614-6	5YR	10/19/2017	Not Printed
<u>workers' compensation</u>					
Administrative Services, Risk Management	41602	R37-2	5YR	05/05/2017	2017-11/210
Labor Commission, Adjudication	41612	R602-2	5YR	05/09/2017	2017-11/222
	41633	R602-2	NSC	06/01/2017	Not Printed
	42188	R602-3	5YR	10/04/2017	2017-21/219
Workforce Services, Unemployment Insurance	41686	R994-404	5YR	05/19/2017	2017-12/42
<u>Workforce Innovation and Opportunity Act</u>					
Workforce Services, Employment Development	41336	R986-600	AMD	05/01/2017	2017-6/18
<u>Workforce Innovation and Opportunity Act (WIOA)</u>					
Workforce Services, Employment Development	41599	R986-600	NSC	05/23/2017	Not Printed
<u>world languages</u>					
Education, Administration	41004	R277-499	NEW	01/10/2017	2016-23/30
<u>x-rays</u>					
Environmental Quality, Waste Management and Radiation Control, Radiation	41180	R313-30	5YR	01/17/2017	2017-3/90

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	41183	R313-35	5YR	01/17/2017	2017-3/91
<u>youth</u>					
Human Services, Administration, Administrative Services, Licensing	42192	R501-8	5YR	10/04/2017	2017-21/216
	42196	R501-16	5YR	10/04/2017	2017-21/218
<u>zoning</u>					
Administrative Services, Facilities Construction and Management	42068	R23-9	5YR	09/07/2017	2017-19/116