

# UTAH STATE BULLETIN

OFFICIAL NOTICES OF UTAH STATE GOVERNMENT  
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January 15, 2021

Nancy L. Lancaster, Managing Editor

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

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

Inquiries concerning the substance or applicability of an administrative rule that appears in the *Bulletin* should be addressed to the contact person for the rule. Questions about the *Bulletin* or the rulemaking process may be addressed to: Office of Administrative Rules, PO Box 141007, Salt Lake City, Utah 84114-1007, telephone 801-957-7110. 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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## EDITOR'S NOTES

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### Duplicate Filing Number

The Office of Administrative Rules was recently made aware that there were two filings published with the same filing number. The five-year review for Rule R154-2 was published in the January 1, 2021, Bulletin with the filing number of 50246. This is correct.

The five-year review for Rule R277-459 that was published in the March 15, 2020, Bulletin also had the filing number of 50246. After research was done, it was discovered that the filing number should have been 50426. It was correct when it was filed with our Office but the number got changed by the time it was published.

*The Office regrets any confusion this may have caused. Any questions can be sent to [rulesonline.utah.gov](mailto:rulesonline.utah.gov).*

**End of the Editor's Notes Section**





# EXECUTIVE DOCUMENTS

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

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

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## EXECUTIVE ORDER 2020-76

Rescinding Prior Executive Orders

**WHEREAS**, executive orders are intended to be temporary; and

**WHEREAS**, some prior executive orders have completed their purpose, become unnecessary, or have been replaced by subsequent orders or superseded by state statute;

**NOW, THEREFORE**, I, Gary R. Herbert, Governor of the State of Utah, hereby order the following executive orders rescinded:

1. Executive Order 2010-6, Executive Agreement to the Executive Authority of the State of Idaho;
2. Executive Order 2011-3, Providing Public Services on Fridays;
3. Executive Order 2012-5, Automotive Idling Reduction;
4. Executive Order 2013-6, Reauthorizing the State of Utah Martin Luther King, Jr. Human Rights Commission;
5. Executive Order 2013-7, Creating the Utah Multicultural Affairs Office and Utah Multicultural Commission;
6. Executive Order 2013-12, Veterans Transition Support;
7. Executive Order 2014-8, Creating the Refugee Board of Advisors for the Refugee Services Office;
8. Executive Order 2015-2, Implementing the Utah Conservation Plan for Greater Sage-Grouse;
9. Executive Order 2015-4, Water Conservation; and
10. Executive Order 2018-1, Establishing a Policy for Legislative Communications of Executive Branch Departments and Employees.

**IN WITNESS WHEREOF**, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Utah. Done in Salt Lake City, Utah, on this, the 3rd day of January, 2021.

(State Seal)

**Gary R. Herbert**  
Governor

ATTEST:

**Spencer J. Cox**  
Lieutenant Governor

2020/076/EO

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**EXECUTIVE ORDER  
2021-01**

Requiring a Review of All Regulated Occupations and Professions

**WHEREAS**, government provides necessary protections for Utah residents by regulating certain occupations and professions;

**WHEREAS**, excessive regulation creates barriers to working;

**WHEREAS**, government should impose only those regulations that are necessary to protect the health, safety, and well-being of Utah residents;

**WHEREAS**, government should periodically review regulations to ensure they are serving the intended purpose;

**NOW, THEREFORE**, I, Spencer J. Cox, Governor of the State of Utah, by virtue of the authority vested in me by the Constitution and the laws of the State of Utah, do hereby order that:

1. As used in this order, "agency" means an agency within the Executive Branch that establishes administrative rules or other regulations for an occupational or professional license.

2. No later than June 30, 2021, each agency shall:

a. review administrative rules and other regulations for occupational or professional licenses within the agency's scope of authority and identify rules and regulations that are no longer necessary or can be amended to reduce barriers to working while still protecting the health, safety, and well-being of Utah residents; and

b. submit a report to the Governor's Office including recommendations regarding ways to remove barriers to licensing and limit unnecessary government regulation.

**IN WITNESS, WHEREOF**, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Utah. Done in Fillmore, Utah, on this, the 4th day of January, 2021.

(State Seal)

**Spencer J. Cox  
Governor**

ATTEST:

**Deidre M. Henderson  
Lieutenant Governor**

2021/001/EO

**EXECUTIVE ORDER  
2021-02**

Establishing a COVID-19 Vaccination Plan

**WHEREAS**, COVID-19 is a worldwide pandemic caused by severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2), a virus that spreads easily from person to person and can cause serious illness or death;

**WHEREAS**, as of January 8, 2021, 301,110 Utah residents have been infected with COVID-19; 11,679 Utah residents have been hospitalized due to COVID-19; and 1,381 Utah residents have died as a result of COVID-19;

**WHEREAS**, COVID-19 will continue to cause serious illness and death until a sufficient number of Utah residents are vaccinated or have immunity after recovering from this infection;

**WHEREAS**, the United States Food and Drug Administration has recently authorized the use of multiple COVID-19 vaccinations;

**WHEREAS**, Utah is receiving regular distributions of vaccines;

**WHEREAS**, older adults and individuals with certain medical conditions are at higher risk for serious illness or death because of COVID-19;

**WHEREAS**, it is necessary to implement a plan to offer the vaccine to higher-risk individuals before lower-risk individuals in order to prevent as much serious illness and death as possible and to prevent overwhelming hospitals;

**NOW, THEREFORE**, I, Spencer J. Cox, Governor of the State of Utah, by virtue of the authority vested in me by the Constitution and the laws of the State of Utah, do hereby order that:

1. **Definitions.** As used in this Order:
  - a. "COVID-19" means Novel Coronavirus Disease 2019 caused by Severe Acute Respiratory Syndrome Coronavirus 2, also known as SARS-CoV-2.
  - b. "COVID-19 Vaccine" means a COVID-19 vaccine and adjuvant (if applicable) provided to a vaccine provider as part of the CDC COVID-19 Vaccination Program.
  - c. "Vaccine provider" means any person, including a CDC COVID-19 Vaccination Program Provider, that administers a COVID-19 vaccine in the state of Utah.
2. **Vaccine eligibility.**
  - a. Except as provided in Section (3), the following individuals are immediately eligible to receive a COVID-19 vaccine:
    - i. Hospital healthcare workers;
    - ii. Front line public healthcare workers;
    - iii. Tribal healthcare workers;
    - iv. Long-term health care facility residents and staff;
    - v. Non-hospital healthcare workers;
    - vi. Essential protective service workers; and
    - vii. K-12 educators and staff having in-person interaction with students.
  - b. Beginning January 18, 2021, except as provided in Section (3), individuals age 70 or older are eligible to receive a COVID-19 vaccine.
3. **Vaccine provider requirements.** A vaccine provider shall:
  - a. prior to administering a COVID-19 vaccine to an individual, take reasonable efforts to determine whether the individual has tested positive for COVID-19 within the 90 days immediately preceding the date that the vaccine is to be administered;
  - b. discourage an individual from receiving a COVID-19 vaccine if the vaccine provider knows the individual has tested positive for COVID-19 within the 90 days immediately preceding the date that the COVID-19 vaccine is to be administered;
  - c. administer each COVID-19 vaccine within seven days of receiving the vaccine; and
  - d. each day by 6:59 a.m.:
    - i. report to the Utah Statewide Immunization Information System COVID-19 vaccines administered during the previous calendar day by the vaccine provider; and
    - ii. report to VaccineFinder the number of COVID-19 vaccines on-hand by the vaccine provider.
4. **Reduced distribution for noncompliance.** A vaccine provider that does not comply with this Order may be subject to a reduced COVID-19 vaccine distribution or no distribution for future distribution periods.
5. **Redistribution of unused vaccines.** A COVID-19 vaccine not used within seven days of distribution is subject to redistribution.
6. **Access by underserved communities.** The Utah Department of Health shall coordinate with local health departments and community stakeholders to establish procedures to offer the COVID-19 vaccine to eligible individuals in traditionally underserved communities.
7. **Monoclonal antibodies.** The Utah Department of Health shall coordinate with local health departments to establish procedures to offer monoclonal antibodies to residents of long-term care facilities who have tested positive for COVID-19.

This Order is effective January 11, 2021, and shall remain in effect until modified, amended, rescinded, or superseded.

**IN WITNESS, WHEREOF**, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Utah. Done in Salt Lake City, Utah, on this, the 8th day of January, 2021.

(State Seal)

**Spencer J. Cox**  
Governor

ATTEST:

**Deidre M. Henderson**  
**Lieutenant Governor**

2021/002/EO

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**EXECUTIVE ORDER**  
**2021-03**

Requiring Agency Review of Remote Work Opportunities

**WHEREAS**, quality of life is a priority for Utah residents;

**WHEREAS**, commuting contributes significantly to poor air quality and road conditions throughout Utah;

**WHEREAS**, government should be a wise steward of state taxpayer dollars in the management of state resources, including in the need and usage of physical facilities;

**WHEREAS**, as an employer, government should support families by reducing unnecessary travel time and costs of employees in order to enable greater time at home;

**WHEREAS**, Utah faces unprecedented growth in the coming years and an increasing demand for government services;

**WHEREAS**, implementation of remote work programs can positively impact air and road quality, employee satisfaction and retention, and employment opportunities in rural and other communities;

**WHEREAS**, expanding remote work programs will help enable the State to exit an expected 29 locations over the next ten years, saving an estimated \$13 million annually;

**WHEREAS**, future requests for new space are anticipated to be significantly reduced, avoiding an estimated \$300 million in new construction costs over the next ten years;

**WHEREAS**, increased implementation of remote work throughout the COVID-19 pandemic has improved Utah air quality by avoiding emissions of 4,600 pounds per month during the COVID-19 pandemic remote work surge months;

**WHEREAS**, implementation of remote work allowed the Department of Heritage and Arts to continue operating remotely while the Rio Grande building closed due to the March 2020 earthquake;

**WHEREAS**, approximately 40% of the state's workforce has worked remotely during the COVID-19 pandemic;

**NOW, THEREFORE**, I, Spencer J. Cox, Governor of the State of Utah, by virtue of the authority vested in me by the Constitution and the laws of the State of Utah, do hereby order that:

1. As used in this order:

a. "Agency" means a state executive branch agency, including:

- i. the State Tax Commission;
- ii. the Board of Pardons and Parole;
- iii. a public institution of higher education; and
- iv. the Utah Board of Higher Education.

b. "Remote work" means work at a place other than a regularly assigned office location, such as an employee's residence or an alternative location approved by the employee's supervisor.

2. Each agency shall:

a. review "A New Workplace: Modernizing Where, How, and When Utah Works," prepared by the Governor's Office of Management and Budget;

b. review each agency position to determine whether it can be performed remotely and deliver a report containing the findings of the review to the Governor's Office no later than July 1, 2021;

- c. on an ongoing basis, evaluate whether each job vacancy at the agency can be filled as a remote work position;
  - d. where possible, offer any new job vacancy as a remote work position; and
  - e. where appropriate, prepare and assist agency employees and supervisors to participate when a remote work opportunity becomes available.
3. The Department of Human Resource Management shall assist agencies in complying with Section (2).
  4. The Department of Technology Services shall assist agencies to:
    - a. implement information technology solutions to support a secure and productive remote work environment; and
    - b. improve cost-effective utilization of equipment that supports remote work.

This Order is effective January 11, 2021, and shall remain in effect until modified, amended, rescinded, or superseded.

**IN WITNESS, WHEREOF**, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Utah. Done in Salt Lake City, Utah, on this, the 11th day of January, 2021.

(State Seal)

**Spencer J. Cox**  
Governor

ATTEST:

**Deidre M. Henderson**  
Lieutenant Governor

2021/003/EO

**EXECUTIVE ORDER**  
**2021-4**

Moving Jobs to Rural Utah

**WHEREAS**, residents of Utah should be able to work where they live;

**WHEREAS**, Utah enjoys one of the strongest economies in the world, but that economic strength is not enjoyed equally by all areas in Utah;

**WHEREAS**, our response to the COVID-19 pandemic has encouraged government and businesses to rely more heavily on remote work;

**WHEREAS**, government and businesses have learned that remote work can be highly productive;

**WHEREAS**, additional jobs can be performed through remote work;

**WHEREAS**, employers throughout Utah are searching for talented individuals with a commitment to high quality work;

**WHEREAS**, talented individuals with a commitment to high quality work reside throughout all of Utah;

**WHEREAS**, many individuals in rural Utah leave rural Utah because they cannot find adequate employment opportunities, but would prefer to remain in rural Utah and contribute to the success of those communities;

**WHEREAS**, rural Utah has a history of innovation and entrepreneurship that can be integral in Utah's economic prosperity;

EXECUTIVE DOCUMENTS

**NOW, THEREFORE**, I, Spencer J. Cox, Governor of the State of Utah, by virtue of the authority vested in me by the Constitution and the laws of the State of Utah do hereby order that:

1. As used in this order:
  - a. "Agency" means a state executive branch agency, including:
    - i. the State Tax Commission;
    - ii. the Board of Pardons and Parole;
    - iii. a public institution of higher education; and
    - iv. the Utah Board of Higher Education.
  - b. "Remote work" means work at a place other than a regularly assigned office location, such as an employee's residence or an alternative location approved by the employee's supervisor.
2. Agencies shall:
  - a. develop and implement a plan to actively recruit in rural Utah;
  - b. identify jobs, offices, divisions, and functions that can be transferred to an onsite location in rural Utah;
  - c. deliver a report to me by July 1, 2021 of the jobs, offices, divisions, and functions that will be transferred to an onsite location in rural Utah; and
  - d. as appropriations from the Legislature permit, invest in infrastructure that supports increased remote work opportunities in rural Utah, including:
    - i. high-speed broadband deployment; and
    - ii. remote and coworking innovation centers.
3. The Utah Board of Higher Education shall develop and implement a plan to provide training opportunities to individuals in rural Utah that will help them compete in the global economy and secure gainful employment while residing in rural Utah.
4. The Department of Workforce Services shall:
  - a. expand coordination efforts with private sector partners to support non-government job growth; and
  - b. ensure the state's labor exchange system is modernized and responsive to the individualized needs of citizens seeking rural and remote employment opportunities.
5. The Department of Technical Services shall make itself available to consult with local governments and community partners to identify and propose solutions to infrastructure needs in rural Utah that create obstacles to remote work.
6. The Department of Human Resource Management shall assist agencies in complying with Sections (2)(a) and (2)(b) of this Order.

**FURTHERMORE**, I invite businesses and individuals throughout Utah to assist in these efforts by:

1. expanding recruiting and hiring opportunities in rural Utah;
2. expanding remote work opportunities in rural Utah;
3. investing in infrastructure that supports increased remote work opportunities in rural Utah, including:
  - a. high-speed broadband deployment; and
  - b. remote and coworking innovation centers; and
4. moving jobs to an onsite location in rural Utah.

This Order is effective January 11, 2021, and shall remain in effect until modified, amended, rescinded, or superseded.

**IN WITNESS, WHEREOF**, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Utah. Done in Salt Lake City, Utah, on this, the 11th day of January, 2021.

(State Seal)

**Spencer J. Cox**  
Governor

ATTEST:

**Deidre M. Henderson**  
Lieutenant Governor

2021/004/EO

**End of the Executive Documents 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 December 16, 2020, 12:00 a.m., and December 31, 2020, 11:59 p.m. are included in this, the January 15, 2021, 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 February 16, 2021. 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 May 15, 2021, 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** or 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**

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	R25-7-10	Filing No. 53269

**Agency Information**

<b>1. Department:</b>	Administrative Services	
<b>Agency:</b>	Finance	
<b>Building:</b>	Taylorsville State Office Building	
<b>Street address:</b>	4315 S 2700 W, Floor 3	
<b>City, state:</b>	Taylorsville, UT 84129-2128	
<b>Mailing address:</b>	PO Box 141031	
<b>City, state, zip:</b>	Salt Lake City, UT 84114-1031	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Marilee P. Richins	801-957-7734	mprichins@utah.gov
Cory Weeks	801-957-7713	cweeks@utah.gov

Please address questions regarding information on this notice to the agency.

**General Information**

<b>2. Rule or section catchline:</b>
R25-7-10. Reimbursement for Transportation
<b>3. Purpose of the new rule or reason for the change:</b>
This section is amended because the IRS announced a decrease in the reimbursement rate for private vehicle use from 57 cents per mile to 56 cents per mile. The Division of Finance (Division) has determined that the reimbursement rate for private vehicles should decrease to 56 cents per mile to avoid exceeding federal mileage reimbursements.
<b>4. Summary of the new rule or change:</b>
This rule decreases reimbursement rates for mileage on private vehicles from 57 cents per mile to 56 cents per mile. (EDITOR'S NOTE: A corresponding emergency (120-day) rule that was effective as of 01/01/2021 is under Filing No. 53273 in this issue, January 15, 2021, of the Bulletin.)

**Fiscal Information**

<b>5. Aggregate anticipated cost or savings to:</b>
<b>A) State budget:</b>
There will potentially be a decrease in cost to the state as mileage reimbursements are decreasing. However, the Division cannot determine exactly what the decrease will

be because it is impossible to anticipate how much travel state employees will do.

**B) Local governments:**

There will potentially be a decrease in cost to local governments as mileage reimbursements are decreasing. However, the Division cannot determine exactly what the decrease will be because it is impossible to anticipate how much travel local government employees will do.

**C) Small businesses** ("small business" means a business employing 1-49 persons):

Because the change deals only with reimbursement rates for mileage for state employees, small businesses are not affected.

**D) Non-small businesses** ("non-small business" means a business employing 50 or more persons):

Because the change deals only with reimbursement rates for mileage for state employees, non-small businesses are not affected.

**E) Persons other than small businesses, non-small businesses, state, or local government entities** ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an **agency**):

Individuals eligible for reimbursement will see a slight decrease in their mileage reimbursement amounts for travel in private vehicles.

**F) Compliance costs for affected persons:**

Because the amendment only changes mileage reimbursement rates and does not require any new action on the part of persons applying for reimbursements, there are no compliance costs.

**G) Regulatory Impact Summary Table** (This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts will be included in narratives above.)

Regulatory Impact Table			
Fiscal Cost	FY2021	FY2022	FY2023
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0



<b>Total Fiscal Cost</b>	\$0	\$0	\$0
<b>Fiscal Benefits</b>			
State Government	\$0	\$0	\$0
Local Governments	\$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

**H) Department head approval of regulatory impact analysis:**

The Executive Director of the Department of Administrative Services, Tani Pack Downing, has reviewed and approved this fiscal analysis.

**6. A) Comments by the department head on the fiscal impact this rule may have on businesses:**

I have reviewed these changes with the Division of Finance interim director and believe these changes are warranted. Individuals may see a slight decrease in reimbursement amounts. However, the Division cannot determine exactly what the decrease will be as that depends on the amount of travel by individuals eligible for mileage reimbursement. This rule will have no impact on business.

**B) Name and title of department head commenting on the fiscal impacts:**

Tani Pack Downing, Executive Director

**Citation Information**

**7. This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws. State code or constitution citations (required):**

Section 63A-3-107	Section 63A-3-106	
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**Public Notice Information**

**9. The public may submit written or oral comments to the agency identified in box 1.** (The public may also request a hearing by submitting a written request to the agency. The agency is required to hold a hearing if it receives requests from ten interested persons or from an association having not fewer than ten members. Additionally, the request must be received by the agency

not more than 15 days after the publication of this rule in the Utah State Bulletin. See Section 63G-3-302 and Rule R15-1 for more information.)

**A) Comments will be accepted until:** 02/16/2021

**10. This rule change MAY become effective on:** 02/23/2021

NOTE: The date above is the date on which this rule MAY become effective. It is NOT the effective date. After the date designated in Box 10, the agency must submit a Notice of Effective Date to the Office of Administrative Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	Marilee P. Richins, Interim Director	<b>Date:</b>	12/29/2020
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**R25. Administrative Services, Finance.**

**R25-7. Travel-Related Reimbursements for State Travelers.**

**R25-7-10. Reimbursement for Transportation.**

A Traveler who travels on business may be eligible for a transportation Reimbursement.

(1) Air transportation is limited to Air Coach or Excursion class. Priority seating charges will not be reimbursed unless preapproved by the Executive Director or designee.

(a) For Agency Travelers, all reservations should be made through the State Travel Office for the least expensive air fare available at the time reservations are made.

(b) Only one change fee per trip will be reimbursed.

(c) The explanation for the change and any other exception to this rule must be given and approved by the Executive Director or designee.

(2) A Traveler may be reimbursed for mileage to and from the airport and long-term parking or away-from-the-airport parking.

(a) The maximum Reimbursement for parking, whether a Traveler parks at the airport or away from the airport, is the long term parking Rate at the airport they are flying out of.

(b) The parking receipt must be included with the Travel Reimbursement Request, form FI 51A, FI 51B, in ESS Travel or equivalent form or system for amounts of \$20 or more.

(c) A Traveler may be reimbursed, up to the maximum Reimbursement Rate, for mileage to and from the airport to allow someone to drop them off and to pick them up.

(3) A Traveler may use a private vehicle with approval from the Executive Director or designee.

(a) Only one person in a vehicle may receive the Reimbursement, regardless of the number of people in the vehicle.

(b) Reimbursement for a private vehicle will be at the Rate of 38 cents per mile or ~~57~~56 cents per mile if a Fleet Vehicle is not available to the Traveler.

(i) To determine which Rate to use, the Traveler must first determine if a Fleet Vehicle is available that meets the Traveler's needs. This does not apply to special purpose vehicles. If reasonably available, the Traveler should use a Fleet Vehicle. If a Fleet Vehicle is not reasonably available, the Agency or Political Subdivision may

NOTICES OF PROPOSED RULES

approve the Traveler to use a private vehicle. If a Fleet Vehicle is not reasonably available, the Traveler may be reimbursed at ~~57~~56 cents per mile.

(ii) If a trip is estimated to average 100 miles or more per day, the Agency or Political Subdivision should approve the Traveler to reserve a Fleet Vehicle if one is reasonably available. Doing so will cost less than if the Traveler takes a private vehicle. If the Agency or Political Subdivision approves the Traveler to take a private vehicle, the Traveler will be reimbursed at the lower Rate of 38 cents per mile not to exceed the expense calculated in the link located in Subsection (e).

(c) A Reimbursement Rate that is more restrictive than the Rate established in this Section may be established by the Agency or Political Subdivision.

(d) Any exceptions to this mileage Reimbursement Rate guidance must be approved in writing by the Traveler's Executive Director or designee.

(e) A cost comparison worksheet is available at: <http://fleet.utah.gov/motor-pool-a/demand-motor-pool/personal-vehicle-vs-rental-vehicle/>

(f) Mileage will be computed using Mapquest, GoogleMaps or other generally accepted route planning website, or from the latest official state road map and will be limited to the most economical, usually traveled routes.

(g) If the Traveler uses a private vehicle on official business and is reimbursed for mileage, parking charges may be reimbursed as an incidental expense.

(h) For an Agency Traveler, an approved "Private Vehicle Usage Report", form FI 40, should be included with the documentation reporting miles driven on business during the payroll period.

(i) Mileage Reimbursement may be allowed on an approved "Travel Reimbursement Request", form FI 51A, FI 51B, or in ESS Travel, or equivalent form or system, if other costs associated with the trip are to be reimbursed at the same time.

(4) A Traveler may choose to drive instead of flying if preapproved by the Executive Director or designee.

(a) If the Traveler drives a Fleet Vehicle, the Traveler may be reimbursed for meals and lodging for a reasonable amount of travel time; however, the total cost of the trip must not exceed the equivalent cost of the airline trip. The Traveler may also be reimbursed for incidental expenses such as toll fees and parking fees.

(b) If the Traveler drives a privately-owned vehicle, Reimbursement will be at the Rate of 38 cents per mile or the airplane fare, whichever is less, unless otherwise approved by the Executive Director or designee.

(i) The lowest fare available within 30 days prior to the departure date will be used when calculating the cost of travel for comparison to private vehicle cost.

(ii) A comparison printout which is available through the State Travel Office is required when the Traveler is taking a private vehicle.

(iii) The Traveler may be reimbursed for meals and lodging for a reasonable amount of travel time; however, the total cost of the trip must not exceed the equivalent cost of an airline trip.

(iv) If the Traveler uses a private vehicle on official business and is reimbursed for mileage, parking charges may be reimbursed as an incidental expense.

(c) When submitting the Reimbursement form, attach a schedule comparing the cost of driving with the cost of flying. The schedule should show that the total cost of driving was less than or equal to the total cost of flying for the trip.

(d) If the travel time taken for driving during the Traveler's normal work week is greater than that which would have occurred had the Traveler flown, the excess time used must not count as time worked.

(5) Use of non-fleet rental vehicles must be approved in writing in advance by the Executive Director or designee.

(a) An exception to advance approval of the use of rental vehicles shall be fully explained in writing with the request for Reimbursement and approved by the Executive Director or designee.

(b) Detailed explanation is required if a rental vehicle is requested for a Traveler staying at a conference hotel.

(c) When making rental car arrangements through the State Travel Office, reserve the vehicle you need. Upgrades in size or model made when picking up the rental vehicle will not be reimbursed.

(i) A Traveler should rent vehicles to be used for business in their own names, using a contract available to the Traveler's Agency or Political Subdivision to ensure the Agency's or Political Subdivision's insurance coverage is extended in the rental.

(ii) For Agency Travelers, a rental vehicle reservation not made through the State Travel Office must be approved in advance by the Executive Director or designee.

(iii) The Traveler will be reimbursed the actual Rate charged by the rental agency.

(iv) The Traveler must have approval for a rental car in order to be reimbursed for rental car parking.

(6) Travel by private airplane for official business must be approved in advance by the Executive Director or designee.

(a) The pilot must certify to the Executive Director or designee that the pilot is certified to fly the plane being used for business.

(b) If the plane is owned by the pilot, the pilot must certify the existence of at least \$500,000 of liability insurance coverage.

(c) If the plane is a rental, the pilot must provide written certification from the rental agency that the insurance covers the Traveler and the Agency or Political Subdivision as insured. The insurance must be adequate to cover any physical damage to the plane and at least \$500,000 for liability coverage.

(d) Reimbursement will be made at ~~57~~56 cents per mile.

(e) Mileage calculation is based on air mileage and is limited to the most economical, usually-traveled route.

(7) Travel by private motorcycle must be approved prior to the trip by the Executive Director or designee. Travel will be reimbursed at 20 cents per mile.

(8) For Agency Travelers, a car allowance may be allowed in lieu of mileage Reimbursement in certain cases. Prior written approval from the Executive Director, the Executive Director of the Department of Administrative Services, and the Governor is required.

**KEY: air travel, per diem allowances, state travelers, transportation**

**Date of Enactment or Last Substantive Amendment:** ~~September 7, 2020~~2021

**Notice of Continuation:** February 8, 2018

**Authorizing, and Implemented or Interpreted Law:** 63A-3-107; 63A-3-106

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	R68-24	Filing No. 53258

**Agency Information**

<b>1. Department:</b>	Agriculture and Food	
<b>Agency:</b>	Plant Industry	
<b>Street address:</b>	350 N Redwood Road	
<b>City, state:</b>	Salt Lake City, UT	
<b>Mailing address:</b>	PO Box 146500	
<b>City, state, zip:</b>	Salt Lake City, UT 84114-6500	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Amber Brown	801-982-2204	ambermbrown@utah.gov
Cody James	801-982-2376	codyjames@utah.gov
Kelly Pehrson	801-982-2202	kwpehrson@utah.gov
Please address questions regarding information on this notice to the agency.		

**General Information**

<b>2. Rule or section catchline:</b>
R68-24. Industrial Hemp License for Growers
<b>3. Purpose of the new rule or reason for the change:</b>
The changes are needed to clarify this rule and improve mechanisms for the Department of Agriculture and Food (Department) to manage and enforce the industrial hemp cultivation program.
<b>4. Summary of the new rule or change:</b>
Key participant is added as a definition, and a requirement is added that key participants in industrial hemp cultivation obtain a background check that is submitted to the Department with a license application. Additionally, a requirement is added that licensees harvest industrial hemp within 30 days of the sample collection date. A requirement is added for corrective actions plans to be implemented if there is a negligent violation of the law and negligent is defined in this rule. Key participants are also added into the violation section of this rule, rather than just licensees.

**Fiscal Information**

<b>5. Aggregate anticipated cost or savings to:</b>
<b>A) State budget:</b>
There are no anticipated costs or savings to the state budget associated with these changes because they simply clarify this rule and improve the Department's ability to manage the industrial hemp program. Fees charged by the Department and Department costs should not change.

<b>B) Local governments:</b>			
There are no anticipated costs or savings to local governments because they do not administer the industrial hemp cultivation program or act as industrial hemp cultivators.			
<b>C) Small businesses ("small business" means a business employing 1-49 persons):</b>			
There could be some additional costs to small businesses that are applying for an industrial hemp cultivation license and now need to obtain a background check for key participants in their business. The Department estimates that an additional 1,000 individuals program wide would need to get a background check at a cost of approximately \$20 each with roughly half from small businesses. This would be a total cost of \$20,000 or \$10,000 to small businesses.			
<b>D) Non-small businesses ("non-small business" means a business employing 50 or more persons):</b>			
There could be some additional costs to non-small businesses that are applying for an industrial hemp cultivation license and now need to obtain a background check for key participants in their business. The Department estimates that an additional 1,000 individuals program wide would need to get a background check at a cost of approximately \$20 each with roughly half from non-small businesses. This would be a total cost of \$20,000 or \$10,000 to non-small businesses.			
<b>E) Persons other than small businesses, non-small businesses, state, or local government entities ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an <i>agency</i>):</b>			
Other persons should not be affected by this rule change because they do not operate as industrial hemp cultivation licensees.			
<b>F) Compliance costs for affected persons:</b>			
Compliance costs for each affected person will increase by approximately \$20.			
<b>G) Regulatory Impact Summary Table (This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts will be included in narratives above.)</b>			
<b>Regulatory Impact Table</b>			
<b>Fiscal Cost</b>	<b>FY2021</b>	<b>FY2022</b>	<b>FY2023</b>
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0

NOTICES OF PROPOSED RULES

Small Businesses	\$10,000	\$10,000	\$10,000
Non-Small Businesses	\$10,000	\$10,000	\$10,000
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Cost</b>	<b>\$20,000</b>	<b>\$20,000</b>	<b>\$20,000</b>
<b>Fiscal Benefits</b>			
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Net Fiscal Benefits</b>	<b>\$(20,000)</b>	<b>\$(20,000)</b>	<b>\$(20,000)</b>
<b>H) Department head approval of regulatory impact analysis:</b>			
The Commissioner of the Utah Department of Agriculture and Food, R. Logan Wilde, has reviewed and approves the regulatory impact analysis.			
<b>6. A) Comments by the department head on the fiscal impact this rule may have on businesses:</b>			
This fiscal impact will have a small impact on businesses in Utah due to the cost of background checks, however having key participants checked is vital to ensuring that those participating in industrial hemp cultivation do not have a criminal background, which should help decrease violations and diversion of product.			
<b>B) Name and title of department head commenting on the fiscal impacts:</b>			
R. Logan Wilde, Commissioner			

**Citation Information**

<b>7. This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws. State code or constitution citations (required):</b>		
Subsection 4-41-103(4)		

**Public Notice Information**

**9. The public may submit written or oral comments to the agency identified in box 1.** (The public may also request a hearing by submitting a written request to the agency. The agency is required to hold a hearing if it receives requests from ten interested persons or from an association having not fewer than ten members. Additionally, the request must be received by the agency not more than 15 days after the publication of this rule in the Utah State Bulletin. See Section 63G-3-302 and Rule R15-1 for more information.)

<b>A) Comments will be accepted until:</b>	02/16/2021
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<b>10. This rule change MAY become effective on:</b>	02/23/2021
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NOTE: The date above is the date on which this rule MAY become effective. It is NOT the effective date. After the date designated in Box 10, the agency must submit a Notice of Effective Date to the Office of Administrative Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	R. Logan Wilde, Commissioner	<b>Date:</b>	12/17/2020
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**R68. Agriculture and Food, Plant Industry.**

**R68-24. Industrial Hemp License for Growers.**

**R68-24-1. Authority and Purpose.**

Pursuant to Section 4-41-103(4), this rule establishes the standards, practices, procedures, and requirements for participation in the Utah Industrial Hemp Program for the growing and cultivation of industrial hemp.

**R68-24-2. Definitions.**

1) "Acceptable hemp THC level" means a total composite tetrahydrocannabinol concentration of not more than 0.3 percent on a dry weight basis if laboratory testing confirms a result within a measurement of uncertainty that includes the total composite tetrahydrocannabinol concentration of 0.3 %.

2) "Community Location" means a public or private elementary or secondary school, a church, a public library, a public playground, or a public park.

3) "Department" means the Utah Department of Agriculture and Food.

4) "Growing Area" means a contiguous area on which hemp is grown whether inside or outside.

5) "Handle" or "handling" means the action of cultivating or storing hemp plants or hemp plant parts prior to the delivery of the plants or plant parts for processing.

6) "Harvesting" means removing industrial hemp plants from final growing condition and physically or mechanically preparing plant material for storage or wholesale.

7) "Industrial Hemp" means any part of a cannabis plant, whether growing or not, with a concentration of less than 0.3% tetrahydrocannabinol by weight.

8) "Key Participant" means any person who has a financial interest in the business entity including members of a limited liability company, a sole proprietor, partners in a partnership, and incorporators or directors of a corporation. A key participant also includes persons at executive levels including chief executive officer, chief operating officer, or chief financial officer. Key participants are also operation managers and site managers, or any employee who may present risk of diversion.

[8]9) "Licensee" means a person authorized by the department to grow industrial hemp.

[9]10) "Measurement of Uncertainty" means the parameter, associated with the result of a measurement, that characterizes the dispersion of the values that could reasonably be attributed to the particular quantity subject to measurement.

11) "Negligent" means failure to exercise the level of care that a reasonably prudent person would exercise in complying with the requirements of this rule.

[10]12) "THC" means total composite tetrahydrocannabinol, including delta -9- tetrahydrocannabinol and tetrahydrocannabinolic acid.

### **R68-24-3. Grower License Application Requirements.**

1) The applicant shall be a minimum of 18 years old.  
2) The applicant is not eligible to receive a license if they have been convicted of a felony or its equivalent within the last ten years.

3) An applicant seeking an industrial hemp cultivation license shall submit the following to the department:

- a) a completed application form provided by the department;
- b) the legal description of the growing area;
- c) the global positioning coordinates for the center of the outdoor growing area;
- d) maps of the growing area in acres or square feet, and the location of different varieties within the growing area;
- e) a statement of the intended end use or disposal for the parts of the hemp plant grown; and
- f) a plan for the storage of seed or clone and harvested industrial hemp material as specified in Section R68-24-7.

4) An applicant shall submit a nationwide criminal history from the Federal Bureau of Investigation (FBI) completed within three months of their application.

5) An applicant shall submit the full name and title of each key participant, along with their email address and a nationwide criminal history from the FBI completed within three months of the application.

[5]6) The applicant shall submit a fee as approved by the legislature in the fee schedule.

[6]7) The department shall deny any applicant who does not submit the required information.

### **R68-24-4. Growing Area.**

1) A licensee [~~shall~~]may not plant or grow industrial hemp on any site not listed on the grower license application and shall take immediate steps to prevent the inadvertent growth of industrial hemp outside of the authorized grow area.

2) A licensee [~~shall~~]may not grow hemp in any structure used for residential purposes.

3) A licensee [~~shall~~]may not handle or store leaf, viable seed, or floral material from hemp in a structure used for residential purposes.

4) A licensee [~~shall~~]may not grow industrial hemp outdoors within 1,000 feet of a community location.

5) The licensee shall post signage at the plot location's entrance and where the plot is visible to a public roadway in a manner that would reasonably be expected to be seen by a person in the area.

6) The signage shall include the following information:

- a) the statement, "Utah Department of Agriculture Industrial Hemp Program";
- b) the name of the licensee;
- c) the Utah Department of Agriculture and Food licensee number; and
- d) the department's telephone number.

### **R68-24-5. Reporting Requirements.**

1) Within ten days of planting the licensee shall submit a Planting Report, on a form provided by the department, that includes:

- a) a list of industrial hemp varieties and other plants in the growing area which were planted;
- b) the actual acres planted or the seeding rate or number of clones planted in the growing area;
- c) adjusted maps and global position coordinates for the area planted; and
- d) the amount of seed that was not used.

2) 30 days prior to harvest the licensee shall submit a Harvest Report, on a form provided by the department, that includes:

- a) any contracts entered into between the grower and an industrial hemp processor or a statement of the intended use of industrial hemp cultivated in the growing area;
- b) any intended storage areas for industrial hemp or industrial hemp material; and
- c) the harvest dates and location of each variety cultivated in the growing areas[;].

[;]3) The licensee shall immediately inform the department of any changes in the reported harvest date [~~which~~]that exceed[s] five days.

[3]4) 30 days after completion of harvest the licensee shall submit a Production Report, on a form provided by the department, which includes:

- a) yield from the growing area;
- b) THC testing reports, if any, conducted at the licensee's request;
- c) water application rates;
- d) report of any pest infestations or problems; and
- e) a statement on the final disposition of the industrial hemp product in the growing area.

[4]5) Failure to submit the required reports may result in the revocation of the grower license.

### **R68-24-6. Inspection and Sampling.**

1) The growing area shall be subject to random sampling to verify the THC concentration does not exceed the acceptable hemp THC levels by department officials.

2) The department shall have complete and unrestricted access to industrial hemp plants and seeds whether growing or harvested, and to land, buildings, and other structures used for the cultivation or storage of industrial hemp.

3) Samples of each variety of industrial hemp shall be randomly sampled from the growing area by department officials.

NOTICES OF PROPOSED RULES

- 4) The department shall conduct the laboratory testing on the sample to determine the THC concentration on a dry weight basis.
- 5) The sample taken by the department shall be the official sample.
- 6) The department shall test the growing area within 30 days prior to harvest.
- 7) The department shall notify the licensee of the test results from the official sample within a reasonable amount of time.
- 8) The test results from the department shall contain a measurement of uncertainty.

9) The licensee shall harvest compliant industrial hemp plants within 30 days of the official sample collection date.

[9]10) Any laboratory test that exceeds the acceptable hemp THC level may be considered a violation of the terms of the license and may result in license revocation and issuance of a citation.

[40]11) Upon receipt of a test result with greater than the acceptable hemp THC level, the department shall notify the grower.

[44]12) The department will coordinate with the appropriate law enforcement agency regarding any laboratory test result considered to have resulted from a culpable mental state greater than negligence. ~~[with 1% THC or greater, and revocation of the license for the remaining calendar year will be immediate.]~~

13) Corrective action plans shall be implemented for any violations of Title 4, Chapter 41, Hemp and Cannabinoid Act, that are considered to be negligent. Negligent violations shall be tracked for compliance and followed up for two calendar years.

**R68-24-7. Storage of Industrial Hemp and Hemp Material.**

- 1) A licensee may store hemp and hemp material provided:
  - a) the licensee notifies the department, in writing, of the location of the storage facility;
  - b) the licensee informs the department of the type and amount of product being stored in the storage facility;
  - c) the storage facility is outside of the public view; and
  - d) the storage facility is secured with physical containment and reasonable security measures ~~[; and]~~.
  - ~~[e) the storage facility is not within 1,000 feet of a community location.]~~
- 2) The storage area is subject to random inspection by department officials.

**R68-24-8. Transportation of Industrial Hemp Materials.**

- 1) A licensee ~~[shall]~~ may not transport any industrial hemp materials, except to a storage facility, until the department has notified the licensee of the test results from the growing area.
- 2) An industrial hemp transportation permit is required for each day and each vehicle used to move industrial hemp or industrial hemp products.
- 3) The licensee shall submit an industrial hemp transportation permit request form provided by the department.
- 4) Requests for an industrial hemp transportation permit shall be submitted to the department at least five business days prior to movement.
- 5) An industrial hemp transportation permit authorizes the transportation of industrial hemp materials only within the borders of the state.
- 6) The department may deny any application for a movement permit that is not completed in accordance with this rule.

**R68-24-9. Restrictions on the Sale and Transfer of Industrial Hemp and Hemp Materials.**

- 1) A licensee ~~[shall]~~ may not sell or transfer living plants, viable plants, viable seeds, leaf material, or floral material to any person not licensed by the department or to any person outside the state who is not authorized by the laws of that state or United States Department of Agriculture.
- 2) The licensee may sell or transfer stripped stalks, fiber, and nonviable seed to the general public provided the hemp material has an acceptable hemp level.

**R68-24-10. Renewal.**

- 1) A licensee shall resubmit documents required in Section R68-24-3, with updated information, before December 31st of the current year.
- 2) The department may deny a renewal for an incomplete application.
- 3) The department may deny renewal for any licensee who has violated any portion of this rule or state law.

**R68-24-11. Extension.**

- 1) The department may extend the term of a license for up to 90 days, provided that:
  - a) the licensee requests an extension prior to the end of the original license term; and
  - b) the licensee reports to the department ~~[;]~~:
    - i) the amount of industrial hemp they possess at the end of the original license term; and
    - ii) the planned disposition of the remaining industrial hemp.
- 2) Under an extended license, the licensee ~~[shall]~~ may not grow or process industrial hemp, but may store and sell industrial hemp harvested during the previous growing season.
- 3) The licensee shall submit a license extension fee as approved by the legislature in the fee schedule.
- 4) The licensee continues to be subject to inspection by the department.

**R68-24-12. Destruction of Industrial Hemp Material.**

- 1) The department shall be responsible for the destruction of any plant material ~~[which]~~ that tests above the acceptable hemp THC level.
- 2) The licensee shall work with the department on an approved plan for the destruction of the plant material.
- 3) The department may destroy the plant material at cost to the licensee.
- 4) The department may inspect the growing area to verify the destruction of any plant material.

**R68-24-13. Violations.**

- 1) A licensee or key participant ~~[shall]~~ may not grow industrial hemp that tests greater than the acceptable hemp THC level on a dry weight basis.
- 2) A licensee or key participant ~~[shall]~~ may not possess, sell, transfer, or transport industrial hemp material that tests greater than the acceptable hemp THC level on a dry weight basis.
- 3) It is a violation of the grower license to grow or store industrial hemp or industrial hemp material on a site not approved by the department as part of the license.

- 4) A licensee or key participant ~~[shall]~~ may not allow unsupervised public access to hemp plots.
- 5) A licensee or key participant ~~[shall]~~ may not deny an official of the department access for sampling or inspection purposes.
- 6) A licensee or key participant ~~[shall]~~ may not violate any portion of this rule or state law.
- 7) It is a violation of this rule to grow, cultivate, handle, or possess industrial hemp or viable industrial hemp materials without a license from the department.
- ~~[9]~~8) It is a violation to grow industrial hemp material on a site not approved by the department as listed on the license.
- ~~[10]~~9) It is a violation to grow industrial hemp outdoors within 1,000 feet of a community location.

**KEY: industrial hemp cultivation**  
**Date of Enactment or Last Substantive Amendment:**  
**2021** ~~[September 4, 2020]~~  
**Authorizing, and Implemented or Interpreted Law: 4-41-103(4)**

NOTICE OF PROPOSED RULE		
TYPE OF RULE: New		
Utah Admin. Code Ref (R no.):	R305-10	Filing No. 53259

**Agency Information**

<b>1. Department:</b>	Environmental Quality	
<b>Agency:</b>	Administration	
<b>Room no.:</b>	Fourth Floor	
<b>Building:</b>	Multi Agency State Office Building	
<b>Street address:</b>	195 N 1950 W	
<b>City, state:</b>	Salt Lake City, UT 84116	
<b>Mailing address:</b>	PO Box 144810	
<b>City, state, zip:</b>	Salt Lake City, UT 84114-4810	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Liam Thrailkill	801-536-4419	lthrailkill@utah.gov
Renette Anderson	801-536-4478	renetteanderson@utah.gov
Please address questions regarding information on this notice to the agency.		

**General Information**

<b>2. Rule or section catchline:</b>
R305-10. Local Health Department Minimum Performance Standards
<b>3. Purpose of the new rule or reason for the change:</b>
This rule is required under Subsection 26A-1-106(4).

<b>4. Summary of the new rule or change:</b>
State law requires that the Utah Department of Environmental Quality establish, by rule, minimum performance standards for basic programs of environmental health for the local health departments. This rule has been developed in conjunction with them. This new rule outlines minimum performance standards for local health environmental programs in coordination with the .

**Fiscal Information**

<b>5. Aggregate anticipated cost or savings to:</b>
<b>A) State budget:</b>
There are no anticipated costs or savings to the state budget as existing staff will coordinate on this new rule.
<b>B) Local governments:</b>
There are no additional anticipated costs or savings to local governments, specifically the local health departments, as the departments should already have the outlined requirements in this rule in place.
<b>C) Small businesses</b> ("small business" means a business employing 1-49 persons):
There are no anticipated costs or savings to small businesses as this rulemaking does not apply to them.
<b>D) Non-small businesses</b> ("non-small business" means a business employing 50 or more persons):
There are no anticipated costs or savings to non-small businesses as this rulemaking does not apply to them.
<b>E) Persons other than small businesses, non-small businesses, state, or local government entities</b> ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an <b>agency</b> ):
There are no anticipated costs to any persons other than small businesses, non-small businesses, state, or local government entities.
<b>F) Compliance costs for affected persons:</b>
There are no anticipated compliance costs for affected persons as there are no expected compliance requirements of persons.
<b>G) Regulatory Impact Summary Table</b> (This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts will be included in narratives above.)

<b>Regulatory Impact Table</b>			
<b>Fiscal Cost</b>	<b>FY2021</b>	<b>FY2022</b>	<b>FY2023</b>
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Cost</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Fiscal Benefits</b>			
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Net Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>H) Department head approval of regulatory impact analysis:</b>			
The Executive Director of the Department of Environmental Quality, L. Scott Baird, has reviewed and approved this fiscal analysis.			
<b>6. A) Comments by the department head on the fiscal impact this rule may have on businesses:</b>			
There are no anticipated fiscal impacts as a result of this rulemaking to state or local governments or to small or non-small businesses. The requirements outlined in this rulemaking should already be followed by local health departments.			
<b>B) Name and title of department head commenting on the fiscal impacts:</b>			
L. Scott Baird, Executive Director			

**Citation Information**

**7. This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws. State code or constitution citations (required):**

Subsection 26 A-1-106(4)	Section 19-1-201	
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**Public Notice Information**

**9. The public may submit written or oral comments to the agency identified in box 1.** (The public may also request a hearing by submitting a written request to the agency. The agency is required to hold a hearing if it receives requests from ten interested persons or from an association having not fewer than ten members. Additionally, the request must be received by the agency not more than 15 days after the publication of this rule in the Utah State Bulletin. See Section 63G-3-302 and Rule R15-1 for more information.)

**A) Comments will be accepted until:** 02/16/2021

**10. This rule change MAY become effective on:** 02/23/2021

NOTE: The date above is the date on which this rule MAY become effective. It is NOT the effective date. After the date designated in Box 10, the agency must submit a Notice of Effective Date to the Office of Administrative Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	L. Scott Baird, Executive Director	<b>Date:</b>	12/07/2021
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**R305. Environmental Quality, Administration.**  
**R305-10. Local Health Department Minimum Performance Standards.**

- R305-10-1. Authority and Purpose.**
- (1) This rule is promulgated as required by Subsection 26A-1-106(4). The minimum performance standards apply to local health department services, regardless of funding sources.
  - (2) The purpose of the Utah Environmental Minimum Performance Standards effort is to bring together Utah Local Health Departments and the Utah Department of Environmental Quality to develop, implement, and monitor core quality measures, assuring effective and efficient delivery of environmental health programs across Utah.

- R305-10-2. Definitions.**
- (1) "Department" means the Utah Department of Environmental Quality.
  - (2) "District" means the area and population served by a local health department.
  - (3) "Environmental Health Programs" means programs that the Utah Department of Environmental Quality has the statutory authority to administer for Utah.
  - (4) "Minimum performance standards" means the minimum duties performed by local health departments for the promotion of environmental quality, including public health administration and environmental health administration including



standards for inspection and enforcement, for basic programs of environmental health, not inconsistent with law, as necessary or desirable for the protection of public health, in addition to the powers and duties listed in Section 26A-1-114 and is equivalent to the phrase "minimum performance standards" in Subsection 26A-1-106(4).

(5) "Service delivery plan" means a plan agreed to between the local health department and the Department to coordinate implementation of environmental programs to maximize efficient use of resources and that:

(i) recognizes that the Department of Environmental Quality and local health departments are the foundation for providing environmental health programs in the state;

(ii) delineates the responsibilities of the department and each local health department for the efficient delivery of environmental programs using federal, state, and local authorities, responsibilities, and resources;

(iii) provides for the delegation of authority and pass through of funding to local health departments for environmental programs, to the extent allowed by applicable law, identified in the plan, and requested by the local health department; and

(iv) is reviewed and updated annually.

### **R305-10-3. Compliance.**

(1) The local health department and the department shall monitor compliance with minimum performance standards.

### **R305-10-4. Corrective Action.**

(1) Except as provided in Subsection R305-10-4(3), if the department has cause to believe that a local health department is out of compliance with minimum performance standards the department shall provide a preliminary assessment to the local health officer that identifies the suspected areas of noncompliance. The local health officer shall respond to each of the areas identified in the preliminary assessment within 30 days of receipt.

(2) After review of the local health officer's response, if the department determines that the local health department is out of compliance with the minimum performance standards and has not provided a satisfactory response, the department shall notify the local board of health and the local health officer in writing of its findings and establish a specific time frame for the correction of each area of noncompliance.

(3) The department shall notify the local board of health and the local health officer if the department has cause to believe that noncompliance with minimum performance standards represents an imminent danger to the safety or health of the people of the state or the district.

(4) The local board of health shall submit a written corrective action plan that is satisfactory to the department. The corrective action plan must include the following:

- a) date of report;
- b) areas of noncompliance;
- c) corrective actions;
- d) responsible individual; and
- e) dates of plan implementation and completion.

### **R305-10-5. Local Health Officers.**

(1) The local health department shall ensure that a local health officer is employed that meets the requirements of Section R380-40-5.

(2) The local health officer shall ensure that an ongoing planning process is initiated and maintained that includes mission statement; community needs assessments; problem statements; goals,

outcomes, and process objectives or implementation activities; evaluation; public involvement; and use of available data sources.

(3) The local health officer shall promote and protect environmental health within the district to include the following activities:

(a) coordinate public health services in the district;

(b) direct programs assigned by statute to the local health department, including administering and enforcing state and local health laws, regulations and standards;

(c) ensure that available data on health status and health problems of the district are reviewed regularly including:

(i) a report to the board of health at least annually, and

(ii) an assessment that includes community input at least every five years; and

(d) ensure that information about environmental health and environmental health hazards is disseminated as appropriate to protect the health of people in the district.

### **R305-10-6. Local Health Department Administration.**

(1) Local health departments shall exercise the powers and duties as outlined in Section 26A-1-114.

(2) The local health officer shall ensure that fiscal management procedures are developed, implemented and maintained in accordance with federal, state, and local government requirements.

(3) Each local health department shall have an annual financial audit. The local board of health shall appoint an independent auditor or the audit may be conducted as part of the county audit and, in any event, the local board of health shall accept the audit or accept responsibility for findings in the audit that apply to the local health department.

(4) Each local health department shall employ an environmental health scientist registered in Utah with education and experience consistent with the position requirements to direct, supervise, evaluate, and be accountable for environmental health activities to protect and promote public health and safety and protect the environment.

### **R305-10-7. Local Health Department Environmental Health Programs.**

(1) Each local health department shall develop, implement, and maintain environmental health programs to meet the special or unique needs of its community as determined by local or state needs assessment and the local board of health.

(2) Environmental health programs provided by local health departments shall be delivered and controlled in accordance with approved budget, and evaluated for effectiveness and impact.

(3) Each local health department shall provide environmental health services in compliance with federal, state, and local laws, regulations, rules, policies and procedures; and accepted standards of public health.

(4) The department shall establish a service delivery plan with each local health department to clarify roles and responsibilities of shared environmental health programs.

(5) The department shall provide specialized training where necessary for the local health department to be successful in accomplishing its responsibilities related to the service delivery plan.

(6) Each local health department shall ensure that there is a program including the maintenance of an inventory of regulated entities or complaints for investigation of complaints about environmental health hazards, to include inspections including corrective actions and an information system that documents the

NOTICES OF PROPOSED RULES

process of receiving, investigating and the final disposition of complaints.

(7) The department and local health departments shall coordinate inspections, complaint investigations, and enforcement activities on regulated entities where there is joint responsibility and as specified in the Environmental Service Delivery Plan.

**R305-10-8. Local Health Department Environmental Emergency Response.**

(1) Each local health department shall participate in environmental emergency preparedness efforts, including:

(a) identifying local health department roles and responsibilities in emergency response;

(b) establishing partnerships with volunteers, emergency response agencies, and other community organizations involved in emergency response;

(c) cooperating with the Department of Environmental Quality in fulfilling responsibilities associated with Emergency Support Functions;

(d) maintaining an all hazards response plan;

(e) maintaining a continuity of operations plan that shall include employee notification, lines of authority and succession, and prioritized local health department functions; and

(f) testing public health preparedness through participation in Department coordinated response drills and exercises.

**R305-10-9. General Performance Standards for Local Health Department Laboratory Services.**

(1) Each local health department shall ensure that laboratories used to analyze environmental samples have the necessary certification to conduct the applicable tests.

**KEY: administrative procedures, local health departments**  
**Date of Enactment or Last Substantive Amendment: 2021**  
**Authorizing, and Implemented or Interpreted Law: 19-1-201; 26A-1-106(4)**

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	R384-415	Filing No. 53257

**Agency Information**

<b>1. Department:</b>	Health	
<b>Agency:</b>	Disease Control and Prevention, Health Promotion	
<b>Building:</b>	Cannon Health Building	
<b>Street address:</b>	288 N 1460 W	
<b>City, state:</b>	Salt Lake City, UT 84116	
<b>Mailing address:</b>	PO Box 142106	
<b>City, state, zip:</b>	Salt Lake City, UT 84114-2106	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Braden Ainsworth	801-538-6187	tobaccorulescomments@utah.gov

Christy Cushing	801-538-6260	tobaccorulescomments@utah.gov
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Please address questions regarding information on this notice to the agency.

**General Information**

**2. Rule or section catchline:**  
 R384-415. Electronic Cigarette Substance Standards

**3. Purpose of the new rule or reason for the change:**  
 These changes revise this rule to align with changes in Section 26-57-103, which became effective 07/01/2020. The changes are needed due to the passage of H.B. 23 during the 2020 General Session, requiring the Department of Health (Department) to establish labeling; nicotine content; packaging; and product quality standards for manufacturer sealed electronic cigarette substances. Between July and September 2020, the Department consulted with representatives from local health departments and members of the public to establish the language for this rule amendment.

**4. Summary of the new rule or change:**  
 This rule amendment to Rule R384-415 revises this rule to align with definition changes throughout the Utah Code. In addition, the rule amendment establishes labeling; nicotine content; packaging; and product quality standards and requirements for retailers that sell manufacturer sealed electronic cigarette substances.

**Fiscal Information**

**5. Aggregate anticipated cost or savings to:**  
**A) State budget:**  
 Enactment of this rule amendment is not expected to have any fiscal costs to the state budget, as existing allocated resources can cover an increase for Quit Line cessation services.

There are costs to Utahns who use electronic cigarettes, especially to those who use them now during the COVID-19 pandemic.

An electronic cigarette with a higher concentration of nicotine has a greater likelihood of being more addictive. Utahns who are addicted to nicotine products and want to quit are more likely to need tobacco cessation services to be able to quit successfully. Currently, tobacco cessation services are provided by the Utah Department of Health through the state tobacco quit line and through quit services covered by health insurance plans. The continued sale of addictive products results in higher cost to the state tobacco quit line and health insurance companies to cover treatment for nicotine dependence.

In 2018, 13.3% of Utah's Medicaid recipients used electronic cigarettes. Reducing the nicotine content in

electronic cigarettes sold in Utah could reduce electronic cigarette use among this population and subsequently decrease nicotine dependence treatment and healthcare expenditures for Medicaid clients, both in the short and long term. The Utah Medicaid program currently spends an estimated \$125,900,000 each year to treat tobacco-related diseases.

The Utah state quit line budget is approximately \$1,000,000 annually and all the tobacco cessation services provided is free and confidential for users. The average state cost for treating nicotine dependence using the Utah quit line ranges between \$273 - \$300 per user. The Utah youth tobacco cessation program "My Life My Quit" (for both vaping and smoking), offered by the Utah tobacco quit line for individuals between the ages of 13 - 17, cost per user (counseling calls, text messaging, email support) is \$273. The Utah adult cessation program provided by the Utah tobacco quit line, cost per user (counseling calls, text messaging, email support, NRT) is \$300.

In Utah, an estimated 30,000 youth currently use electronic cigarette products (12.4%). 44.5% of U.S. adolescents who vape are seriously interested in quitting, and 24.9% tried to quit in the past year (Smith, 2020). To offer tobacco cessation services to 44.5% of Utah youth who vape (13,350) would cost Utah an estimated \$3,600,000. To offer tobacco cessation services to 50% of young adults who vape (ages 18 - 34) (~55,000) would cost Utah an estimated \$16,600,000.

Effective 07/01/2021, this rule amendment prohibits a tobacco retailer that sells a manufacturer sealed electronic cigarette substance from selling a manufacturer sealed electronic cigarette substance with a nicotine concentration higher than 5% nicotine by weight per container, or exceeding a 59mg/mL concentration of nicotine; and effective 01/01/2022, this rule amendment prohibits a tobacco retailer that sells a manufacturer sealed electronic cigarette substance from selling a manufacturer sealed electronic cigarette substance with a nicotine concentration higher than 3% nicotine by weight per container, or exceeding a 36mg/mL concentration of nicotine. An electronic cigarette substance with a higher concentration of nicotine has a greater likelihood of being more addictive, being that "the amount of nicotine delivered and the way in which it is delivered influences the addictiveness of a tobacco product" (Eaton DL et al., 2018; HHS, 2010b). Reducing the nicotine content in electronic cigarette substances sold in Utah can aid in preventing youth and adult initiation of electronic cigarette products among Utahans who do not already smoke or vape. Electronic cigarette use is more popular among Utah youth than all other tobacco products combined, therefore limiting youth access to highly addictive electronic cigarette products is critical for preventing a new epidemic of nicotine addiction.

A study of youth and young adults ages 13 - 24 argues that those who have ever used e-cigarettes are five times more likely to contract COVID-19 than those who do not use tobacco products. Dual users of cigarettes and e-cigarettes are nearly seven times more likely to contract the respiratory disease (Gaiha, S. M, et al., 2020).

#### **B) Local governments:**

Enactment of this rule amendment is not expected to have any fiscal impact on local governments, as local health departments will continue to conduct retail observations and investigations in accordance with respective state tobacco control laws, state administrative rules, and local health department regulations using existing allocated resources to enforce this amended rule.

#### **C) Small businesses** ("small business" means a business employing 1-49 persons):

This rule amendment may result in a direct cost to small businesses that employ fewer than 50 employees and choose to sell manufacturer sealed electronic cigarette substances. This rule amendment may result in a direct fiscal cost to small businesses that primarily rely on the sale of tobacco products (retail tobacco specialty businesses) and operate under the North American Industry Classification System (NAICS) codes of 453991, and 424940. Other small businesses that sell manufacturer sealed electronic cigarette substances among other products they choose to sell include (445120) convenience stores, (447110) gas stations with convenience stores, (445110) supermarkets and other grocery stores, (452319) general merchandise and discount stores, (447190) other gasoline stations, (453991) tobacco stores, (424940) tobacco product merchant wholesalers, (453220) gift, novelty, and souvenir stores, (721110) hotels, (813410) civic and social organizations. A review of the Department combined local health department tobacco retail compliance check logs for fiscal year 2020 and cross-referenced with Utah Department of Workforce Services (DWS) Firm Find Data, shows that there are approximately 1,175 small businesses that sell some type of electronic cigarette substances in Utah, or approximately 88% of Utah tobacco retailers. The Department does not know how many of these 1,175 small businesses sell manufacturer sealed electronic cigarette substances with nicotine concentrations higher than either 5% by weight per container or exceed 59 mg/ml concentration of nicotine, or the number of small businesses that sell manufacturer sealed electronic cigarette substances with nicotine concentrations higher than 3% by weight per container or exceed 36 mg/ml concentration of nicotine. Approximately 168 small business tobacco retailers, or approximately 12% choose to not sell electronic cigarette substances and these businesses will not be affected by this rule amendment.

The proposed rule amendment labeling; packaging; and product quality standards and requirements for retailers that sell manufacturer sealed electronic cigarette substances are effective 07/01/2021. Whereas regarding nicotine content, effective 07/01/2021, this rule amendment prohibits a tobacco retailer that sells a manufacturer sealed electronic cigarette substance from selling a manufacturer sealed electronic cigarette substance with a nicotine concentration higher than 5% nicotine by weight per container, or exceeding a 59mg/mL concentration of nicotine; and effective 01/01/2022, this rule amendment prohibits a tobacco retailer that sells a manufacturer sealed electronic cigarette substance from selling a manufacturer sealed electronic cigarette substance with a nicotine concentration higher than 3% nicotine by weight per container, or exceeding a 36mg/mL concentration of nicotine.

Only tobacco retailers that currently sell manufacturer sealed electronic cigarette substances with a higher nicotine concentration may experience a direct fiscal impact. The additional six months' notice of the nicotine content limit from 5% nicotine by weight per container, or 59mg/mL concentration of nicotine to equal to or less than 3% nicotine by weight per container, or that do not exceed a 36mg/mL concentration of nicotine may reduce the direct fiscal cost impact on tobacco retailers. The additional six months' time allows for tobacco retailers that sell manufacturer sealed electronic cigarette substances with a nicotine concentration higher than 3% nicotine by weight per container, or exceeds a 36mg/mL concentration of nicotine to sell their current inventory of manufacturer sealed electronic cigarette substance with a nicotine concentration of 5% nicotine by weight per container, or exceeds a 59mg/mL concentration of nicotine and avoid restocking these products before 01/01/2022.

According to Statista's E-cigarette market share in the United States in 2020, by brand, 09/04/2020 report, five electronic cigarette manufacturer brands account for 97% of the U.S. market share: Juul (42%), Vuse (36%), blu (9%), Logic (8%) and Njoy (2%). Some of these electronic cigarette brands sell products with a nicotine concentration that is more than 3% nicotine by weight or 36mg/ml concentration of nicotine. Nevertheless, all these brands also offer electronic cigarette products with less than a 3% nicotine by weight per container or 36 mg/ml concentration of nicotine. Utah tobacco retailers that sell manufacturer sealed electronic cigarette substances (or prefilled pods or cartridges) will continue to have the option to sell manufacturer sealed electronic cigarette substances with a nicotine concentration equal to or less than 5% nicotine by weight per container, or that do not exceed a 59mg/mL concentration of nicotine until 01/01/2022, when Utah tobacco retailers will be required to only sell manufacturer sealed electronic cigarette substances with a nicotine concentration equal to or less than 3% nicotine by weight per container, or that do not exceed a 36mg/mL concentration of nicotine. As indicated, the five electronic cigarette manufacturer brands listed above all offer manufacturer sealed electronic cigarette substances that meet this 3% nicotine by weight per container, or that do

not exceed a 36mg/mL concentration of nicotine concentration requirement.

**D) Non-small businesses** ("non-small business" means a business employing 50 or more persons):

This rule amendment may result in a direct cost to non-small businesses that employ more than 50 employees and choose to sell manufacturer sealed electronic cigarette substances. The rule amendment may result in a direct fiscal cost to non-small businesses that sell manufacturer sealed electronic cigarette substances among other products they choose to sell include (445120) convenience stores, (447110) gas stations with convenience stores, (445110) supermarkets and other grocery stores, (452319) general merchandise and discount stores, (447190) other gasoline stations, and (453220) gift, novelty, and souvenir stores. A review of the Department combined local health department tobacco retail compliance check logs for fiscal year 2020 and cross-referenced with DWS Firm Find Data, shows that there are approximately 208 non-small businesses that sell some type of electronic cigarette substances in Utah, or approximately 12% of Utah tobacco retailers. The Department does not know how many of these 208 non-small businesses sell manufacturer sealed electronic cigarette substances with nicotine concentrations higher than either 5% by weight per container or exceed 59 mg/ml concentration of nicotine, or the number of non-small businesses that sell manufacturer sealed electronic cigarette substances with nicotine concentrations higher than 3% by weight per container or exceed 36 mg/ml concentration of nicotine. Approximately 164 non-small business tobacco retailers, or approximately 9.6%, choose to not sell any electronic cigarette substances and these businesses will not be affected by this rule amendment.

The proposed rule amendment labeling; packaging; and product quality standards and requirements for retailers that sell manufacturer sealed electronic cigarette substances are effective 07/01/2021. Whereas regarding nicotine content, effective 07/01/2021, this rule amendment prohibits a tobacco retailer that sells a manufacturer sealed electronic cigarette substance from selling a manufacturer sealed electronic cigarette substance with a nicotine concentration higher than 5% nicotine by weight per container, or exceeding a 59mg/mL concentration of nicotine; and effective 01/01/2022, this rule amendment prohibits a tobacco retailer that sells a manufacturer sealed electronic cigarette substance from selling a manufacturer sealed electronic cigarette substance with a nicotine concentration higher than 3% nicotine by weight per container, or exceeding a 36mg/mL concentration of nicotine.

Only tobacco retailers that currently sell manufacturer sealed electronic cigarette substances with a higher nicotine concentration may experience a direct fiscal impact. The additional six months' notice of the nicotine content limit from 5% nicotine by weight per container, or 59mg/mL concentration of nicotine to equal to or less than 3% nicotine by weight per container, or that do not exceed

a 36mg/mL concentration of nicotine may reduce the direct fiscal cost impact on tobacco retailers. The additional six months' time allows for tobacco retailers that sell manufacturer sealed electronic cigarette substances with a nicotine concentration higher than 3% nicotine by weight per container, or exceeds a 36mg/mL concentration of nicotine to sell their current inventory of manufacturer sealed electronic cigarette substance with a nicotine concentration of 5% nicotine by weight per container, or exceeds a 59mg/mL concentration of nicotine and avoid restocking these products before 01/01/2022.

According to Statista's E-cigarette market share in the United States in 2020, by brand, 09/04/2020 report, five electronic cigarette manufacturer brands account for 97% of the U.S. market share: Juul (42%), Vuse (36%), blu (9%), Logic (8%) and Njoy (2%). Some of these electronic cigarette brands sell products with a nicotine concentration that is more than 3% nicotine by weight or 36mg/ml concentration of nicotine. Nevertheless, all these brands also offer electronic cigarette products with less than a 3% nicotine by weight per container or 36 mg/ml concentration of nicotine. Utah tobacco retailers that sell manufacturer sealed electronic cigarette substances (or prefilled pods or cartridges) will continue to have the option to sell manufacturer sealed electronic cigarette substances with a nicotine concentration equal to or less than 5% nicotine by weight per container, or that do not exceed a 59mg/mL concentration of nicotine until 01/01/2022, when Utah tobacco retailers will be required to only sell manufacturer sealed electronic cigarette substances with a nicotine concentration equal to or less than 3% nicotine by weight per container, or that do not exceed a 36mg/mL concentration of nicotine. As indicated, the five electronic cigarette manufacturer brands listed above all offer manufacturer sealed electronic cigarette substances that meet this 3% nicotine by weight per container, or that do not exceed a 36mg/mL concentration of nicotine concentration requirement.

**E) Persons other than small businesses, non-small businesses, state, or local government entities** ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an **agency**):

This rule amendment to Rule R384-415 may result in an indirect cost or indirect benefit to persons, which can include both consumers who buy electronic cigarette substances and individuals who work for small businesses or non-small businesses that sell electronic cigarette substances. The indirect costs or indirect benefits to persons is unknown and difficult to determine, as the potential impact on consumers is unknown as they could choose to vape electronic cigarettes with a lower nicotine concentration, or they may choose to quit using electronic cigarettes as a result of enactment of this rule amendment. Likewise, the indirect costs or indirect benefits to persons employed at tobacco retail businesses is unknown and it is difficult to determine the impact on individual tobacco retail employees, who may be employed at either small businesses or non-small businesses which could be

impacted as already indicated in 5c and 5d, as a result of enactment of this rule amendment.

**F) Compliance costs for affected persons:**

This rule amendment to Rule R384-415 may result in an indirect cost or indirect benefit to persons, which can include both consumers who buy electronic cigarette substances and individuals who work for small businesses or non-small businesses that sell electronic cigarette substances.

**G) Regulatory Impact Summary Table** (This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts will be included in narratives above.)

**Regulatory Impact Table**

Fiscal Cost	FY2021	FY2022	FY2023
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Cost</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Fiscal Benefits</b>			
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Net Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

**H) Department head approval of regulatory impact analysis:**

The Interim Executive Director of Department of Health, Richard G. Saunders, has reviewed and approved this fiscal analysis.

**6. A) Comments by the department head on the fiscal impact this rule may have on businesses:**

After conducting a thorough analysis, it was determined that this proposed rule amendment will not result in a fiscal impact to businesses is inestimable because retailers have the option to sell this product.

**B) Name and title of department head commenting on the fiscal impacts:**

Richard G. Saunders, Interim Executive Director

**Citation Information**

**7. This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws. State code or constitution citations (required):**

Subsection		
26-57-103(2)		

**Public Notice Information**

**9. The public may submit written or oral comments to the agency identified in box 1.** (The public may also request a hearing by submitting a written request to the agency. The agency is required to hold a hearing if it receives requests from ten interested persons or from an association having not fewer than ten members. Additionally, the request must be received by the agency not more than 15 days after the publication of this rule in the Utah State Bulletin. See Section 63G-3-302 and Rule R15-1 for more information.)

**A) Comments will be accepted until:** 02/15/2021

**10. This rule change MAY become effective on:** 2/22/2021

NOTE: The date above is the date on which this rule MAY become effective. It is NOT the effective date. After the date designated in Box 10, the agency must submit a Notice of Effective Date to the Office of Administrative Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	Richard G. Saunders, Interim Executive Director	<b>Date:</b>	12/17/2020
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**R384. Disease Control and Prevention, Health Promotion.**

**R384-415. Electronic[-] Cigarette Substance Standards.**

**R384-415-1. Authority and Purpose.**

(1) This rule is authorized by Section 26-57-103[~~and Subsection 59-14-803(5)~~].

(2) The[is] purpose of this rule is to establish[es] standards for labeling, nicotine content, packaging, and product quality for non-

manufacturer sealed electronic[-]\_cigarette substances and manufacturer sealed electronic cigarette substances for the regulation of selling electronic[-]\_cigarette[s] products.

(3) A person may only sell a non-manufacturer sealed electronic cigarette substance that is compliant with the established standards and requirements set forth in this rule.

(4) Beginning on July 1, 2021, a person may only sell a manufacturer sealed electronic cigarette substance that is compliant with the established standards and requirements set forth in this rule.

~~\_\_\_\_\_ (3) This rule does not apply to a manufacturer sealed electronic cigarette substance.~~

~~(4)(5)~~ A product in compliance with this rule is not endorsed as safe.

**R384-415-2. Definitions.**

As used in this rule:

~~\_\_\_\_\_ (1) "Business" means any sole proprietorship, partnership, joint venture, corporation, association, or other entity formed for profit or non-profit purposes.~~

~~(2)(1)~~ "Child resistant" means the same as the term "special packaging" is defined in 16 C.F.R. 1700.1(a)(4) [~~January 1, 2015~~]-and is tested in accordance with the method described in 16 C.F.R. 1700.20[~~(January 1, 2015)~~].

~~(3)(2)~~ "Department" means the Utah Department of Health.

~~(4)(3)~~ "Electronic[-]\_cigarette" means the same as ~~that[the]~~ term is defined in [Subs]Section[s ~~26-38-2(1) and 59-14-802(2)~~] 76-10-101.

~~(5)(4)~~ "Electronic[-]\_cigarette [P]product" means the same as ~~that[the]~~ term is defined in [Subs]Section [59-14-802(3)]76-10-101.

~~(6)(5)~~ "Electronic[-]\_cigarette substance" means the same as ~~that[the]~~ term is defined in [Subs]Section [59-14-802(4)]76-10-101.

~~(7)(6)~~ "Local health department" means the same as ~~that[the]~~ term is defined in Subsection 26A-1-102(5).

~~(8)~~ "Industrial hemp product" means the same as that term defined is in Section 4-41-102.

(8) "Manufacture" means the same as ~~that[the]~~ term is defined in [Subs]Section 26-57-102[~~(5)~~].

(9) "Manufacturer" means the same as ~~that[the]~~ term is defined in [Subs]Section 26-57-102[~~(6)~~].

(10) "Manufacturer sealed electronic cigarette substance" means the same as that term defined is in Section 26-57-102.

~~(10)(11)~~ "Mg/mL" means milligrams per milliliter, a ratio for measuring an ingredient, in liquid form, where accuracy is measured in milligrams per milliliter, or a percentage equivalent.

~~(12)~~ "Nicotine" means the same as that term is defined in Section 76-10-101.

~~\_\_\_\_\_ (11) "Nicotine" means the same as the term is defined in the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. Sec. 387(12) (2013).~~

~~\_\_\_\_\_ (12) "Manufacturer sealed electronic cigarette substance" means the same as the term defined is in Subsection 26-57-102(6).~~

~~(13)~~ "Non-manufacturer sealed electronic cigarette substance" means:

(a) an electronic cigarette substance that is not a manufacturer sealed electronic cigarette substance; and

(b) an electronic cigarette substance container the electronic cigarette manufacturer does intend for a consumer to open or refill.

~~[(13)](14)~~ "Package[-]" or "packaging" means a pack, box, carton, or container of any kind, or if no other container, any wrapping, in which an electronic cigarette substance or a manufacturer sealed electronic cigarette substance is offered for sale, sold, or otherwise distributed to consumers.

~~(15)~~ "Permit" means the same as that term is defined in Section 26-62-101.

~~[(14)](16)~~ "Retailer" means any person who sells, offers for sale, exchanges, or offers to exchange for any form of consideration, an non-manufacturer sealed electronic[-] cigarette substance or a manufacturer sealed electronic cigarette substance to a consumer. This definition is without regard to the quantity of an non-manufacturer sealed electronic[-] cigarette substance or a manufacturer sealed electronic cigarette substance sold, offered for sale, exchanged, or offered for exchange.

~~[(15)](15)~~ "Retailing" means involvement in any of the activities listed in Subsection R384-415-2(14). This definition is without regard to the quantity of an electronic cigarette substance sold, offered for sale, exchanged, or offered for exchange.]

~~[(16)](17)~~ "Transaction statement" means a statement, in paper or electronic form, which the manufacturer transferring ownership of the product certifies that the non-manufacturer sealed electronic[-] cigarette substance or the manufacturer sealed electronic cigarette substance is in compliance with the standards in this rule.

### R384-415-3. Labeling.

(1) The retailer shall ensure that nicotine containing non-manufacturer sealed electronic[-] cigarette substance or manufacturer sealed electronic cigarette substance offered for sale to the consumer features on the product package label the required safety warning stating "WARNING<sup>[\*]</sup>: This product contains nicotine. Nicotine is an addictive chemical."

(2) Consistent with 21 C.F.R. 1143.3, the safety warning statements required in Subsection (1), the required safety warning statement must appear directly on the package and must be clearly visible underneath any cellophane or other clear wrapping as follows:

(a) be located in a conspicuous and prominent place on the two principal display panels of the package and the warning area must comprise at least 30 percent of each of the principal display panels;

(b) be printed in at least 12-point font size and ensures that the required warning statement occupies the greatest possible proportion of the warning area set aside for the required text;

(c) be printed in conspicuous and legible Helvetica bold or Arial bold type, or other sans serif fonts, and in black text on a white background or white text on a black background in a manner that contrasts by typography, layout, or color, with all other printed material on the package;

(d) be capitalized and punctuated as indicated in Subsection (1); and

(e) be centered in the warning area in which the text is required to be printed and positioned such that the text of the required warning statement and the other information on the principal display panel have the same orientation.

~~[(2)](3)~~ The retailer shall ensure that a<sup>[\*]</sup> non-manufacturer sealed electronic[-] cigarette substance or a manufacturer sealed electronic cigarette substance marketed as nicotine-free and offered for sale to the consumer features a safety warning stating "WARNING: Keep away from children and pets."

(4) The safety warning statements required in Subsection (3), the required safety warning statement must appear directly on the

package and must be clearly visible underneath any cellophane or other clear wrapping as follows:

(a) be located in a conspicuous and prominent place on the two principal display panels of the package and the warning area must comprise at least 30 percent of each of the principal display panels;

(b) be printed in at least 12-point font size and ensures that the required warning statement occupies the greatest possible proportion of the warning area set aside for the required text;

(c) be printed in conspicuous and legible Helvetica bold or Arial bold type, or other sans serif fonts, and in black text on a white background or white text on a black background in a manner that contrasts by typography, layout, or color, consistent with the other printed material on the package;

(d) be capitalized and punctuated as indicated in Subsection (3); and

(e) be centered in the warning area in which the text is required to be printed and positioned such that the text of the required warning statement and the other information on the principal display panel have the same orientation.

~~[(3)](3)~~ The retailer shall ensure that the required safety warning appear directly on the package and must be visible underneath any cellophane or other clear wrapping as follows:

(a) be located in a conspicuous and prominent place on the two principle display panels of the package and the warning area must comprise at least 30 percent of each of the principal display panels;

(b) is capitalized and punctuated as indicated in Subsection (1) or (2) of this Section;

(c) be printed in at least 12 point font size and ensure that the required warning statement occupies the greatest possible proportion of the warning area set aside for the required text;

(d) uses a conspicuous and legible Helvetica, Arial, or other san serif font;

(e) uses either a black font on a white background or a white font on a black background; and

(f) is centered in the warning area in which the text is required to be printed and positions such that the text of the required warning statement and the other information on the principal display panel have the same orientation.]

~~[(4)](5)~~ A retailer [of an electronic cigarette substance] will not be in violation of this [S]ection [when]for packaging that:

(a) contains a health warning;

(b) is supplied to the retailer by a<sup>[\*]</sup>the electronic cigarette substance manufacturer, importer, or distributor, who has the required state, local, or tobacco tax license or permit, if applicable; and

(c) is not altered by the retailer in a way that is material to the requirements of this [S]ection.

~~[(5)](6)~~ A<sup>[\*]</sup> non-manufacturer sealed electronic[-] cigarette substance or a manufacturer sealed electronic cigarette substance package that would otherwise be required to bear the safety warning in Subsection (1) or (2) [of this Section] but is too small or otherwise unable to accommodate a safety warning label with sufficient space to bear such information is exempt from compliance with the requirement provided that:

(a) the information and specifications required in Subsection (1) and ~~[(2)](3)~~ [of this Section] appear on the carton or other outer container or wrapper if the carton, outer container, or wrapper has sufficient space to bear the information; or

(b) appear on a tag otherwise firmly and permanently affixed to the non-manufacturer sealed [packaged-]electronic[-]

cigarette substance package or the manufacturer sealed electronic cigarette substance package.

~~(6)~~(7) In the case of Subsection ~~(5)~~(6)(a) or (b), the carton, outer container, wrapper, or tag will serve as the location of the principal display panels.

(8) The retailer shall ensure that an industrial hemp product that is a non-manufacturer sealed electronic cigarette substance or an industrial hemp product that is a manufacturer sealed electronic cigarette substance is compliant with Title 4, Chapter 41, Part 1, Industrial Hemp and Section R68-26-5, unless:

(a) an industrial hemp product that is a non-manufacturer sealed electronic cigarette substance marketed as containing nicotine and offered for sale or an industrial hemp product that is a manufacturer sealed electronic cigarette substance marketed as containing nicotine and offered for sale is in compliance with the safety warning requirements in Subsection (1) and (2); or

(b) an industrial hemp product that is a non-manufacturer sealed electronic cigarette substance marketed as nicotine-free and offered for sale or an industrial hemp product that is a manufacturer sealed electronic cigarette substance marketed as nicotine-free and offered for sale is exempt from the safety warning requirements in Subsection (3) and (4); if the product is compliant with Title 4, Chapter 41, Part 1, Industrial Hemp and Section R68-26-5.

**R384-415-4. Prohibited Sales.**

(1) The retailer shall be prohibited from selling a ~~a~~[n] non-manufacturer sealed electronic[-] cigarette substance or a manufacturer sealed electronic cigarette substance~~[to the public]~~ that is labeled ~~[to the public]~~as containing:

(a) additives that create the impression that a~~a~~[n] non-manufacturer sealed electronic[-] cigarette substance or a manufacturer sealed electronic cigarette substance has a health benefit;

(b) additives that are associated with energy and vitality;

(c) illegal or controlled substances as identified in Section 58-37-3; and

(d) additives having coloring properties for emissions.

(2) The retailer shall ensure that an industrial hemp product that is a non-manufacturer sealed electronic cigarette substance or an industrial hemp product that is a manufacturer sealed electronic cigarette substance is compliant with Title 4, Chapter 41, Part 1, Industrial Hemp; Section R68-26-5; and Section R68-33-5.

**R384-415-5. Nicotine Content.**

(1) The retailer shall be prohibited from selling a ~~a~~[n] non-manufacturer sealed electronic[-] cigarette substance or a manufacturer sealed electronic cigarette substance to the consumer ~~[that]~~[if the product is not compliant with the following:

(a) the nicotine concentration for a non-manufacturer sealed electronic cigarette substance is limited to 360 mg nicotine per container, or~~and~~ does not exceed a 24mg/mL concentration of nicotine; and

(b) the nicotine concentration for a manufacturer sealed electronic cigarette substance is limited:

(i) to 5% nicotine by weight per container, or does not exceed a 59mg/mL concentration of nicotine, effective July 1, 2021; and

(ii) to 3% nicotine by weight per container, or does not exceed a 36mg/mL concentration of nicotine, effective January 1, 2022.

**R384-415-6. Packaging.**

(1) The retailer shall ensure that the packaging of a~~a~~[n] non-manufacturer sealed electronic[-] cigarette substance intended for sale to a consumer is certified as child resistant, and compliant with federal standards and law concerning child nicotine poisoning prevention.

(2) The retailer shall sell non-manufacturer sealed electronic cigarette substances and manufacturer sealed electronic cigarette substances in the product's original packaging.

(3) The retailer shall be prohibited from repackaging or dispensing any non-manufacturer sealed electronic cigarette substance or any manufacturer sealed electronic cigarette substance for retail sale.

(4) The retailer shall be prohibited from refilling a manufacturer sealed electronic cigarette substance that is not intended to be opened by a retailer or a consumer.

(5) The retailer shall ensure that an industrial hemp product that is a non-manufacturer sealed electronic cigarette substance or an industrial hemp product that is a manufacturer sealed electronic cigarette substance is compliant with Title 4, Chapter 41, Part 1, Industrial Hemp; and Rule R68-26.

**R384-415-7. Product Quality.**

~~[When the United States Food and Drug Administration instituting its process to approve electronic cigarettes, the retailer shall only sell an electronic cigarette substance that has been approved for regulatory sale by the United States Food and Drug Administration through a Pre Market Tobacco application or Substantial Equivalent application.]~~

(1) No manufacturer or retailer shall sell, offer for sale, or distribute an electronic cigarette, an electronic cigarette product, or an electronic cigarette substance unless the product complies with each of the relevant electronic cigarette product standards established by the U.S. Food and Drug Administration under 21 U.S.C. 387g(3).

(2) Notwithstanding Subsection (3), after September 9, 2021, no manufacturer or retailer shall sell, offer for sale, or distribute an electronic cigarette, an electronic cigarette product, or an electronic cigarette substance unless the product has received marketing authorization from the U.S. Food and Drug Administration (FDA) under 21 U.S.C. 387j(c)(1)(A)(i), 21 U.S.C. 387j(a)(2)(A)(i), or 21 U.S.C. 387j(a)(2)(A)(ii).

(3) This section will take effect on the date that manufacturers are required to secure marketing orders from the FDA to continue marketing their products in the United States. Any delays in enforcement efforts by FDA due to litigation will not impact the effective date of this section.

**R384-415-8. Record Keeping and Testing.**

(1) The retailer shall provide the non-manufacturer sealed electronic[-] cigarette substance~~[s]~~ transaction statements or manufacturer sealed electronic cigarette substance transaction statements to the Department or the local health department within 14 calendar~~[five working]~~ days of a request. The retailer shall ensure that the transaction statement includes manufacturer certifications that:

(a) the labeling standards are compliant with Section R384-415-3;

~~(b)~~(b) the nicotine content of a~~a~~[n] non-manufacturer sealed electronic[-] cigarette substance is compliant with Subsection R384-415-5(1)(a) and the nicotine content of a manufacturer sealed electronic cigarette substance is compliant with Subsection R384-415-5(1)(b);



~~[(b)](c) the packaging standards are compliant with Section R384-415-6[of an electronic cigarette substance is child-resistant]; and~~

~~[(e)](d) the product quality standards are compliant with Section R384-415-7[An electronic cigarette substance that has been approved for regulatory sale by the United States Food and Drug Administration through a Pre Market Tobacco application or Substantial Equivalent application].~~

(2) The retailer shall provide evidence that supports the documents described in Subsection R384-415-8(1) to the Department or the local health department within ~~14 calendar~~~~[5 working]~~ days of a request.

(3) The retailer shall have access to the documents described in Subsections R384-415-8(1) and R384-415-8(2) for a period of two years after the retailer purchases the non-manufacturer sealed electronic[-] cigarette substance or the manufacturer sealed electronic cigarette substance.

**R384-415-9. Enforcement.**

(1) In enforcing or seeking penalties of any violation as set forth in this rule or Section 26-57-103, the Department and local health departments shall comply with the enforcement requirement in Title 26, Chapter 62, Part 3, Enforcement.

~~[(1) The Department may enforce and seek penalties for the violation of public health rules including, the standards for electronic cigarettes set forth in this rule as prescribed in Sections 26-23-1 through 26-23-10.~~

~~[(2) A local health department may enforce and seek penalties for the violation of the standards for electronic cigarettes set forth in this rule. A local health department shall have authority to enforce and seek penalties for violations of public health law including this rule as is found in Sections 26-23-1 through 26-23-10, 26A-1-108, 26A-1-114(1) and 26A-1-123.~~

~~[(3) The Department or local health department is responsible to make a determination as to if a person holding a Utah State Tax Commission license to sell electronic cigarettes has violated the standards of this rule. If the Department or local health department makes such a determination it shall notify the Utah State Tax Commission to revoke the person's license as provided in Subsection 59-14-803(5).~~

~~[(4) Administrative or civil enforcement of this rule by the Department or local health departments does not preclude criminal enforcement by a law enforcement agency and prosecution of any violation of the standards in this rule that can constitute a criminal offense under state law.]~~

**KEY:** electronic cigarettes, nicotine, standards, Electronic Cigarette Regulation Act  
**Date of Enactment or Last Substantive Amendment:** ~~[December 1, 2019]~~**2021**  
**Authorizing, and Implemented or Interpreted Law:** ~~26-57-103; 59-14-803(5)]~~

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	R414-505-6	Filing No. 53270

**Agency Information**

<b>1. Department:</b>	Health	
<b>Agency:</b>	Health Care Financing, Coverage and Reimbursement Policy	
<b>Building:</b>	Cannon Health Building	
<b>Street address:</b>	288 N 1460 W	
<b>Mailing address:</b>	PO Box 143102	
<b>City, state, zip:</b>	Salt Lake City, UT 84114-3102	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Craig Devashrayee	801-538-6641	cdevashrayee@utah.gov
Please address questions regarding information on this notice to the agency.		

**General Information**

<b>2. Rule or section catchline:</b>
R414-505-6. Intergovernmental Transfer (IGT) Certification
<b>3. Purpose of the new rule or reason for the change:</b>
The purpose of this change is to implement a submission requirement for non-state governmental entities (NSGEs) to obtain annual IGT certification.
<b>4. Summary of the new rule or change:</b>
This amendment includes a deadline for NSGEs to submit their annual IGT certification, using the annual IGT certification form.

**Fiscal Information**

<b>5. Aggregate anticipated cost or savings to:</b>
<b>A) State budget:</b>
There is no impact to the state budget as this change only specifies a time requirement for NSGEs to obtain IGT certification. It neither affects member services nor provider reimbursement.
<b>B) Local governments:</b>
There is no impact on local governments as this change only specifies a time requirement for NSGEs to obtain IGT certification. It neither affects member services nor provider reimbursement.
<b>C) Small businesses ("small business" means a business employing 1-49 persons):</b>
There is no impact on small businesses as this change only specifies a time requirement for NSGEs to obtain IGT certification. It neither affects member services nor provider reimbursement.

**D) Non-small businesses** ("non-small business" means a business employing 50 or more persons):

There is no impact on non-small businesses as this change only specifies a time requirement for NSGEs to obtain IGT certification. It neither affects member services nor provider reimbursement.

**E) Persons other than small businesses, non-small businesses, state, or local government entities** ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an **agency**):

There is no impact on Medicaid providers and Medicaid members as this change only specifies a time requirement for NSGEs to obtain IGT certification. It neither affects member services nor provider reimbursement.

**F) Compliance costs for affected persons:**

There are no compliance costs to a single Medicaid provider or Medicaid member as this change only specifies a time requirement for NSGEs to obtain IGT certification. It neither affects member services nor provider reimbursement.

**G) Regulatory Impact Summary Table** (This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts will be included in narratives above.)

**Regulatory Impact Table**

Fiscal Cost	FY2021	FY2022	FY2023
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Cost</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Fiscal Benefits</b>			
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0

Other Persons	\$0	\$0	\$0
<b>Total Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Net Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

**H) Department head approval of regulatory impact analysis:**

The Interim Executive Director of the Department of Health, Richard G. Saunders, has reviewed and approved this fiscal analysis.

**6. A) Comments by the department head on the fiscal impact this rule may have on businesses:**

These new requirements for annual IGT certification will not result in a fiscal impact to businesses.

**B) Name and title of department head commenting on the fiscal impacts:**

Richard G. Saunders, Interim Executive Director

**Citation Information**

**7. This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws. State code or constitution citations (required):**

Section 26-1-5	Section 26-18-3	Section 26-18-21
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**Public Notice Information**

**9. The public may submit written or oral comments to the agency identified in box 1.** (The public may also request a hearing by submitting a written request to the agency. The agency is required to hold a hearing if it receives requests from ten interested persons or from an association having not fewer than ten members. Additionally, the request must be received by the agency not more than 15 days after the publication of this rule in the Utah State Bulletin. See Section 63G-3-302 and Rule R15-1 for more information.)

**A) Comments will be accepted until:** 02/16/2021

**10. This rule change MAY become effective on:** 02/23/2021

NOTE: The date above is the date on which this rule MAY become effective. It is NOT the effective date. After the date designated in Box 10, the agency must submit a Notice of Effective Date to the Office of Administrative Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	Richard G. Saunders, Interim Executive Director	<b>Date:</b>	12/25/2020
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**R414. Health, Health Care Financing, Coverage and Reimbursement Policy.**

**R414-505. Participation in the Nursing Facility Non-State Government-Owned Upper Payment Limit Program.**

**R414-505-6. Intergovernmental Transfer (IGT) Certification.**

(1) With its IGT, using the [F]IGT [C]certification [F]form [F] prescribed by the Medicaid agency, the NSGE shall specify the dollar amount and certify the source of the IGT funds. The NSGE shall specify, on the form, a detailed description of the IGT monies and the legal basis for the monies ability to be used to match federal funds.

(2) Using the IGT annual certification form prescribed by the Medicaid agency, the NSGE shall submit its annual IGT certification required in Section 26-18-21 no later than 30 days following the end of the NSGE's fiscal year end date.

**KEY: Medicaid**

**Date of Enactment or Last Substantive Amendment:** ~~2021~~ **August 12, 2016**

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

NOTICE OF PROPOSED RULE		
<b>TYPE OF RULE:</b> Amendment		
<b>Utah Admin. Code Ref (R no.):</b>	<b>R432-550</b>	<b>Filing No. 53262</b>

**Agency Information**

<b>1. Department:</b>	Health	
<b>Agency:</b>	Family Health and Preparedness, Licensing	
<b>Room no.:</b>	100	
<b>Building:</b>	Highland	
<b>Street address:</b>	3760 S Highland Drive	
<b>City, state:</b>	Salt Lake City, UT 84106	
<b>Mailing address:</b>	PO Box 144103	
<b>City, state, zip:</b>	Salt Lake City, UT 84114-4103	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Kristi Grimes	801-273-2821	kristigrimes@utah.gov
Joel Hoffman	801-273-2804	jhoffman@utah.gov
Please address questions regarding information on this notice to the agency.		

**General Information**

<b>2. Rule or section catchline:</b>
R432-550. Birthing Centers
<b>3. Purpose of the new rule or reason for the change:</b>
The purpose of this amendment is to modify this rule regulating birthing centers to conform to the approval of H.B. 428, passed in the 2020 General Session, which allows for an alongside midwifery unit in a hospital.
<b>4. Summary of the new rule or change:</b>
This amendment defines an "alongside midwifery unit," provides regulation for the clinical director and the practicing midwife of such a unit. This amendment also defines the relationship between the hospital and the alongside midwifery unit, specifically regarding staffing, records, and transfer agreements. The Health Facility Committee reviewed and approved this rule amendment on 09/09/2020.

**Fiscal Information**

<b>5. Aggregate anticipated cost or savings to:</b>
<b>A) State budget:</b>
State government birthing center survey process was thoroughly reviewed. This change will likely impact the current process, as "alongside midwifery units" will require licensure and re-licensure surveys. Approximately two surveyors will be required to conduct each survey inspection. The inspections are expected to take approximately four hours each. It is expected that two "alongside midwifery units" will require inspections the first year, and one inspection for each of the next two years. The surveyor wages will cause an increase to the state budget.
<b>B) Local governments:</b>
Local government city business licensing requirements were considered. This proposed rule amendment should not impact local governments' revenues or expenditures. Birthing centers are regulated by the state health department and not local governments. There will be no change in local business licensing or any other item(s) with which local government is involved.
<b>C) Small businesses ("small business" means a business employing 1-49 persons):</b>
After conducting a thorough analysis, it was determined that this rule amendment should not impact costs for small business Licensed Birthing Centers. There are six small birthing center businesses, as determined by the Department's licensing data system. (North American Industry Classification System (NAICS) codes used – Offices of Other Health Practitioners 6213, reports 1,859 small businesses). The proposed amendments will not apply to these small businesses.

**D) Non-small businesses** ("non-small business" means a business employing 50 or more persons):

After conducting a thorough analysis, it was determined that this rule amendment should not impact costs for non-small business licensed birthing centers. There are no non-small business birthing centers, as determined by the Department's licensing data system. There are 47 non-small business hospitals, as determined by the Department's licensing data system, that may participate with the alongside midwifery unit. (NAICS codes used - General Medical and Surgical Hospitals 6221, reports 94 non-small businesses). The non-small business hospitals that choose to offer an alongside midwifery unit will still need the same amount of staffing to operate. Costs for care staff will remain the same.

**E) Persons other than small businesses, non-small businesses, state, or local government entities** ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an **agency**):

After conducting a thorough analysis, it was determined that this rule amendment will not result in a fiscal impact to affected persons because this amendment modifies health care facility requirements and therefore, would not add cost for persons, businesses, or local government entities.

**F) Compliance costs for affected persons:**

After conducting a thorough analysis, it was determined that this rule amendment will not result in a fiscal impact to affected persons because this amendment modifies health care facility requirements and therefore, would not add cost for persons, businesses, or local government entities.

**G) Regulatory Impact Summary Table** (This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts will be included in narratives above.)

**Regulatory Impact Table**

Fiscal Cost	FY2021	FY2022	FY2023
State Government	\$448	\$224	\$224
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Cost</b>	<b>\$448</b>	<b>\$224</b>	<b>\$224</b>
<b>Fiscal Benefits</b>			

State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Net Fiscal Benefits</b>	<b>\$-448</b>	<b>\$-448</b>	<b>\$-448</b>

**H) Department head approval of regulatory impact analysis:**

The Interim Executive Director of the Department of Health, Richard G. Saunders, has reviewed and approved this fiscal analysis.

**6. A) Comments by the department head on the fiscal impact this rule may have on businesses:**

After conducting a thorough analysis, it was determined that this amendment will not result in fiscal impact to businesses.

**B) Name and title of department head commenting on the fiscal impacts:**

Richard G. Saunders, Interim Executive Director

**Citation Information**

**7. This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws. State code or constitution citations (required):**

Title 26, Chapter 21		
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**Public Notice Information**

**9. The public may submit written or oral comments to the agency identified in box 1.** (The public may also request a hearing by submitting a written request to the agency. The agency is required to hold a hearing if it receives requests from ten interested persons or from an association having not fewer than ten members. Additionally, the request must be received by the agency not more than 15 days after the publication of this rule in the Utah State Bulletin. See Section 63G-3-302 and Rule R15-1 for more information.)

<b>A) Comments will be accepted until:</b>	02/16/2021
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<b>10. This rule change MAY become effective on:</b>	02/23/2021
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NOTE: The date above is the date on which this rule MAY become effective. It is NOT the effective date. After the date designated in Box 10, the agency must submit a Notice of Effective Date to the Office of Administrative Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	Richard G. Saunders, Interim Executive Director	<b>Date:</b>	11/30/2020
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**R432. Health, Family Health and Preparedness, Licensing.**

**R432-550. Birthing Centers.**

**R432-550-4. Definitions.**

(1) Common definitions Section R432-1-3.

(2) Special Definitions:

(a) "Alongside midwifery unit" means a birthing unit that may be licensed as a birthing center and is connected to a hospital facility, either through a bridge, ramp, or adjacent to the labor and delivery unit within the hospital with care provided with the midwifery model of care, where maternal patients are received and care provided during labor, delivery, and immediately after delivery.

(~~a~~)b) "Birth room" means a room and environment designed, equipped and arranged to provide for the care of a maternal patient and newborn and to accommodate a maternal patient's support person during the process of vaginal birth and recovery. "Birth room" does not include rooms intended for pre-admittance or post-discharge accommodations of maternal patients and their newborns.

(~~b~~)c) "Birthing center" means a ~~freestanding~~ facility, receiving maternal patients and providing care during labor, delivery and immediately after delivery; including an alongside midwifery unit.

(~~e~~)d) Certification in Cardiopulmonary Resuscitation (CPR) refers to certification issued after completion of a course that is consistent with the most current version of the American Heart Association Guidelines for Health Care Provider CPR.

(~~d~~)e) "Patient" means a woman or newborn receiving care and services provided by a birthing center during labor, childbirth and recovery.

(~~e~~)f) "Clinical staff" means a licensed maternity care practitioner appointed by the governing authority to practice within the birthing center and governed by rules approved by the governing body.

(~~f~~)g) "Support person" means the individual or individuals selected or chosen by a patient to provide emotional support and to assist her during the process of labor and childbirth.

(~~g~~)h) "Vaginal birth" means the three stages of labor.

(~~h~~)i) "Licensed maternity care practitioner" means a person licensed to provide maternity care services including physicians licensed under Title 58, Chapters 67 and 68, Certified Nurse-Midwives licensed under Title 58, Chapter 44a, Naturopathic Physicians licensed under Title 58, Chapter 71, Licensed Direct-Entry Midwives licensed under Title 58, chapter 77, and others licensed to provide maternity, midwifery, or obstetric care under Title 58.

**R432-550-8. Clinical Director.**

(1) The clinical director shall be responsible for implementing, coordinating and assuring the quality of patient care services.

(2) The clinical director shall:

(a) be currently licensed to practice medicine or midwifery in Utah;

(b) have training and expertise in obstetric and newborn services offered to ensure adequate supervision of patient care services~~[-]; and~~

(c) for an alongside midwifery unit, the clinical director shall be a physician as defined in Section 58-67-102 or a certified nurse midwife under Title 58, Chapter 44a, Nurse Midwife Practice Act.

(3) The clinical director's responsibilities shall be included in a written job description available for Department review. The clinical director shall:

(a) review and update facility protocols;

(b) review and evaluate clinical staff privileges and revise them as necessary;

(c) recommend, to the governing body, names of qualified licensed health care practitioners to perform approved procedures and the corresponding clinical staff privileges to be granted;

(d) coordinate, direct and evaluate clinical operations of the facility;

(e) evaluate and recommend to the administrator the type and amount of equipment needed in the facility;

(f) ensure that qualified staff are on the premises while patients are admitted to the facility;

(g) ensure clinical staff documentation is recorded immediately and reflects a description of care given;

(h) ensure that planned birthing center services are within the scope of privileges granted to the clinical staff; and

(i) recommend to the administrator appropriate remedial action and disciplinary action, when necessary, to correct violations of clinical protocols.

**R432-550-10. Contracts.**

(1) The licensee shall provide a written contract for any birthing center services that are not provided directly by the facility. The licensee shall ensure that the contracted entity:

(a) performs according to facility policies and procedures;

(b) conforms to standards required by laws, rules and regulations; and

(c) provides services that meet professional standards and are timely.

(2) Contracts shall be available for Department review.

(3) An alongside midwifery unit shall have a transfer agreement in place with the adjoining hospital to transfer a patient to the adjacent hospital's labor and delivery unit if a higher level of care is needed, and for services that are provided by the adjacent hospital's staff in collaboration with the alongside midwifery unit staff.

(4) An alongside midwifery unit may contract with staff from the adjoining hospital to assist with newborn care or resuscitation of a patient in an emergency.

**R432-550-14. Clinical Staff and Personnel.**

(1) Information identifying current clinical staff and on-call and emergency telephone numbers shall be readily available to birthing center personnel.

(2) Clinical staff and licensed personnel of the birthing center shall be trained in emergency and resuscitation measures for infants and adults, including but not limited to, cardiopulmonary resuscitation certification.

(3) A licensed maternity care practitioner shall be present at each birth and remain until the maternal patient and newborn are stable postpartum.

NOTICES OF PROPOSED RULES

(4) A second member of the birthing center staff who is licensed or certified to give cardiopulmonary resuscitation shall be present at each birth.

(5) Clinical staff, licensed personnel and support staff shall be provided to meet patients' needs, to ensure patients' safety and to ensure that patients in active labor are attended.

(6) A midwife practicing in an alongside midwifery unit shall be a certified nurse midwife under Title 58, Chapter 44a, Nurse Midwife Practice Act.

**R432-550-20. Medical Records.**

(1) Medical records shall be complete, accurately documented and systematically organized to facilitate retrieval and compilation of information.

(2) An employee designated by the administrator shall be responsible and accountable for the processing of medical records.

(3) The medical record and its contents shall be safeguarded from loss, defacement, tampering, fires and floods.

(4) Medical records shall be protected against access by unauthorized individuals. Birthing centers shall:

(a) ~~keep [M] medical record information [shall be ]confidential[-]; and~~

~~(b) [The birthing center may disclose medical record information only to authorized persons in accordance with federal, state and local laws.~~

~~(c) The birthing center shall obtain]obtain~~ consent from the patient before releasing client information identifying the client, including photographs, unless release is otherwise allowed or required by law.

(5) Medical records shall be retained for at least five years after the last date of patient care. Records of minors, including records of newborn infants, shall be retained for three years after the minor reaches legal age under Utah law, but in no case less than five years.

(6) The birthing center shall maintain an individual medical record for each patient which shall include but is not limited to written documentation of the following:

(a) admission record with demographic information and patient identification data;

(b) history and physical examination which shall be up-to-date upon the patient's admission;

(c) written and signed informed consent;

(d) orders by a clinical staff member;

(e) record of assessments, plan of care and services provided;

(f) record of medications and treatments administered;

(g) laboratory and radiology reports;

(h) discharge summary for mother and newborn to include a note of condition, instructions given and referral as appropriate;

(i) prenatal care record containing at least prenatal blood serology, Rh factor determination, past obstetrical history and physical examination and documentation of fetal status;

(j) monitoring of progress in labor with assessment of maternal and newborn reaction to the process of labor;

(k) fetal monitoring record;

(l) labor and delivery record, including type of delivery, record of anesthesia and operative procedures if any; and

(m) documentation that the patient is informed of the statement of patient rights.

(7) The records of newborn infants shall include the following:

(a) date and hour of birth, birth weight and length, period of gestation, gender and condition of infant on delivery including Apgar scores and resuscitative measures;

(b) mother's name or unique identification;

(c) record of ophthalmic prophylaxis; and

(d) the identification number of the screening kit used to screen for metabolic diseases, documentation that metabolic screening, genetic screening, PKU or other metabolic disorders reports were completed or refused by the client.

(8) An alongside midwifery unit may integrate medical records with the medical record system of the adjoining hospital.

**KEY: health care facilities**

**Date of Enactment or Last Substantive Amendment: ~~2021~~[October 17, 2017]**

**Notice of Continuation: November 9, 2015**

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

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Repeal		
Utah Admin. Code Ref (R no.):	R495-862	Filing No. 53267

**Agency Information**

<b>1. Department:</b>	Human Services	
<b>Agency:</b>	Administration	
<b>Building:</b>	MASOB	
<b>Street address:</b>	195 N 1950 W	
<b>City, state:</b>	Salt Lake City, UT 84115	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Jonah Shaw	801-538-4219	jshaw@utah.gov

Please address questions regarding information on this notice to the agency.

**General Information**

<b>2. Rule or section catchline:</b>
R495-862. Communicable Disease Control Act
<b>3. Purpose of the new rule or reason for the change:</b>
Following a five-year review, it was determined that this rule is no longer necessary. The rule language and requirements are outdated. Any requirements or procedures are established in Utah Communicable Disease Control Act of Title 26, Chapter 6, which does not authorize or require Department of Human Services (DHS) rulemaking.
<b>4. Summary of the new rule or change:</b>
This rule is being repealed in its entirety.

**Fiscal Information**

**5. Aggregate anticipated cost or savings to:**

**A) State budget:**

Due to the nature of this repeal, there is no anticipated cost or savings to the state budget.

**B) Local governments:**

Due to the nature of this repeal, there is no anticipated cost or savings to local governments.

**C) Small businesses** ("small business" means a business employing 1-49 persons):

Due to the nature of this repeal, there is no anticipated cost or savings to small businesses.

**D) Non-small businesses** ("non-small business" means a business employing 50 or more persons):

Due to the nature of this repeal, there is no anticipated cost or savings to non-small businesses.

**E) Persons other than small businesses, non-small businesses, state, or local government entities** ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an **agency**):

Due to the nature of this repeal, there is no anticipated cost or savings to persons other than small businesses, non-small businesses, state, or local government entities.

**F) Compliance costs for affected persons:**

There are no compliance costs through this repeal.

**G) Regulatory Impact Summary Table** (This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts will be included in narratives above.)

**Regulatory Impact Table**

Fiscal Cost	FY2021	FY2022	FY2023
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Cost</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Fiscal Benefits</b>			

State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Net Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

**H) Department head approval of regulatory impact analysis:**

The Executive Director of the Department of Human Service, Ann Williamson, has reviewed and approved this fiscal analysis.

**6. A) Comments by the department head on the fiscal impact this rule may have on businesses:**

After conducting a thorough analysis, it was determined that these proposed rule amendments will not result in a fiscal impact to small businesses

**B) Name and title of department head commenting on the fiscal impacts:**

Ann Williamson, Executive Director

**Citation Information**

**7. This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws. State code or constitution citations (required):**

Section 62A-1-110

**Public Notice Information**

**9. The public may submit written or oral comments to the agency identified in box 1.** (The public may also request a hearing by submitting a written request to the agency. The agency is required to hold a hearing if it receives requests from ten interested persons or from an association having not fewer than ten members. Additionally, the request must be received by the agency not more than 15 days after the publication of this rule in the Utah State Bulletin. See Section 63G-3-302 and Rule R15-1 for more information.)

**A) Comments will be accepted until:** 02/16/2021

**10. This rule change MAY become effective on:** 02/23/2021

NOTE: The date above is the date on which this rule MAY become effective. It is NOT the effective date. After the date designated in Box 10, the agency must submit a Notice of Effective Date to the Office of Administrative Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	Mark Brasher, Deputy Director	<b>Date:</b>	12/21/2020
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**R495. Human Services, Administration.**

~~R495-862. Communicable Disease Control Act.~~

~~R495-862-1. Compliance with Communicable Disease Control Act.~~

~~All units of the Department of Human Services will follow established public health guidelines and procedures, including the Communicable Disease Control Act, when providing services to persons infected with the human immunodeficiency virus (HIV). When persons are admitted to programs of the Department, it must be done in such a manner so as to protect the community, other consumers, staff, and the infected party. Administrative guidelines established by the Department are to be available to all units.~~

~~KEY: social services, communicable diseases~~

~~Date of Enactment or Last Substantive Amendment: 1987~~

~~Notice of Continuation: January 4, 2016~~

~~Authorizing, and Implemented or Interpreted Law: 62A-1-110~~

NOTICE OF PROPOSED RULE		
<b>TYPE OF RULE:</b> Amendment		
<b>Utah Admin. Code Ref (R no.):</b>	<b>R527-35</b>	<b>Filing No. 53260</b>

**Agency Information**

<b>1. Department:</b>	Human Services	
<b>Agency:</b>	Recovery Services	
<b>Street address:</b>	515 E 100 S	
<b>City, state:</b>	Salt Lake City, UT 84102-4211	
<b>Mailing address:</b>	PO Box 45033	
<b>City, state, zip:</b>	Salt Lake City, UT 84145-0033	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Scott Weight	801-741-7435	sweigh2@utah.gov
Casey Cole	801-741-7523	cacole@utah.gov
Jonah Shaw	801-538-4225	jshaw@utah.gov

Please address questions regarding information on this notice to the agency.

**General Information**

<b>2. Rule or section catchline:</b>
R527-35. Non-IV-A Fee Schedule

**3. Purpose of the new rule or reason for the change:**

Public Law No. 115-123 amended section 454(6)(B)(ii) of the Social Security Act (42 U.S.C. 654(6)(b)(ii)) to increase the Annual Collection Processing Fee for Child Support Services from \$25 to \$35. Additionally, the amount the state must collect before imposing the annual collection fee increased from \$500 to \$550 for each federal fiscal year (October 1st though September 30th). Section 62A-11-303.7 was amended on 05/14/2019 to reflect this change. This rule outlines all Office of Recovery Services' fees in one location and must be updated to match the existing laws.

**4. Summary of the new rule or change:**

The Annual Collection Processing Fee for Child Support Services was increased from \$25 to \$35. This amendment also cleans up preexisting language to meet the standards set forth in the Utah Rulewriting Manual.

**Fiscal Information**

**5. Aggregate anticipated cost or savings to:**

**A) State budget:**

The Annual Collection Processing Fee for Child Support Services is retained by the federal government. There is no anticipated cost or savings to the state budget due to the amendment to this rule.

**B) Local governments:**

Administrative rules of the Office of Recovery Services do not apply to local governments. There are no anticipated costs or savings for local governments due to this amendment.

**C) Small businesses ("small business" means a business employing 1-49 persons):**

The Annual Collection Processing Fee for Child Support Services is retained by the federal government. There are no anticipated costs or savings to small businesses due to the amendment to this rule.

**D) Non-small businesses ("non-small business" means a business employing 50 or more persons):**

The Annual Collection Processing Fee for Child Support Services is retained by the federal government. There are no anticipated costs or savings to non-small businesses due to the amendment to this rule.



**E) Persons other than small businesses, non-small businesses, state, or local government entities** ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an **agency**):

Any additional cost to individuals is due to the underlying federal law change, later codified in Utah state law in Section 62A-11-303.7. Per the Agency Estimate of the Fiscal Impact of Implementing Section 62A-11-303.7, it is estimated that fiscal year 2020, 27,000 individuals will pay the \$35 Annual Application fee or a portion thereof. The cost of this amendment to those individuals would be estimated at 27,000 times a \$10 increase for a total of \$270,000.

**F) Compliance costs for affected persons:**

\$270,000 was estimated based the federal law change, when codifying the change in Section 62A-11-303.7.

**G) Regulatory Impact Summary Table** (This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts will be included in narratives above.)

**Regulatory Impact Table**

Fiscal Cost	FY2021	FY2022	FY2023
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$270,000	\$270,000	\$270,000
<b>Total Fiscal Cost</b>	<b>\$270,000</b>	<b>\$270,000</b>	<b>\$270,000</b>
<b>Fiscal Benefits</b>			
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Net Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

**H) Department head approval of regulatory impact analysis:**

The Executive Director of the Department of Human Services, Ann Silverberg Williamson, has reviewed and approved this fiscal analysis.

**6. A) Comments by the department head on the fiscal impact this 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.

**B) Name and title of department head commenting on the fiscal impacts:**

Ann Williamson, Executive Director

**Citation Information**

**7. This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws. State code or constitution citations (required):**

42 U.S.C. 654(6)(b)(ii)	Section 62A-11-104	Section 62A-11-107
Subsection 63J-1-504(2)(a)		

**Public Notice Information**

**9. The public may submit written or oral comments to the agency identified in box 1.** (The public may also request a hearing by submitting a written request to the agency. The agency is required to hold a hearing if it receives requests from ten interested persons or from an association having not fewer than ten members. Additionally, the request must be received by the agency not more than 15 days after the publication of this rule in the Utah State Bulletin. See Section 63G-3-302 and Rule R15-1 for more information.)

**A) Comments will be accepted until:** 02/16/2021

**10. This rule change MAY become effective on:** 02/23/2021

NOTE: The date above is the date on which this rule MAY become effective. It is NOT the effective date. After the date designated in Box 10, the agency must submit a Notice of Effective Date to the Office of Administrative Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	Liesa Stockdale, Director	<b>Date:</b>	10/13/2020
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**R527. Human Services, Recovery Services.**

**R527-35. Non-IV-A Fee Schedule.**

**R527-35-1. Authority and Purpose.**

(1) The Department of Human Services is authorized to create rules necessary for the provision of social services by Section 62A-11-111. The Office of Recovery Services [Child Support Services] (ORS [CSS]) is authorized to adopt, amend, and enforce rules by Section 62A-11-107.

(2) The purpose of this rule is to provide information regarding the ORS [CSS] fee schedule for Non-IV-A cases which is authorized by [F] federal [R] regulations found at 45 CFR 302.33. ORS [CSS] is responsible for utilizing fees as one method to finance any costs incurred pursuant to Section 62A-11-104. This rule outlines when a fee will be charged and the amount that will be assessed on a case that qualifies for a particular fee.

**R527-35-2. Non-IV-A Fee Schedule.**

(1) Pursuant to 45 CFR 302.33 [(2010)] and U.S.C. 654(6)(b)(ii), ORS [the Office of Recovery Services may] must charge an applicant or recipient of child support services who is not receiving IV-A financial assistance or Medicaid [one or more fees for specific services. These fees are itemized below:

The following fees, which have been established by the federal government:

1. the a \$35 Annual Collection Processing Fee for Child Support Services [of \$25]. This fee is charged to the custodial parent who has never received cash assistance. The fee is retained from child support collected on behalf of the custodial parent after \$[500.00]550.00 has been collected within the one year period, October 1 through September 30 each year.

(2) [†]The full IRS enforcement fee of \$122.50 is charged if a case qualifies for full IRS collection services, the obligee requests those services, and the amount of the child support obligation is certified for those services by the United States Secretary of the Treasury.

(3) ORS shall charge the following service fees on any qualifying case [The following fees, which have been established by the Office]:

[+](a) a [P]parent [L]locator [S]service fee of \$20.00 [-], [F]this fee is waived if the case was closed within the last 12 months for the reason CTF, [(cannot find the non-custodial parent,)] or AFC, [(non-custodial parent lives in a foreign jurisdiction)];

[2-](b) the cost of genetic testing if the alleged father is excluded as the biological father;

[3-](c) an administrative fee of 6% of the payment amount each time a payment is processed, not to exceed \$12.00 per month;

[4-](d) a fee of \$25.00, to be paid at the time the obligor's federal tax refund is intercepted to offset a Non-IV-A support arrearage if the refund is \$50.00 or more, [-] [†]if the refund is more than \$25.00 but less than \$50.00, the fee is the refund amount minus \$25.00; and

[5-](e) the Child Support Lien Network (CSLN) fee of \$52.00, to be paid at the time the levy is processed.

**KEY: child support**

**Date of Enactment or Last Substantive Amendment: 2021 [July 22, 2016]**

**Notice of Continuation: October 19, 2020**

**Authorizing, and Implemented or Interpreted Law: 45 CFR 302.33; U.S.C. 654(6)(b)(ii); 62A-11-104; 62A-11-107; 62A-11-111; 63J-1-504(2)(a)**

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	R590-102	Filing No. 53271

**Agency Information**

<b>1. Department:</b>	Insurance	
<b>Agency:</b>	Administration	
<b>Room no.:</b>	3110	
<b>Building:</b>	State Office Building	
<b>Street address:</b>	450 N State St	
<b>City, state:</b>	Salt Lake City, UT 84114	
<b>Mailing address:</b>	PO Box 146901	
<b>City, state, zip:</b>	Salt Lake City, UT 84114-6901	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Steve Gooch	801-538-3803	sgooch@utah.gov

Please address questions regarding information on this notice to the agency.

**General Information**

<b>2. Rule or section catchline:</b>
R590-102. Insurance Department Fee Payment Rule
<b>3. Purpose of the new rule or reason for the change:</b>
The rule is being amended to make changes to the Insurance Department's (Department) captive fee structure.
<b>4. Summary of the new rule or change:</b>
The amendments change the cost of an initial captive insurer license dependent on the month it is filed and changes the annual license renewal amount. Additionally, fees for an industrial insured captive are increased and separated from other captive types to better reflect the additional time and expertise necessary to regulate them.

**Fiscal Information**

<b>5. Aggregate anticipated cost or savings to:</b>
<b>A) State budget:</b>
The Department is increasing its annual captive license fee by \$2,250 a year. With 381 captive licensees currently, this will result in the Department collecting an additional \$857,250 in annual revenue.

<b>B) Local governments:</b>
There is no anticipated cost or savings to local governments. The fee relates to captive insurers only and has no bearing on any other parties.
<b>C) Small businesses</b> ("small business" means a business employing 1-49 persons):
A very small number of captives operating in Utah have employees. Of the 381 currently licensed captives, fewer than 20 are estimated to have 1 - 49 employees. These captives will have a cost increase of \$2,250 for their annual license fees, resulting in an aggregate cost increase of less than \$45,000 annually.
<b>D) Non-small businesses</b> ("non-small business" means a business employing 50 or more persons):
There is no anticipated cost or savings to non-small businesses. No captives operating in Utah have more than 50 employees.
<b>E) Persons other than small businesses, non-small businesses, state, or local government entities</b> ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an <b>agency</b> ):
Most captives operating in Utah have no employees. Of the 381 currently licensed captive, an estimated 362 have no employees. These captives will have a cost increase of \$2,250 for their annual license fees, resulting in an aggregate cost increase of \$814,500 annually.
<b>F) Compliance costs for affected persons:</b>
Any person that forms and runs a captive insurer in Utah will be required to pay an additional \$2,250 for their annual renewal cost. Captive legislation was initially passed in 2003 with the license fee amount of \$5,000. After nearly 20 years in existence Utah has yet to increase rates; the proposed increase to \$7,250 will not result in undue hardship to captive insurers and will keep Utah as one of, if not the most, price competitive captive domicile in the nation. Fees will be prorated for the last five months of the fiscal year starting in February by \$1,000 for each following month. This will help potential new captive formations in those months to complete the licensing processing in the month they're ready rather than waiting until July to avoid a full double payment of the license fee, as renewal payments are due by July 1 every year regardless of when the captive initially formed.
<b>G) Regulatory Impact Summary Table</b> (This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts will be included in narratives above.)

<b>Regulatory Impact Table</b>			
<b>Fiscal Cost</b>	<b>FY2021</b>	<b>FY2022</b>	<b>FY2023</b>
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$137,750	\$145,000	\$152,250
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$2,624,500	\$2,762,250	\$2,900,000
<b>Total Fiscal Cost</b>	<b>\$2,762,250</b>	<b>\$2,907,250</b>	<b>\$3,052,250</b>
<b>Fiscal Benefits</b>			
State Government	\$2,762,250	\$2,907,250	\$3,052,250
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Benefits</b>	<b>\$2,762,250</b>	<b>\$2,907,250</b>	<b>\$3,052,250</b>
<b>Net Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>H) Department head approval of regulatory impact analysis:</b>			
The Interim Commissioner of the Insurance Department, Tanji J. Northrup, has reviewed and approved this fiscal analysis.			
<b>6. A) Comments by the department head on the fiscal impact this rule may have on businesses:</b>			
The Department has not increased the cost of a captive insurer license in 20 years, despite the increasing costs of regulating them. Utah is one of the nation's most price competitive domiciles for captives and the proposed licensing fee structure will not pose an undue hardship on captives.			
<b>B) Name and title of department head commenting on the fiscal impacts:</b>			
Tanji J. Northrup, Interim Commissioner			

**Citation Information**

**7. This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws. State code or constitution citations (required):**

Subsection 31A-3-103(3)		
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**Public Notice Information**

**9. The public may submit written or oral comments to the agency identified in box 1.** (The public may also request a hearing by submitting a written request to the agency. The agency is required to hold a hearing if it receives requests from ten interested persons or from an association having not fewer than ten members. Additionally, the request must be received by the agency not more than 15 days after the publication of this rule in the Utah State Bulletin. See Section 63G-3-302 and Rule R15-1 for more information.)

<b>A) Comments will be accepted until:</b>		02/16/2021
<b>B) A public hearing (optional) will be held:</b>		
<b>On:</b>	<b>At:</b>	<b>At:</b>
01/19/2021	10:00 AM	Teleconference only due to COVID-19 restrictions. Contact sgooch@utah.gov for details.

**10. This rule change MAY become effective on:** 02/23/2021

NOTE: The date above is the date on which this rule MAY become effective. It is NOT the effective date. After the date designated in Box 10, the agency must submit a Notice of Effective Date to the Office of Administrative Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	Steve Gooch, Public Information Officer	<b>Date:</b>	12/30/2020
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**R590. Insurance, Administration.**

**R590-102. Insurance Department Fee Payment Rule.**

**R590-102-1. Authority.**

This rule is adopted pursuant to Subsection 31A-3-103(3), which requires the commissioner to publish the schedule of fees approved by the legislature and to establish deadlines for payment of each of the various fees.

**R590-102-2. Purpose and Scope.**

- (1) The purposes of this rule are to:
  - (a) publish the schedule of fees approved by the legislature;
  - (b) establish fee deadlines; and
  - (c) disclose this information to licensees and the public.

- (2) The rule applies to:
  - (a) any person engaged in the business of insurance in Utah;
  - (b) any person holding an insurance license in Utah;
  - (c) any applicant for a license, registration, certificate, or other similar filing; and
  - (d) any person requesting any service provided by the department for which a fee is required.

**R590-102-3. Definitions.**

In addition to the definitions in Title 31A, Insurance Code, the following definitions shall apply for the purposes of this rule:

- (1) "Admitted insurer" includes fraternal, health, health maintenance organization, life, limited health plan, motor club, non-profit health service, property and casualty, title insurer, and a prescription drug plan.
- (2) "Agency" means:
  - (a) a person, other than an individual, including a sole proprietorship by which a natural person does business under an assumed name; and
  - (b) an insurance organization required to be licensed under Sections 31A-23a-301, 31A-25-207, and 31A-26-209.
- (3) "Captive insurer" includes association captive, branch captive, ~~industrial insured captive,~~ pure captive, sponsored captive, and special purpose financial captive. It does not include a captive cell or an industrial insured captive.
- (4) "Deadline" means the final date or time:
  - (a) imposed by:
    - (i) statute;
    - (ii) rule; or
    - (iii) order; and
  - (b) by which:
    - (i) a payment must be received by the department without incurring a penalty for late payment or non-payment; or
    - (ii) required information must be received by the department without incurring a penalty for late receipt or non-receipt.
- (5) "Fee" means an amount set by the commissioner, by statute, or by rule, and approved by the legislature for a license, registration, certificate, or other filing or service provided by the Insurance Department.
- (6) "Full-line agency" includes a producer, consultant, independent adjuster, managing general agent, public adjuster, reinsurance intermediary broker, and third-party administrator.
- (7) "Full-line individual" includes a producer, consultant, independent adjuster, managing general agent, public adjuster, reinsurance intermediary broker, and third-party administrator.
- (8) "Limited-line agency" includes a bail bond producer and a limited-line producer.
- (9) "Limited-line individual" includes a bail bond agent, limited-lines producer, and customer service representative.
- (10) "Other organization" includes a home warranty, joint underwriter, purchasing group, rate service organization, risk retention group, service contract provider, and health discount program.
- (11) "Non-electronic application" means an application that must be manually entered into the department's database because the application was submitted by paper, facsimile, or email when the department has provided an electronic application process and stated the electronic process is the preferred process for receiving an application.
- (12) "Non-electronic filing" means a filing that must be manually entered into the department's database because the filing was submitted by paper, facsimile, or email when the department has provided an electronic filing process and stated the electronic process is the preferred process for receiving a filing.

(13) "Non-electronic payment" means a payment that must be manually entered by the department because the payment was submitted by check, money order, or other physical medium when the department has provided an electronic payment process and stated the electronic process is the preferred process for receiving a payment.

(14) "Received by the department" means:

- (a) the date delivered to and stamped received by the department, if delivered in person;
- (b) the postmark date, if delivered by mail;
- (c) the delivery service's postmark date or pick-up date, if delivered by a delivery service; or
- (d) the received date recorded on an item delivered, if delivered by:
  - (i) facsimile;
  - (ii) email; or
  - (iii) another electronic method; or
- (e) a date specified in:
  - (i) a statute;
  - (ii) a rule; or
  - (iii) an order.

**R590-102-4. General Instructions.**

(1) Any fee payable to the department not included in Sections R590-102-5 through R590-102-~~24~~25 shall be due when service is requested, if applicable, otherwise by the due date on the invoice.

(2) Payment.

(a) A non-electronic payment processing fee will be added to a payment when the department has provided an electronic payment process and stated the electronic process is the preferred process for receiving a payment.

(b) Check.

(i) A check shall be made payable to the Utah Insurance Department.

(ii) A check that is dishonored in the process of the collection will not constitute payment of the fee for which it was issued and any action taken based on the payment will be voided.

(iii) Any late fee or other penalty resulting from the voided action will apply until proper payment is made.

(iv) A check payment that is dishonored is a violation of this rule.

(c) Cash. The department is not responsible for un-receipted cash that is lost or misdelivered.

(d) Electronic.

(i) Credit card.

(A) A credit card may be used to pay any fee due to the department.

(B) A credit card payment that is dishonored will not constitute payment of the fee and any action taken based on the payment will be voided.

(C) A late fee or other penalty resulting from the voided action will apply until proper payment is made.

(D) A credit card payment that is dishonored is a violation of this rule.

(ii) Automated clearinghouse (ACH).

(A) Any payer or purchaser desiring to use this method must contact the department for the proper routing and transit information.

(B) A payment that is made in error to another agency or that is not deposited into the department's account will not constitute payment of the fee and any action taken based on the payment will be voided.

(C) Any late fee or other penalty resulting from the voided action will apply until proper payment is made.

(D) An ACH payment that is dishonored is a violation of this rule.

(3) Retaliation. The fees enumerated in this rule are not subject to retaliation in accordance with Section 31A-3-401 if other states or countries impose higher fees.

(4) Refunds.

(a) Fees enumerated in this rule are non-refundable.

(b) Overpayments of fees are refundable.

(c) A request for a return of an overpayment must be submitted in writing.

(5) A non-electronic processing fee described in Section R590-102-21 will be assessed for a particular service if the department has established an electronic process for that service.

(6) Any annual or biennial license fee, service fee, or assessment described in this rule is for services the department will provide during the year and is paid in advance of providing the services.

(7) An electronic commerce dedicated fee described in Section R590-102-~~23~~24 may be added to the fees required by Sections R590-102-5 through R590-102-~~20~~21.

**R590-102-5. Admitted Insurer and Prescription Drug Plan Fees.**

(1) Annual license fees:

(a) certificate of authority initial license application, due with license application - \$1,000;

(b) certificate of authority renewal, due by the due date on the invoice - \$300;

(c) certificate of authority late renewal, due for any renewal paid after the date on the invoice - \$350; and

(d) certificate of authority reinstatement, due with application for reinstatement - \$1,000.

(2) Other license fees:

(a) certificate of authority amendments, due with request for amendment - \$250;

(b)(i) Form A application for merger, acquisition, or change of control, due with filing - \$2,000; and

(ii) Expenses incurred for consultant services necessary to evaluate a Form A will be charged to the applicant and due by the due date on the invoice;

(c) redomestication filing, due with filing - \$2,000; and

(d) application for organizational permit for mutual insurer to solicit applications for qualifying insurance policies or subscriptions for mutual bonds or contribution notes, due with application - \$1,000.

(3) The annual license fee includes the following licensing services for which no additional fee is required:

(a) filing annual statement and report of Utah business, due annually on March 1;

(b) filing holding company registration statement, Form B;

(c) filing application for material transactions between affiliated companies, Form D; and

(d) applications for:

(i) stock solicitation permit;

(ii) public offering filing, but not an SEC filing;

(iii) an SEC filing;

(iv) private placement offering; and

(v) individual license to solicit in accordance with the stock solicitation permit.

(4) Annual service fee:

(a) Due by the due date on the invoice.

(b) A prescription drug plan is exempted from payment of a service fee.

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(c) The fee is based on the Utah premium as shown in the company's prior year annual statement on file with the National Association of Insurance Commissioners and the department.

(d) Fee schedule:

- (i) \$0 premium volume - no service fee;
- (ii) more than \$0 but less than \$1 million in premium volume - \$700;
- (iii) \$1 million but less than \$3 million in premium volume - \$1,100;
- (iv) \$3 million but less than \$6 million in premium volume - \$1,550;
- (v) \$6 million but less than \$11 million in premium volume - \$2,100;
- (vi) \$11 million but less than \$15 million in premium volume - \$2,750;
- (vii) \$15 million but less than \$20 million in premium volume - \$3,500; and
- (viii) \$20 million or more in premium volume - \$4,350.

(e) The annual service fee includes the following services for which no additional fee is required:

- (i) filing of amendments to articles of incorporation, charter, or bylaws;
- (ii) filing of power of attorney;
- (iii) filing of registered agent;
- (iv) affixing commissioner's seal and certifying any paper;
- (v) filing of authorization to appoint and remove agents;
- (vi) initial filing of producer or agency appointment with an insurer;
- (vii) termination of producer or agency appointment with an insurer;
- (viii) report filing;
- (ix) rate filing; and
- (x) form filing.

(5) Actual costs plus overhead expenses incurred during an examination of an insurer shall be paid by the examined insurer by the due date on the invoice.

**R590-102-6. Foreign Surplus Lines Insurer, Accredited Reinsurer, Certified Reinsurer, Trusteed Reinsurer, and Employee Welfare Fund Administrative/Service Fees.**

(1) Annual license fees:

- (a) initial, due with application - \$1,000;
- (b) renewal, due by the due date on the invoice - \$500;
- (c) late renewal, due for any renewal payment paid after the due date on the invoice - \$550; and
- (d) reinstatement, due with application - \$1,000.

(2) The annual license fee includes the following services for which no additional fee is required:

- (a) filing of power of attorney; and
- (b) filing of registered agent.

**R590-102-7. Other Organization Fees.**

(1) Annual license fees:

- (a) initial, due with application - \$250;
- (b) renewal, due by the due date on the invoice - \$200;
- (c) late renewal, due for any renewal paid after the due date on the invoice - \$250; and
- (d) reinstatement, due with application for reinstatement - \$250.

(e) The annual other organization initial or renewal fee includes the risk retention group annual statement filing, due annually on March 1.

(2) Annual service fee, due by the due date on the invoice - \$200.

(a) The annual service fee includes the following services for which no additional fee is required:

- (i) filing of power of attorney;
- (ii) filing of registered agent; and
- (iii) rate, form, report or service contract filing.

**R590-102-8. Captive Insurer Fees.**

(1) Initial license application, due with license application - \$200.

(2) Actual costs incurred by the department during the initial license application review shall be paid by the captive insurer by the due date on the invoice.

(3) Annual license fees:

- (a) initial, due by the due date on the invoice [~~-\$5,000~~];
- (i) for a license date in the months of July through January - \$7,250;
- (ii) for a license date in the month of February - \$6,250;
- (iii) for a license date in the month of March - \$5,250;
- (iv) for a license date in the month of April - \$4,250;
- (v) for a license date in the month of May - \$3,250; and
- (vi) for a license date in the month of June - \$2,250;

(b) renewal, due by the due date on the invoice - ~~\$[5,000]~~7,250;

(c) late renewal, due for any renewal paid after the due date on the invoice - ~~\$[5,050]~~7,300; and

(d) reinstatement, due with application for reinstatement - ~~\$[5,050]~~7,300.

(4) Actual costs plus overhead expenses incurred during an examination of a captive insurer shall be paid by the examined captive insurer by the due date on the invoice.

**R590-102-9. Captive Cell Fees.**

(1) Initial license application, due with license application - \$200.

(2) Actual costs incurred by the department during the initial license application review shall be paid by the captive insurer by the due date on the invoice.

(3) Annual license fees:

- (a) initial, without proration, due by the due date on the invoice - \$1,000;
- (b) renewal, due by the due date on the invoice - \$1,000; and
- (c) late renewal, due for any renewal paid after the due date on the invoice - \$1,050.

**R590-102-10. Industrial Insured Captive Fees.**

(1) Initial license application, due with license application - \$1,000.

(2) Actual costs incurred by the department during the initial license application review shall be paid by the industrial insured captive by the due date on the invoice.

(3) Annual license fees:

- (a) initial, due by the due date on the invoice:
- (i) for a license date in the months of July through January - \$25,000; and
- (ii) for a license date in the months of February through June - \$20,000;
- (b) renewal, due by the due date on the invoice - \$25,000;
- (c) late renewal, due for any renewal paid after the due date on the invoice - \$25,500; and

(d) reinstatement, due with application for reinstatement - \$25,500.

(4) Actual costs plus overhead expenses incurred during an examination of an industrial insured captive shall be paid by the examined industrial insured captive by the due date on the invoice.

**R590-102-11. Life Settlement Provider Fees.**

(1) Annual license fees:

(a) initial, due with application - \$1,000;

(b) renewal, due by the due date on the invoice - \$300;

(c) late renewal, due for any renewal paid after the due date on the invoice - \$350; and

(d) reinstatement, due with reinstatement application - \$1,000.

(2) Annual service fee, due by the due date on the invoice - \$600.

(a) The annual service fee includes the following service for which no additional fee is required: rate, form, report or service contract filing.

(3) Actual costs plus overhead expenses incurred during an examination of a viatical settlement provider shall be paid by the examined viatical settlement provider by the due date on the invoice.

**R590-102-~~14~~12. Professional Employer Organization (PEO) Fees.**

(1) Annual license fees:

(a) PEO not certified by an assurance organization:

(i) initial, due with application - \$2,000;

(ii) renewal, due by the due date on the invoice - \$2,000;

(iii) late renewal, due for any renewal paid after the due date on the invoice - \$2,050; and

(iv) reinstatement, due with reinstatement application - \$2,050.

(b) PEO certified by an assurance organization:

(i) initial, due with application - \$2,000;

(ii) renewal, due by the due date on the invoice - \$1,000;

(iii) late renewal, due for any renewal paid after the due date on the invoice - \$1,050; and

(iv) reinstatement, due with reinstatement application - \$1,050.

(c) PEO small operator:

(i) initial, due with application - \$2,000;

(ii) renewal, due by the due date on the invoice - \$1,000;

(iii) late renewal, due for any renewal paid after the due date on the invoice - \$1,050; and

(iv) reinstatement, due with reinstatement application - \$1,050.

**R590-102-~~14~~13. Individual Resident and Non-Resident License Fees, Other Than Individual Navigators.**

(1) Biennial full-line license fees:

(a) initial, due with application - \$70;

(b) renewal if renewed prior to license expiration date, due with renewal application - \$70; and

(c) reinstatement if inactive license is reinstated within one year following the license expiration date, due with application for reinstatement - \$120.

(2) Biennial limited-line license fees:

(a) initial, due with application - \$45;

(b) renewal if renewed prior to license expiration date, due with renewal application - \$45; and

(c) reinstatement if inactive license is reinstated within one year following the license expiration date, due with application for reinstatement - \$95.

(3) Other fees:

(a) addition of producer classification or line of authority to individual producer license, due with request for additional classification or line of authority - \$25; and

(b) title insurance product or service approval for dual licensed title licensee form filing, due with filing - \$25.

(4) The biennial license fee includes the following services for which no additional fee is required:

(a) issuance of letter of certification;

(b) issuance of letter of clearance;

(c) issuance of duplicate license; and

(d) individual continuing education services.

**R590-102-~~14~~14. Individual Navigator Fees.**

(1) Annual license fees:

(a) initial, due with application - \$35;

(b) renewal if renewed prior to license expiration date, due with renewal application - \$35; and

(c) reinstatement if inactive license is reinstated within one year following the license expiration date, due with application for reinstatement - \$60.

(2) The annual license fee includes the following services for which no additional fee is required:

(a) issuance of letter of certification;

(b) issuance of letter of clearance;

(c) issuance of duplicate license; and

(d) individual continuing education services.

**R590-102-~~14~~15. Agency License Fees, Other than Navigator or Bail Bond Agencies.**

(1) Biennial resident and non-resident full-line agency and limited-line agency license fees:

(a) initial, due with application - \$75;

(b) renewal if renewed prior to license expiration date, due with renewal application - \$75; and

(c) reinstatement if inactive license is reinstated within one year following the license expiration date, due with application for reinstatement - \$125.

(2) Biennial resident title agency license fees:

(a) initial, due with application - \$100;

(b) renewal if renewed prior to license expiration date, due with renewal application - \$100; and

(c) reinstatement if inactive license is reinstated within one year following the license expiration date, due with application for reinstatement - \$150.

(3) Addition of producer classification or line of authority to agency license, due with request for additional classification or line of authority - \$25.

(4) The biennial license fee includes the following services for which no additional fee is required:

(a) issuance of letter of certification;

(b) issuance of letter of clearance;

(c) issuance of duplicate license;

(d) initial filing of producer designation to agency license;

(e) termination of producer designation to agency license;

(f) filing of amendment to agency license; and

(g) filing of power of attorney.

**R590-102-~~15~~16. Navigator Agency Fees.**

- (1) Annual license fees:
  - (a) initial, due with application - \$40;
  - (b) renewal if renewed prior to license expiration date, due with renewal application - \$40; and
  - (c) reinstatement if inactive license is reinstated within one year following the license expiration date, due with application for reinstatement - \$65.
- (2) The annual license fee includes the following services for which no additional fee is required:
  - (a) issuance of letter of certification;
  - (b) issuance of letter of clearance;
  - (c) issuance of duplicate license;
  - (d) initial filing of producer designation to agency license;
  - (e) termination of producer designation to agency license;
  - (f) filing of amendment to agency license; and
  - (g) filing of power of attorney.

**R590-102-~~16~~17. Bail Bond Agency Fees.**

- (1) Annual license fees:
  - (a) initial, due with application - \$250;
  - (b) renewal if renewed prior to license expiration date, due with renewal application - \$250; and
  - (c) reinstatement if inactive license is reinstated within one year following the license expiration date, due with application for reinstatement - \$300.
- (2) The annual license fee includes the following services for which no additional fee is required:
  - (a) issuance of letter of certification;
  - (b) issuance of letter of clearance;
  - (c) issuance of duplicate license;
  - (d) initial filing of producer designation to agency license;
  - (e) termination of producer designation to agency license;
  - (f) filing of amendment to agency license; and
  - (g) filing of power of attorney.

**R590-102-~~17~~18. Continuing Care Provider Fees.**

- (1) Annual registration fee:
  - (a) initial, due with application - \$6,900;
  - (b) renewal, due by the due date on the invoice - \$6,900; and
  - (c) reinstatement, due with application for reinstatement - \$6,950.
- (2) Annual disclosure statement fee:
  - (a) initial, due with application - \$600; and
  - (b) renewal, due with annual renewal disclosure statement - \$600.

**R590-102-~~18~~19. Pharmacy Benefit Manager Licensing Fees.**

- (1) Annual license fee:
  - (a) initial, due with application - \$1,000;
  - (b) renewal, due by the due date on the invoice - \$1,000;
  - (c) late renewal, due for any renewal paid after the due date on the invoice - \$1,050; and
  - (d) reinstatement, due with application for reinstatement - \$1,000.

**R590-102-~~19~~20. Guaranteed Asset Protection Provider Fees.**

- (1) Annual provider registration fee:
  - (a) initial, due with application - \$1,000;
  - (b) renewal, due by the due date on the invoice - \$1,000; and
  - (c) late renewal, due for any renewal paid after the due date on the invoice - \$1,050.

- (2) Annual retail seller assessment:
  - (a) annual assessment, due by the due date on the invoice - \$50; and
  - (b) late fee, due for any retail seller assessment fee paid after the due date on the invoice - \$50.

**R590-102-~~20~~21. Continuing Education Fees.**

- (1) Annual license fee:
  - (a) initial, due with application - \$250;
  - (b) renewal if renewed prior to license expiration date, due with renewal application - \$250; and
  - (c) reinstatement if inactive license is reinstated within one year following the license expiration date, due with application for reinstatement - \$300.
- (2) Continuing education course post-approval fee, due with request for approval - \$5 per credit hour, minimum fee \$25.

**R590-102-~~21~~22. Non-Electronic Processing or Payment Fees.**

- (1) Non-electronic filing processing fee. Assessed on a non-electronic filing, due with each non-electronic filing or by the due date on the invoice - \$5.
- (2) Non-electronic application processing fee. Assessed on a non-electronic application, due with each non-electronic application or by the due date on the invoice - \$25.
- (3) Non-electronic payment processing fee. Assessed on a non-electronic payment, due with each non-electronic payment or by the due date on the invoice - \$25.

**R590-102-~~22~~23. Dedicated Fees.**

- The following are fees dedicated to specific uses:
- (1) Fraud assessment:
    - (a) annual assessment as calculated under Section 31A-31-108 and stated in the invoice, due by the due date on the invoice; and
    - (b) late fee, due for any fraud assessment fee paid after the due date on the invoice - \$50.
  - (2) Title insurance regulation assessment: annual assessment as calculated under Section 31A-23a-415 and Rule R592-10 and stated in the invoice, due by the due date on the invoice.
  - (3) Annual Title Recovery, Education, and Research Fund assessment:
    - (a) individual title licensee applicant for initial license or renewal license, due with the initial application or the renewal application - \$15;
    - (b) agency title licensee applicant, due with the initial application - \$1,000; and
    - (c) annual agency title licensee assessment based on annual written title insurance premium, due by the due date on the invoice:
      - (i) Band A, \$0 to \$1 million - \$125;
      - (ii) Band B, more than \$1 million to \$10 million - \$250;
      - (iii) Band C, more than \$10 million to \$20 million - \$375;
  - and
    - (iv) Band D, more than \$20 million - \$500.
  - (4) Health insurance actuarial review assessment: annual assessment as calculated under Section 31A-30-115 and stated in the invoice, due by the due date on the invoice.
  - (5) Code book fees:
    - (a) code book, due at time of purchase or by invoice due date - \$57; and
    - (b) mailing fee, due at time of purchase or by invoice due date if book is to be mailed to purchaser - \$3.
  - (6) Fingerprint fees, due with application for individual license:



- (a) Bureau of Criminal Investigation (BCI) - \$15; and
- (b) Federal Bureau of Investigation (FBI) - \$13.25.

**R590-102-~~23~~24. Electronic Commerce Dedicated Fees.**

(1) Electronic commerce, e-commerce, and internet technology services fee:

(a) admitted insurer and surplus lines insurer, due with the initial, renewal, or reinstatement application - \$75;

(b) captive insurer and industrial insured captive, due with the initial, renewal, or reinstatement application - \$250;

(c) other organization including professional employer organization, continuing care provider, pharmacy benefit manager and life settlement provider, due with the initial, renewal, or reinstatement application - \$50;

(d) continuing education provider, due with the initial, renewal, or reinstatement application - \$20;

(e) agency, due with the initial, renewal, or reinstatement application - \$10; and

(f) individual, due with the initial, renewal, or reinstatement application - \$5.

(2) Database access fees:

(a) information accessed through an electronic portal set up for that purpose, due when the department's database is accessed to input or acquire data - \$3 per transaction; and

(b) rate and form filing database access to an electronic public rate and form filing, due at time of service or by the due date on the invoice:

(i) a separate fee is assessed per line of insurance accessed (accident and health, life and annuity, or property-casualty);

(ii) each line of insurance accessed is charged the following fees:

(A) a base fee, which entitles the user up to 30 minutes of access, the assistance of staff during that time, and one DVD - \$45; and

(B) each additional 30 minutes of access time or fraction thereof, including the assistance of staff during that time - \$45; and

(iii) additional DVD - \$2.

**R590-102-~~24~~25. Other Fees.**

(1) Photocopy fee - \$0.50 per page.

(2) Complete annual statement copy fee - \$40 per statement.

(3) Fee for accepting service of legal process - \$10.

(4) Fees for production of information lists regarding licensees or other information that can be produced by list:

(a) printed list, if the information is already in list format and only needs to be printed or reprinted - \$1 per page; and

(b) electronic list compiled by accessing information stored in the Department's database:

(i) a separate fee is assessed for each list compiled;

(ii) each list is assessed one or more of the following fees:

(A) a base fee, which entitles the requestor up to 30 minutes of staff time to draft the information query, compile the information, prepare a CD, and prepare a CD for mailing to the requestor, due with request for information - \$50; and

(B) each additional 30 minutes or fraction thereof to draft the information query, compile the information, prepare a CD, and prepare a CD for mailing to the requestor, due by the due date on the invoice - \$50; and

(iii) additional CD, due by the due date on the invoice - \$1.

(5) Returned check fee - \$20.

(6) Workers compensation loss cost multiplier schedule - \$5.

(7) Address correction fee, assessed when department has to research and enter new address for a licensee, due by the due date on the invoice - \$35.

(8) Independent review organization initial application fee, due with application - \$250.

(9) Withdrawal from writing a line of insurance or reducing total annual premium volume by 75% or more, due with plan of orderly withdrawal submission - \$50,000.

(10) Administrative disciplinary action removal from public access on Insurance Department controlled website, due with application - \$185.

**R590-102-~~25~~26. Severability.**

If any provision of this rule, R590-102, or its application to any person or situation is held invalid, such invalidity does not affect any other provision or application of this rule ~~[which]~~ that can be given effect without the invalid provision or application. The remainder of this rule shall be given effect without the invalid provision or application.

**KEY: insurance fees**

**Date of Enactment or Last Substantive Amendment:** ~~2021~~ **August 10, 2020**

**Notice of Continuation:** December 12, 2016

**Authorizing, and Implemented or Interpreted Law:** 31A-3-103

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	R590-238-20	Filing No. 53272

**Agency Information**

<b>1. Department:</b>	Insurance	
<b>Agency:</b>	Administration	
<b>Room no.:</b>	3110	
<b>Building:</b>	State Office Building	
<b>Street address:</b>	450 N State St	
<b>City, state:</b>	Salt Lake City, UT 84114	
<b>Mailing address:</b>	PO Box 146901	
<b>City, state, zip:</b>	Salt Lake City, UT 84114-6901	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Steve Gooch	801-538-3803	sgooch@utah.gov
Please address questions regarding information on this notice to the agency.		

**General Information**

<b>2. Rule or section catchline:</b>
R590-238-20. Fee Schedule. Initial Application. Renewal
<b>3. Purpose of the new rule or reason for the change:</b>
This rule is being amended to explicitly clarify that captive cell companies are excluded from the Department of

Insurance's (Department) annual e-commerce fee and to fix stylistic and citation errors.

**4. Summary of the new rule or change:**

These changes clarify the exclusion of a captive cell company from the requirement to pay an annual e-commerce fee and fix stylistic and citation errors.

**Fiscal Information**

**5. Aggregate anticipated cost or savings to:**

**A) State budget:**

There is no anticipated cost or savings to the state budget. Captive cells are not subject to the e-commerce fee and do not currently pay it; these changes make it clear that they are not required to do so.

**B) Local governments:**

There is no anticipated cost or savings to local governments. These changes deal with the relationship between the Department and licensed captive cells and does not involve any other parties.

**C) Small businesses** ("small business" means a business employing 1-49 persons):

There is no anticipated cost or savings to small businesses. These changes deal with the relationship between the Department and licensed captive cells and does not involve any other parties.

**D) Non-small businesses** ("non-small business" means a business employing 50 or more persons):

There is no anticipated cost or savings to non-small businesses. These changes deal with the relationship between the Department and licensed captive cells and does not involve any other parties.

**E) Persons other than small businesses, non-small businesses, state, or local government entities** ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an **agency**):

There is no anticipated cost or savings to any other persons. These changes deal with the relationship between the Department and licensed captive cells and does not involve any other parties.

**F) Compliance costs for affected persons:**

There are no compliance costs for any affected persons. Captive cells are not subject to the e-commerce fee and do not currently pay it; this change makes it clear that they are not required to do so.

**G) Regulatory Impact Summary Table** (This table only includes fiscal impacts that could be measured. If there

are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts will be included in narratives above.)

**Regulatory Impact Table**

<b>Fiscal Cost</b>	<b>FY2021</b>	<b>FY2022</b>	<b>FY2023</b>
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Cost</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Fiscal Benefits</b>			
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Net Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

**H) Department head approval of regulatory impact analysis:**

The Interim Commissioner of the Insurance Department, Tanji J. Northrup, has reviewed and approved this fiscal analysis.

**6. A) Comments by the department head on the fiscal impact this rule may have on businesses:**

After conducting a thorough analysis, it was determined that these proposed rule amendments will not result in a fiscal impact to businesses.

**B) Name and title of department head commenting on the fiscal impacts:**

Tanji J. Northrup, Interim Commissioner

**Citation Information**

**7. This rule change is authorized or mandated by state law, and implements or interprets the following state**

<b>and federal laws. State code or constitution citations (required):</b>		
Section 31A-2-201	Section 31A-37-106	

**Public Notice Information**

<b>9. The public may submit written or oral comments to the agency identified in box 1.</b> (The public may also request a hearing by submitting a written request to the agency. The agency is required to hold a hearing if it receives requests from ten interested persons or from an association having not fewer than ten members. Additionally, the request must be received by the agency not more than 15 days after the publication of this rule in the Utah State Bulletin. See Section 63G-3-302 and Rule R15-1 for more information.)	
<b>A) Comments will be accepted until:</b>	02/16/2021

<b>10. This rule change MAY become effective on:</b>	02/23/2021
NOTE: The date above is the date on which this rule MAY become effective. It is NOT the effective date. After the date designated in Box 10, the agency must submit a Notice of Effective Date to the Office of Administrative Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.	

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	Steve Gooch, Public Information Officer	<b>Date:</b>	12/30/2020
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**R590. Insurance, Administration.**

**R590-238. Captive Insurance Companies.**

**R590-238-20. Fee Schedule. [-]Initial Application. [-]Renewal.**

(1) An applicant for a certificate of authority under the captive insurance code shall pay to the commissioner a nonrefundable fee established in the department's fee rule, Section R590-102-8, for examining, investigating, and processing its initial application for license to the commissioner at the time the application is filed.

(2) In addition, each company that is licensed by the commissioner shall pay a license fee, without proration, for the initial year of registration and a renewal fee for each succeeding year in the amount established in the department's fee rule, Section R590-102-8.

(3) Each company, except a captive cell company, shall pay to the commissioner an annual nonrefundable e-commerce (internet technology services) fee [each year] in the amount established in the department's fee rule, Section R590-102-18(1)(b) to the commissioner 24.

(4) Each captive insurance company shall pay to the commissioner a nonrefundable fee in the amount established in the department's fee rule, Rule R590-102, for photocopies of documents to the commissioner.

**KEY:** captive insurance

**Date of Enactment or Last Substantive Amendment:** 2021 [June 21, 2019]

**Notice of Continuation:** May 2, 2017

**Authorizing, and Implemented or Interpreted Law:** 31A-2-201; 31A-37-106

NOTICE OF PROPOSED RULE		
<b>TYPE OF RULE:</b> Amendment		
<b>Utah Admin. Code Ref (R no.):</b>	R657-9	<b>Filing No.</b> 53242

**Agency Information**

<b>1. Department:</b>	Natural Resources	
<b>Agency:</b>	Wildlife Resources	
<b>Room no.:</b>	Suite 2110	
<b>Building:</b>	Department of Natural Resources	
<b>Street address:</b>	1594 W North Temple	
<b>City, state:</b>	Salt Lake City, UT 84116	
<b>Mailing address:</b>	PO Box 146301	
<b>City, state, zip:</b>	Salt Lake City, UT 84114-6301	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Staci Coons	801-450-3093	stacicoons@utah.gov

Please address questions regarding information on this notice to the agency.

**General Information**

<b>2. Rule or section catchline:</b>
R657-9. Taking Waterfowl, Wilson's Snipe and Coot
<b>3. Purpose of the new rule or reason for the change:</b>
This rule is being amended pursuant to Regional Advisory Council and Wildlife Board meetings conducted annually for taking public input and reviewing the Division of Wildlife Resources' (DWR) rule pursuant to the taking of waterfowl, Wilson's snipe, and coot.
<b>4. Summary of the new rule or change:</b>
The proposed amendments to this rule: 1) add Willard Spur Waterfowl Management Area (WMA) to the non-toxic shot list; 2) create a retrieval zone around Farmington Bay WMA rest area; and 3) require written permission for blinds constructed at Willard Spur WMA.

**Fiscal Information**

<b>5. Aggregate anticipated cost or savings to:</b>
<b>A) State budget:</b>
The proposed rule amendments clarify the requirements for Willard Spur WMA and the retrieval zone for Farmington Bay WMA, these changes can be initiated within the current workload and resources of DWR, therefore, DWR has determined that these amendments do not create a cost or savings impact to the state budget or DWR's budget since the changes will not increase workload and can be carried out with existing budget.
<b>B) Local governments:</b>
Since the proposed amendments only clarify regulations already in place, this filing does not create any direct cost or savings impact to local governments. Nor are local governments indirectly impacted because this rule does not create a situation requiring services from local governments.
<b>C) Small businesses</b> ("small business" means a business employing 1-49 persons):
The proposed rule amendments will not directly impact small businesses because a service is not required of them.
<b>D) Non-small businesses</b> ("non-small business" means a business employing 50 or more persons):
The proposed rule amendments will not directly impact non-small businesses because a service is not required of them.
<b>E) Persons other than small businesses, non-small businesses, state, or local government entities</b> ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an <b>agency</b> ):
These amendments do not have the potential to create a cost impact to those individuals wishing to participate in hunting at Willard Spur WMA or Farmington Bay WMA simply because there is not a cost associated with this amendment.
<b>F) Compliance costs for affected persons:</b>
DWR has determined that this amendment will not create additional costs for those participating in waterfowl hunting in Utah simply because there is not a cost associated with this amendment.
<b>G) Regulatory Impact Summary Table</b> (This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts will be included in narratives above.)

<b>Regulatory Impact Table</b>			
<b>Fiscal Cost</b>	<b>FY2021</b>	<b>FY2022</b>	<b>FY2023</b>
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Cost</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Fiscal Benefits</b>			
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Net Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>H) Department head approval of regulatory impact analysis:</b>			
The Executive Director of the Department of Natural Resources, Brian Steed, has reviewed and approved this fiscal analysis.			
<b>6. A) Comments by the department head on the fiscal impact this rule may have on businesses:</b>			
After conducting a thorough analysis, it was determined that this proposed rule amendment will not result in a fiscal impact to businesses.			
<b>B) Name and title of department head commenting on the fiscal impacts:</b>			
Brian Steed, Executive Director			
<b>Citation Information</b>			
<b>7. This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws. State code or constitution citations (required):</b>			
Section 23-14-18	Section 23-14-19		

**Public Notice Information**

**9. The public may submit written or oral comments to the agency identified in box 1.** (The public may also request a hearing by submitting a written request to the agency. The agency is required to hold a hearing if it receives requests from ten interested persons or from an association having not fewer than ten members. Additionally, the request must be received by the agency not more than 15 days after the publication of this rule in the Utah State Bulletin. See Section 63G-3-302 and Rule R15-1 for more information.)

<b>A) Comments will be accepted until:</b>	02/16/2021
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<b>10. This rule change MAY become effective on:</b>	02/23/2020
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NOTE: The date above is the date on which this rule MAY become effective. It is NOT the effective date. After the date designated in Box 10, the agency must submit a Notice of Effective Date to the Office of Administrative Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	Mike Fowlks, DWR Director	<b>Date:</b>	12/10/2020
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**R657. Natural Resources, Wildlife Resources.**

**R657-9. Taking Waterfowl, Wilson's Snipe and Coot.**

**R657-9-1. Purpose and Authority.**

(1) Under authority of Sections 23-14-18 and 23-14-19, and in accordance with 50 CFR 20, 50 CFR 32.64 and 50 CFR 27.21, 2004 edition, which is incorporated by reference, the Wildlife Board has established this rule for taking waterfowl, Wilson's snipe, and coot.

(2) Specific dates, areas, limits, requirements and other administrative details which may change annually are published in the guidebook of the Wildlife Board for taking waterfowl, Wilson's snipe and coot.

**R657-9-8. Nontoxic Shot.**

(1) Only nontoxic shot may be in possession or used while hunting waterfowl, Wilson's snipe, and coot.

(2) A person may not possess or use lead shot:

- (a) while hunting waterfowl or coot in any area of the state;
- (b) on federal refuges;

(c) on the following waterfowl management areas: Bicknell Bottoms, Blue Lake, Brown's Park, Clear Lake, Desert Lake, Farmington Bay, Harold S. Crane, Howard Slough, Locomotive Springs, Manti Meadow, Mills Meadows, Ogden Bay, Powell Slough, Public Shooting Grounds, Salt Creek, Stewart's Lake, Timpie Springs Willard Spur; or

(d) on the Scott M. Matheson or Utah Lake wetland preserve.

**R657-9-30. Rest Areas and No Shooting Areas.**

(1) A person may only access and use state waterfowl management areas in accordance with state and federal law, state administrative code, and proclamations of the Wildlife Board.

(2)(a) The division may establish portions of state waterfowl management areas as "rest areas" for wildlife that are closed to the public and trespass of any kind is prohibited.

(b) In addition to any areas identified in the proclamation of the Wildlife Board for taking waterfowl, Wilson's snipe, and coot, the following areas are designated as rest areas:

(i) ~~[F]~~that portion of Clear Lake Waterfowl Management Area known as Spring Lake;

(ii) ~~[F]~~that portion of Desert Lake Waterfowl Management Area known as Desert Lake;

(iii) ~~[F]~~that portion of Public Shooting Grounds Waterfowl Management Area that lies above and adjacent to the Hull Lake Diversion Dike known as Duck Lake;

(iv) ~~[F]~~that portion of Salt Creek Waterfowl Management Area known as Rest Lake;

(v) ~~[F]~~that portion of Farmington Bay Waterfowl Management Area that lies in the northwest quarter of unit one; and

(iv) ~~[F]~~that portion of Ogden Bay Waterfowl Management Area known as North Bachman.

(c) Maps of all rest areas will be available at division offices, on the division's website, and to the extent necessary, marked with signage at each rest area.

(3)(a) The division may establish portions of state waterfowl management areas as "No Shooting Areas" where the discharge of weapons for the purposes of hunting is prohibited.

(b) No Shooting Areas remain open to the public for other lawful activities.

(c) In addition to any areas identified in the proclamation of the Wildlife Board for taking waterfowl, Wilson's snipe, and coot, the following areas are No Shooting Areas:

(i) ~~[A]~~all of Antelope Island, including all areas within 600 feet of the upland vegetative line or other clearly defined high water mark;

(ii) ~~[W]~~within 600 feet of the north and south side of the center line of Antelope Island causeway;

(iii) ~~[W]~~within 600 feet of all structures found at Brown's Park Waterfowl Management Area;

(iv) ~~[F]~~the following portions of Farmington Bay Waterfowl Management Area:

(A) within 600 feet of the Headquarters;

(B) within 600 feet of dikes and roads accessible by motorized vehicles;~~and~~

(C) within the area designated as the Learning Center~~[-];and~~

(D) within the 100 yard buffer around the Farmington Bay Waterfowl Management Area rest area.

(v) ~~[W]~~within 600 feet of the headquarters area of Ogden Bay Waterfowl Management Area;

(vi) ~~[W]~~within the boundaries of all State Parks except those designated open by appropriate signage as provided in Rule R651-614-4;

(vii) ~~[W]~~within 1/3 of a mile of the Great Salt Lake Marina;

(viii) ~~[B]~~below the high-water mark of Gunnison Bend Reservoir and its inflow upstream to the Southerland Bridge, Millard County;

(xi) ~~[A]~~all property within the boundary of the Salt Lake International Airport; and

(x) ~~[A]~~all property within the boundaries of federal migratory bird refuges, unless hunting waterfowl specifically authorized by the federal government.

(4) The division reserves the right to manage division lands and regulate their use consistent with Utah Code Section 23-21-7 and Utah Administrative Code R657-28.

**R657-9-34. Waterfowl Blinds on Waterfowl Management Areas.**

(1) Waterfowl blinds on division waterfowl management areas may be constructed or used as follows: ~~provided in Subsection (a) through Subsection (e).~~

(a) ~~W~~ waterfowl blinds may not be left unattended overnight, except for blinds constructed entirely of non-woody, vegetative materials that naturally occur where the blind is located~~[-];~~

(b) ~~T~~ trees and shrubs on waterfowl management areas that are live or dead standing may not be cut or damaged except as expressly authorized in writing by the division~~[-];~~

(c) ~~E~~ excavating soil or rock on waterfowl management areas above or below water surface is strictly prohibited, except as expressly authorized in writing by the division~~[-];~~

(d) ~~R~~ rock and soil material may not be transported to waterfowl management areas for purposes of constructing a blind~~[-]; and~~

(e) ~~W~~ waterfowl blinds may not be constructed or used in any area or manner, which obstructs vehicular or pedestrian travel on dikes.

(2) The restrictions set forth in Subsection (1)(a) through Subsection (1)(c) do not apply to the following waterfowl management areas:

(a) Farmington Bay Waterfowl Management Area - West and North of Unit 1, Turpin Unit, and Doug Miller Unit~~[-];~~

(b) Howard Slough Waterfowl Management Area - West and South of the exterior dike separating the waterfowl management area's fresh water impoundments from the Great Salt Lake~~[-];~~

(c) Ogden Bay Waterfowl Management Area - West of Unit 1, Unit 2, and Unit 3~~[-]; and~~

(d) Harold Crane Waterfowl Management Area - one half mile North and West of the exterior dike separating the waterfowl management area's fresh water impoundments from Willard Spur.

(3)(a) The restrictions set forth in Subsection (1)(a) through Subsection (1)(c) do not apply to blinds on Willard Spur Waterfowl Management Area.

(b) The placement or use of any permanent blind on Willard Spur Waterfowl Management Area requires written permission from UDWR and FFSL.

(4) Waterfowl blinds constructed or maintained on waterfowl management areas in violation of this section may be removed or destroyed by the division without notice.

~~(4)5~~ Any unoccupied, permanent waterfowl blind located on state land open to public access for hunting may be used by any person without priority to the person that constructed the blind. It being the intent of this rule to make such blinds available to any person on a first-come, first-serve basis.

~~(5)6~~ Waterfowl blinds or decoys cannot be left unattended overnight on state land open to public access for hunting in an effort to reserve the particular location where the blinds or decoys are placed.

**KEY: wildlife, birds, migratory birds, waterfowl**

**Date of Enactment or Last Substantive Amendment:** ~~August 10, 2020~~ 2021

**Notice of Continuation:** August 1, 2016

**Authorizing, and Implemented or Interpreted Law:** 23-14-18; 23-14-19; 50 CFR part 20

**Agency Information**

<b>1. Department:</b>	Natural Resources	
<b>Agency:</b>	Wildlife Resources	
<b>Room no.:</b>	Suite 2110	
<b>Building:</b>	Department of Natural Resources	
<b>Street address:</b>	1594 W North Temple	
<b>City, state:</b>	Salt Lake City, UT 84116	
<b>Mailing address:</b>	PO Box 146301	
<b>City, state, zip:</b>	Salt Lake City, UT 84114-6301	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Staci Coons	801-450-3093	stacicoons@utah.gov
Please address questions regarding information on this notice to the agency.		

**General Information**

<b>2. Rule or section catchline:</b>
R657-38. Dedicated Hunter Program
<b>3. Purpose of the new rule or reason for the change:</b>
This rule is being amended pursuant to Regional Advisory Council and Wildlife Board meetings conducted annually for taking public input and reviewing the Division of Wildlife Resources' (DWR) rule pursuant to Dedicated Hunters.
<b>4. Summary of the new rule or change:</b>
The proposed amendments to this rule allow for a minimum number of Dedicated Hunter Certificate of Registrations to be issued during the Big Game drawing.

**Fiscal Information**

<b>5. Aggregate anticipated cost or savings to:</b>
<b>A) State budget:</b>
The proposed rule amendments allow for a minimum number of Dedicated Hunter Certificate of Registrations to be available in the Big Game drawing, these changes can be initiated within the current workload and resources of DWR, therefore, DWR has determined that these amendments do not create a cost or savings impact to the state budget or DWR's budget since the changes will not increase workload and can be carried out with existing budget.
<b>B) Local governments:</b>
Since the proposed amendments add a minimum number of Code of Regulations (CORs) for the Dedicated Hunter program, this filing does not create any direct cost or savings impact to local governments. Nor are local governments indirectly impacted because this rule does

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	R657-38	Filing No. 53243

not create a situation requiring services from local governments.

**C) Small businesses** ("small business" means a business employing 1-49 persons):

The proposed rule amendments will not directly impact small businesses because a service is not required of them.

**D) Non-small businesses** ("non-small business" means a business employing 50 or more persons):

The proposed rule amendments will not directly impact non-small businesses because a service is not required of them.

**E) Persons other than small businesses, non-small businesses, state, or local government entities** ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an **agency**):

These amendments do not have the potential to create a cost impact to those individuals wishing to participate in the Dedicated Hunter Program simply because there is not a cost associated with the amendment.

**F) Compliance costs for affected persons:**

DWR has determined that this amendment will not create additional costs for those participating in the Dedicated Hunter program in Utah simply because there is not a cost associated with the amendment.

**G) Regulatory Impact Summary Table** (This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts will be included in narratives above.)

<b>Regulatory Impact Table</b>			
<b>Fiscal Cost</b>	<b>FY2021</b>	<b>FY2022</b>	<b>FY2023</b>
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Cost</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Fiscal Benefits</b>			
State Government	\$0	\$0	\$0

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

**H) Department head approval of regulatory impact analysis:**

The Executive Director of the Department of Natural Resources, Brian Steed, has reviewed and approved this fiscal analysis.

**6. A) Comments by the department head on the fiscal impact this rule may have on businesses:**

After conducting a thorough analysis, it was determined that this proposed rule amendment will not result in a fiscal impact to businesses.

**B) Name and title of department head commenting on the fiscal impacts:**

Brian Steed, Executive Director

**Citation Information**

**7. This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws. State code or constitution citations (required):**

Section 23-14-18

**Public Notice Information**

**9. The public may submit written or oral comments to the agency identified in box 1.** (The public may also request a hearing by submitting a written request to the agency. The agency is required to hold a hearing if it receives requests from ten interested persons or from an association having not fewer than ten members. Additionally, the request must be received by the agency not more than 15 days after the publication of this rule in the Utah State Bulletin. See Section 63G-3-302 and Rule R15-1 for more information.)

**A) Comments will be accepted until:** 02/16/2021

**10. This rule change MAY become effective on:** 02/23/2021

NOTE: The date above is the date on which this rule MAY become effective. It is NOT the effective date. After the date designated in Box 10, the agency must submit a

Notice of Effective Date to the Office of Administrative Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	Mike Fowlks, DWR Director	<b>Date:</b>	12/10/2020
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**R657. Natural Resources, Wildlife Resources.**

**R657-38. Dedicated Hunter Program.**

**R657-38-1. Purpose and Authority.**

(1) Under the authority of Section 23-14-18, this rule provides the standards and requirements for qualified deer hunters to participate in the Dedicated Hunter Program by obtaining a certificate of registration.

(2) The Dedicated Hunter Program is a program that:

- (a) provides expanded hunting opportunities;
- (b) requires participation in wildlife conservation projects;

and

(c) provides educational training in hunter ethics and wildlife management principles.

**R657-38-3. Dedicated Hunter Certificates of Registration.**

(1)(a) To participate in the Dedicated Hunter P[~~p~~] program, a person must apply for, be issued, and sign a [~~Dedicated Hunter~~] certificate of registration as prescribed by the Division.

(b) Certificates of registration are issued by the Division through a drawing as prescribed in the guidebook of the Wildlife Board for taking big game and R657-62.

(c) Certificates of registration are valid for three consecutive years, except as provided by R657-38-10 and R657-38-13, beginning on the date the big game drawing results are released and ending on the last day of the general season hunt for the third year of enrollment.

(d) The quantity of [~~Dedicated Hunter~~] certificates of registrations for the Dedicated Hunter Program available in the big game drawing is limited to:

(i) 15 percent of the total annual general season buck deer quota for each respective hunt area, inclusive of those certificates of registration that are within their effective term; or

(ii) one resident and one non-resident certificate of registration if the 15 percent total on that hunt area is met or exceeded.

(e) Certificates of registration remaining unissued from the Dedicated Hunter portion of the big game drawing shall be redistributed as general single-season permits for their respective hunt areas in the general buck deer drawing.

(2) The Division may deny issuance of a [~~Dedicated Hunter~~] certificate of registration for the Dedicated Hunter Program for any of the reasons identified as a basis for suspension in Section 23-19-9(7) and R657-38-15.

(3)(a) A certificate of registration for the Dedicated Hunter Program conditionally authorizes the participant to obtain a Dedicated Hunter permit which may be used to hunt deer within the area listed on the permit, during the general archery, general muzzleloader and general any legal weapon buck deer seasons according to the dates and boundaries established by the Wildlife Board.

(b) When available, the certificate of registration may also authorize the Dedicated Hunter permit to include the general deer archery extended area during the extended season dates.

(c) The person must use the appropriate weapon type specified by each season and boundary.

(4) The participant's [-] hunt area, as issued through the drawing, shall remain the same for the entire duration of [~~that program enrollment period~~] the certificate of registration.

(5) Participants in the Dedicated Hunter P[~~p~~] program shall be subject to any changes subsequently made to this or other rules during the term of enrollment.

**KEY: wildlife, hunting, recreation, wildlife conservation**

**Date of Enactment or Last Substantive Amendment: 2021[February 7, 2019]**

**Notice of Continuation: September 8, 2020**

**Authorizing, and Implemented or Interpreted Law: 23-14-18**

**NOTICE OF PROPOSED RULE**

**TYPE OF RULE:** Amendment

**Utah Admin. Code Ref (R no.):** R671-302

**Filing No.:** 53263

**Agency Information**

<b>1. Department:</b>	Pardons (Board of)	
<b>Agency:</b>	Administration	
<b>Street address:</b>	448 E Winchester Street, Suite 300	
<b>City, state:</b>	Murray, UT	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Mike Haddon	801-261-6467	mikehaddon@utah.gov

Please address questions regarding information on this notice to the agency.

**General Information**

**2. Rule or section catchline:**

R671-302. News Media and Public Access to Hearings

**3. Purpose of the new rule or reason for the change:**

The amended rule clarifies processes involved when the public and/or media want to attend an open public hearing conducted by the Board of Pardons and Parole (Board).

**4. Summary of the new rule or change:**

The incorporated changes clarify the public hearing process related to the Board. It also includes health and safety concerns as considerations for public access. It also specifies processes involved with in-person access to hearings which is needed due to some hearings now being conducted via video technology.



**Fiscal Information**

**5. Aggregate anticipated cost or savings to:**

**A) State budget:**

The changes to this rule should not result in either increased costs or cost savings in the state budget. Although not necessarily tied directly to this rule, the Board is conducting an increased number of hearings via video. That change could result in some additional hardware and software costs to the agency.

**B) Local governments:**

As this rule primarily is clarifying the hearing process, there is nothing substantive incorporated that would change if or how local governments may participate in a hearing. As such, there should be no additional cost or savings to local governments based on the proposed rule change.

**C) Small businesses** ("small business" means a business employing 1-49 persons):

Small businesses would likely only be involved in hearings before the Board if they happen to be the victim of a crime. If a small business that was a victim would like to participate in the hearing process, there is nothing in the changes to this rule that would lead to either an additional cost or a cost savings. Any participation would be similar to prior participant involvement.

**D) Non-small businesses** ("non-small business" means a business employing 50 or more persons):

Non-small businesses would likely only be involved in hearings before the Board if they happen to be the victim of a crime. If a non-small business that was a victim would like to participate in the hearing process, there is nothing in the changes to this rule that would lead to either an additional cost or a cost savings. Any participation would be similar to prior participant involvement.

**E) Persons other than small businesses, non-small businesses, state, or local government entities** ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an *agency*):

The changes to this rule do not substantively change the way the Board conducts hearings. The changes clarify processes for accessing and participating in hearings. The changes included are financially neutral.

**F) Compliance costs for affected persons:**

The changes to this rule do not significantly alter the way hearings are conducted, and, therefore, will not result in any compliance costs for individuals affected.

**G) Regulatory Impact Summary Table** (This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in

this table. Inestimable impacts will be included in narratives above.)

**Regulatory Impact Table**

Fiscal Cost	FY2021	FY2022	FY2023
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Cost</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Fiscal Benefits</b>			
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Net Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

**H) Department head approval of regulatory impact analysis:**

The Chair of the Board of Pardons and Parole, Carrie Cochran, has reviewed and approved this fiscal assessment.

**6. A) Comments by the department head on the fiscal impact this rule may have on businesses:**

The changes incorporated in this rule will not have a fiscal impact on any businesses.

**B) Name and title of department head commenting on the fiscal impacts:**

Carrie Cochran, Chair

**Citation Information**

**7. This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws. State code or constitution citations (required):**

Subsection 63G-3-201(3)	Section 77-27-1 et seq.	Subsection 77-27-9(4)
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**Public Notice Information**

**9. The public may submit written or oral comments to the agency identified in box 1.** (The public may also request a hearing by submitting a written request to the agency. The agency is required to hold a hearing if it receives requests from ten interested persons or from an association having not fewer than ten members. Additionally, the request must be received by the agency not more than 15 days after the publication of this rule in the Utah State Bulletin. See Section 63G-3-302 and Rule R15-1 for more information.)

<b>A) Comments will be accepted until:</b>	02/16/2021
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<b>10. This rule change MAY become effective on:</b>	02/23/2021
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NOTE: The date above is the date on which this rule MAY become effective. It is NOT the effective date. After the date designated in Box 10, the agency must submit a Notice of Effective Date to the Office of Administrative Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	Carrie Cochran, Chair	<b>Date:</b>	12/24/2020
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**R671. Pardons (Board of), Administration.**

**R671-302. ~~[News Media and]~~Public Access to Hearings.**

**R671-302-1. Open Hearings.**

(a) According to state law, and subject to fairness, health, and security requirements, Board hearings ~~[shall be]~~ are open ~~[to the]~~ public ~~including representatives of the news media~~ hearings.

(b) Public access to Board hearings is primarily available through live internet streaming of hearing.

(c) When health, safety, and security procedures and protocols of the Board and the Utah Department of Corrections (UDC) allow, victims and members of the public, including media representatives, may attend Board hearings in person.

(d) ~~[However, t]~~The Board shall only accept testimony or comments from the offender and specific individuals as provided in Rules R671-203 and R671-308.

(e) The Board may suspend in-person access to hearings in cases of national, state, county, or municipal declared emergency; natural catastrophe; or other unforeseen and extraordinary circumstances.

**R671-302-2. Limited Seating.**

When conditions allow in-person attendance at hearings pursuant to Section R671-302-1, if the number of ~~[people]~~ individuals wishing to attend a hearing exceeds the seating capacity of the room in which the hearing will be conducted, priority for admission and seating shall be given to:

1. ~~an~~ ~~[f]~~ individual[s] involved in the hearing;
  2. a ~~[v]~~ victim~~[s]~~ or victim representative of record~~[-]~~;
  3. ~~[Up to five people]~~ up to three victim advocates or other individuals designated ~~[selected-]~~ by ~~[the]~~ a victim~~[s]~~ or victim representative of record~~[-]~~;
  4. ~~[U]~~ up to five individuals ~~[people-]~~ selected by the offender~~[-]~~;
  5. ~~any~~ ~~[O]~~ officials designated or approved by the Board~~[-]~~; and
  6. ~~Up to five members of the news media as allocated by the Board or its designee.~~
6. ~~[7-]~~ a ~~[M]~~ member[s] of the public ~~[and media]~~ on a first come basis.

**R671-302-3. Security and Conduct.**

(a) ~~An individual may attend a Board hearing in-person pursuant to Section R671-302-1.~~

(b) ~~[All attendees are]~~ Each individual in attendance at a Board hearing is subject to ~~[prison-]~~ hearing facility security requirements and must conduct themselves in a manner ~~[which]~~ that does not interfere with the orderly conduct of the hearing.

(c) Any individual in attendance at a Board hearing that causes ~~[ing]~~ a disturbance or engages ~~[ing]~~ in behavior deemed by the ~~[Board]~~ hearing official to be disruptive of the proceeding may be ordered to leave and security personnel may be requested to escort the individual from the premises. ~~[All persons granted admission to a hearing must have a picture identification and subject themselves to the security regulations of the custodial facility.]~~

**R671-302-4. Executive Session.**

Board executive sessions are closed sessions with no access. No filming, recording or transmitting of executive session portions of any hearing will be allowed.

**R671-302-5. ~~[News-]Media Procedures~~~~[Equipment].~~**

(a) ~~In addition to the requirements of Section R671-303-3, a media representative may attend a Board hearing in-person pursuant to Section R671-302-1.~~

(b) ~~[Subject to prior approval by the Board or its designee, news agency]~~ A media representative~~[s will]~~ may be permitted to operate photographic, recording or ~~[transmitting]~~ other equipment during the public portion[s] of any hearing, ~~subject to prior approval by the Board or its designee and the safety or security requirements of the Department of Corrections (UDC) and the hearing facility.~~ ~~When more than one news agency requests permission to use photographic, recording or transmitting equipment, a pooling arrangement may be required.]~~

(c) If the Board receives requests for more than one media representative to operate photographic, recording or other equipment during a hearing, the Board shall require a media pooling arrangement.

~~(b)~~(d) If ~~[When it is determined by the Board or its designee,]~~ a hearing official determines that ~~[any such]~~ media equipment or operators ~~[of that equipment]~~ are causing a disturbance, are interfering with, or have the potential to cause a disturbance or interfere with an orderly, fair and impartial hearing, restrictions may be imposed to eliminate those problems.

~~(e)~~(e) ~~[Any-]~~ Instant ~~[uploading]~~ broadcast or transmitting of video, audio, or images by media or any individual ~~[recorded at the site of a hearing, or while a hearing is in progress, must be approved by the Board or its designee in advance of the hearing]~~ during a hearing is prohibited.

~~(f) Photographing, recording, [and/or] transmitting, or broadcasting the image of any victim [testifying before the] attending a Board hearing is prohibited unless approved by the victim and the [individual presiding over the] hearing official prior to the hearing.~~

~~**[R671-302-6. Prior Approval.**~~

~~News media representatives wishing to use photographic, recording or transmitting equipment or to be considered for one of the five reserved media seats shall submit a request in writing to the Board or its designee. Such requests must be submitted in compliance with the policy and procedures of the Department of Corrections. If requesting the use of equipment, the request must specify by type, all the pieces of equipment to be used.]~~

**R671-302-6[7]. [Approving] Media Equipment Approval.**

(a) ~~A media [R]request[s] to use photographic, recording or [transmitting]other equipment[;] must be made in writing to the Board director or designee at least [forty-eight (48) hours][three business days prior to a [regularly scheduled] hearing[ and ninety-six (96) hours prior to a Commutation Hearing].~~

(b) ~~[It is the responsibility of the news agency, or their representative, making the request to contact and confer with the Board's designee in order to work out logistical, access and all other details of such use.~~

~~(c) If the Board's designee is unfamiliar with the equipment proposed to be used, he or she may require that a demonstration be performed to determine if it is likely to be intrusive. [Equipment will not be approved if the equipment is likely to disturb or interfere with the hearing[inhibit the orderly, fair and impartial hearing in any way. Any equipment causing a disturbance or distraction will be removed from the premises].~~

~~[(d) Digital cameras and recording equipment are approved equipment.]~~

~~[(e)](c) If equipment is approved for use at a hearing, its location and mode of operation shall be approved in advance by the Board's designee. Any approved equipment will remain in a stationary position during the entire hearing and will be operated as unobtrusively as possible.~~

~~[(f)](d) No artificial lighting may be used during a hearing, or in the hearing room[; in conjunction with the use of any photographic, recording or transmitting equipment]. The hearing official or other Board representative may direct the placement of equipment and seating to ensure the hearing is conducted in an orderly and safe manner.~~

~~[(g) If there are multiple requests for the same type of equipment, news agencies will be required to make pool arrangements, as no more than one piece of the same type of equipment will be allowed. If no agreement can be reached regarding~~

~~pooling arrangements, the Board, or its designee, will make the determination and assignment. Any news agency or representative so designated and assigned as the pool representative shall promptly provide all photographs, recordings or footage to all other media agencies and personnel who are deemed a part of the pool.~~

**R671-302-8. Reserved Media Seating.**

~~(a) If five or fewer requests for media seating are received prior to the deadline, all requests will be approved. If more than five requests for media seating are received, the Board's designee will allocate the seating based on a pool arrangement. Each media category will select its own representative(s). If no agreement can be reached regarding pool representative(s), the Board's designee will make the determination and assignment. Any person wishing to be a pool representative must agree in advance to fully cooperate with all pool arrangements.~~

~~(b) One seat will be allocated to each of the following media categories:~~

- ~~1. Local daily newspapers with statewide circulation;~~
- ~~2. Major wire services with local bureaus;~~
- ~~3. Local television stations with regularly scheduled daily newscasts;~~
- ~~4. Local radio stations with regularly scheduled daily newscasts;~~
- ~~5. Web-based media.~~
- ~~6. If the requests submitted do not fill all of the above categories, a seat will be allocated to a representative of a major wire service with no local bureau or a national publication (in that order).~~
- ~~7. If seats remain unfilled, one additional seat will be allocated to the categories in the above order until all seats are filled. No news agency will have more than one individual assigned to reserved media seating unless all other requests have been satisfied.]~~

**R671-302-7[9]. Violations.**

~~Any [news agency found to be in violation of this policy]individual or organization that violates this rule may be removed from a hearing and may [have its representatives restricted in or banned from covering]be prohibited from attending future Board hearings.~~

**KEY: [news agencies]public hearings, media, equipment**

**Date of Enactment or Last Substantive Amendment: 2021[October 31, 2016]**

**Notice of Continuation: January 30, 2017**

**Authorizing, and Implemented or Interpreted Law: 63G-3-201(3); 77-27-1 et seq.; 77-27-9(4)(a)**

**End of the Notices of Proposed Rules Section**



## NOTICES OF CHANGES IN PROPOSED RULES

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After an agency has published a **PROPOSED RULE** in the *Utah State Bulletin*, it may receive comment that requires the **PROPOSED RULE** to be altered before it goes into effect. A **CHANGE IN PROPOSED RULE** allows an agency to respond to comments it receives.

As with a **PROPOSED RULE**, a **CHANGE IN PROPOSED RULE** is preceded by a **RULE ANALYSIS**. This analysis provides summary information about the **CHANGE IN PROPOSED RULE** including the name of a contact person, anticipated cost impact of the rule, and legal cross-references.

While the law does not designate a comment period for a **CHANGE IN PROPOSED RULE**, it does provide for a 30-day waiting period. An agency may accept additional comments during this period and, at its option, may designate a comment period or may hold a public hearing. The 30-day waiting period for **CHANGES IN PROPOSED RULES** published in this issue of the *Utah State Bulletin* ends February 16, 2021.

Following the **RULE ANALYSIS**, the text of the **CHANGE IN PROPOSED RULE** is usually printed. The text shows only those changes made since the **PROPOSED RULE** was published in an earlier edition of the *Utah State Bulletin*. Additions made to the rule appear underlined (example). Deletions made to the rule appear struck out with brackets surrounding them (~~example~~). A row of dots in the text between paragraphs (. . . . .) indicates that unaffected text, either whole sections or subsections, was removed to conserve space. If a **CHANGE IN PROPOSED RULE** is too long to print, the Office of Administrative Rules may include only the **RULE ANALYSIS**. A copy of rules that are too long to print is available from the agency or from the Office of Administrative Rules.

From the end of the 30-day waiting period through May 15, 2021, an agency may notify the Office of Administrative Rules that it wants to make the **CHANGE IN PROPOSED RULE** effective. When an agency submits a **NOTICE OF EFFECTIVE DATE** for a **CHANGE IN PROPOSED RULE**, the **PROPOSED RULE** as amended by the **CHANGE IN PROPOSED RULE** becomes the effective rule. The agency sets the effective date. The date may be no fewer than 30 days nor more than 120 days after the publication date of the **CHANGE IN PROPOSED RULE**. If the agency designates a public comment period, the effective date may be no fewer than seven calendar days after the close of the public comment period nor more than 120 days after the publication date. Alternatively, the agency may file another **CHANGE IN PROPOSED RULE** in response to additional comments received. If the Office of Administrative Rules does not receive a **NOTICE OF EFFECTIVE DATE** or another **CHANGE IN PROPOSED RULE** by the end of the 120-day period after publication, the **CHANGE IN PROPOSED RULE** filing, along with its associated **PROPOSED RULE**, lapses.

**CHANGES IN PROPOSED RULES** are governed by Section 63G-3-303, Rule R15-2, and Sections R15-4-3, R15-4-4, R15-4-5b, R15-4-7, R15-4-9, and R15-4-10.

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

NOTICE OF CHANGE IN PROPOSED RULE		
Utah Admin. Code Ref (R no.):	R590-285	Filing No. 53179

**Agency Information**

<b>1. Department:</b>	Insurance	
<b>Agency:</b>	Administration	
<b>Room no.:</b>	3110	
<b>Building:</b>	State Office Building	
<b>Street address:</b>	450 N State St	
<b>City, state, zip:</b>	Salt Lake City, UT 84114	
<b>Mailing address:</b>	PO Box 146901	
<b>City, state, zip:</b>	Salt Lake City, UT 84114-6901	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Steve Gooch	801-538-3803	sgooch@utah.gov
Please address questions regarding information on this notice to the agency.		

**General Information**

<b>2. Rule or section catchline:</b>	
R590-285. Limited Long-Term Care Insurance	
<b>3. Change in Proposed Rule:</b>	
Changes FILING Name, Publication date of prior filing:	R590-285, Limited Long-Term Care Insurance, 11/15/2020
<b>4. Reason for this change:</b>	
Based on conversations with industry, this change is being made to give more clarity regarding compliance dates for limited long-term care policies that are currently being sold in Utah.	
<b>5. Summary of this change:</b>	
Compliance dates were extended from January 1, 2021 to July 1, 2021. (EDITOR'S NOTE: The original proposed new rule upon which this change in proposed rule (CPR) was based was published in the November 15, 2020, issue of the Utah State Bulletin, on page 29. Underlining in the rule below indicates text that has been added since the publication of the proposed new rule mentioned above; strike-out indicates text that has been deleted. You must view the CPR and the proposed new rule together to understand all of the changes that will be enforceable should the agency make this rule effective.)	

**Fiscal Information**

<b>6. Aggregate anticipated cost or savings to:</b>			
<b>A) State budget:</b>			
There is no anticipated cost or savings to the state budget. This change is being made only to extend compliance dates.			
<b>B) Local government:</b>			
There is no anticipated cost or savings to local governments. This change is being made only to extend compliance dates.			
<b>C) Small businesses</b> ("small business" means a business employing 1-49 persons):			
There is no anticipated cost or savings to small businesses. This change is being made only to extend compliance dates.			
<b>D) Non-small businesses</b> ("non-small business" means a business employing 50 or more persons):			
There is no anticipated cost or savings to non-small businesses. This change is being made only to extend compliance dates.			
<b>E) Persons other than small businesses, non-small businesses, or state or local government entities</b> ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an <b>agency</b> ):			
There is no anticipated cost or savings to any other persons. This change is being made only to extend compliance dates.			
<b>F) Compliance costs for affected persons:</b>			
There are no compliance costs for any affected persons. The compliance dates for insurers currently selling limited long-term care insurance are being extended to clarify that they may continue selling such plans.			
<b>G) Regulatory Impact Summary Table</b> (This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts will be included in narratives above.)			
<b>Regulatory Impact Table</b>			
<b>Fiscal Cost</b>	<b>FY2021</b>	<b>FY2022</b>	<b>FY2023</b>
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0

Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Cost</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Fiscal Benefits</b>			
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Net Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>H) Department head approval of regulatory impact analysis:</b>			
The Interim Commissioner of the Insurance Department, Tanji J. Northrup, has reviewed and approved this fiscal analysis.			
<b>7. A) Comments by the department head on the fiscal impact the rule may have on businesses:</b>			
After conducting a thorough analysis, it was determined that this proposed rule amendment will not result in a fiscal impact to businesses.			
<b>B) Name and title of department head commenting on the fiscal impacts:</b>			
Tanji J. Northrup, Interim Commissioner			

**Citation Information**

<b>8. This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws. State code or constitution citations (required):</b>		
Subsection 31A-2-203(3)(a)	Section 31A-22-2006	

**Public Notice Information**

**10. The public may submit written or oral comments to the agency identified in box 1.** (The public may also request a hearing by submitting a written request to the agency. The agency is required to hold a hearing if it receives requests from ten interested persons or from an association having not fewer than ten members. Additionally, the request must be received by the agency not more than 15 days after the publication of this rule in the Utah State Bulletin. See Section 63G-3-302 and Rule R15-1 for more information.)

<b>A) Comments will be accepted until:</b>	02/16/2021
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<b>11. This rule change MAY become effective on:</b>	02/23/2021
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NOTE: The date above is the date on which this rule MAY become effective. It is NOT the effective date. After the date designated in Box 11, the agency must submit a Notice of Effective Date to the Office of Administrative Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	Steve Gooch, Public Information Officer	<b>Date:</b>	12/23/2020
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**R590. Insurance, Administration.**

**R590-285. Limited Long-Term Care Insurance.**

**R590-285-1. Purpose.**

The purpose of this regulation is to implement Title 31A, Chapter 22, Part 20, Limited Long-Term Care Insurance Act, to promote the public interest, to promote the availability of limited long-term care insurance coverage, to protect applicants for limited long-term care insurance, as defined, from unfair or deceptive sales or enrollment practices, to facilitate public understanding and comparison of limited long-term care insurance coverages, and to facilitate flexibility and innovation in the development of limited long-term care insurance.

**R590-285-2. Authority.**

This regulation is issued pursuant to the authority vested in the commissioner under Subsection 31A-2-201(3)(a) and Section 31A-22-2006.

**R590-285-3. Applicability and Scope.**

Except as otherwise specifically provided, this regulation applies to all limited long-term care insurance policies delivered or issued for delivery in this state on or after ~~January~~ July 1, 2021.

## NOTICES OF CHANGES IN PROPOSED RULES

### **R590-285-4. Definitions.**

In addition to the definitions in Sections 31A-1-301 and 31A-22-2002, the following definitions shall apply for the purpose of this rule.

(1) "Activities of daily living" means at least bathing, continence, dressing, eating, toileting, and transferring.

(2) "Acute condition" means that the individual is medically unstable. Such an individual requires frequent monitoring by medical professionals, such as physicians and registered nurses, in order to maintain his or her health status.

(3) "Adult day care" means a facility duly licensed and operating within the scope of such license. An adult day care facility may not be defined more restrictively than a program for three or more individuals, of social and health-related services provided during the day in a community group setting for the purpose of supporting frail, impaired elderly or other disabled adults who can benefit from care in a group setting outside the home.

(4) "Bathing" means washing oneself by sponge bath; or in either a tub or shower, including the task of getting into or out of the tub or shower.

(5) "Benefit trigger" for the purposes of independent review, means a contractual provision in the insured's policy of limited long-term care insurance conditioning the payment of benefits on a determination of the insured's ability to perform activities of daily living and on cognitive impairment.

(6) "Cognitive impairment" means a deficiency in a person's short or long-term memory; orientation as to person, place, and time; deductive or abstract reasoning; or judgment as it relates to safety awareness.

(7) "Continence" means the ability to maintain control of bowel and bladder function; or, when unable to maintain control of bowel or bladder function, the ability to perform associated personal hygiene, including caring for catheter or colostomy bag.

(8) "Dressing" means putting on and taking off all items of clothing and any necessary braces, fasteners, or artificial limbs.

(9) "Eating" means feeding oneself by getting food into the body from a receptacle, such as a plate, cup, or table, or by a feeding tube or intravenously.

(10) "Hands-on assistance" means physical assistance (minimal, moderate, or maximal) without which the individual would not be able to perform the activity of daily living.

(11) "Home care services" means medical and nonmedical services, provided to ill, disabled, or infirm persons in their residences. Such services may include homemaker services, assistance with activities of daily living, and respite care services.

(12) "Licensed health care professional" means an individual qualified by education and experience in an appropriate field, to determine, by record review, an insured's actual functional or cognitive impairment.

(13) "Medicare" means "The Health Insurance for the Aged Act, Title XVIII of the Social Security Amendments of 1965 as Then Constituted or Later Amended," or "Title I, Part I of Public Law 89-97, as Enacted by the Eighty-Ninth Congress of the United States of America and popularly known as the Health Insurance for the Aged Act, as then constituted and any later amendments or substitutes thereof," or words of similar import.

(14) "Mental or nervous disorder" may not be defined to include more than neurosis, psychoneurosis, psychopathy, psychosis, or mental or emotional disease or disorder.

(15) "Personal care" means the provision of hands-on services to assist an individual with activities of daily living.

(16) "Qualified actuary" means a member in good standing of the American Academy of Actuaries.

(17)(a) "Similar policy forms" means all of the limited long-term care insurance policies and certificates issued by an insurer in the same limited long-term care benefit classification as the policy form being considered.

(b) Certificates of groups that meet the definition in Subsection 31A-22-2002(3) are not considered similar to certificates or policies otherwise issued as limited long-term care insurance, but are similar to other comparable certificates with the same limited long-term care benefit classifications.

(c) For purposes of determining similar policy forms, limited long-term care benefit classifications are defined as:

(i) institutional limited long-term care benefits only;

(ii) non-institutional limited long-term care benefits only;

or

(iii) comprehensive limited long-term care benefits.

(18) "Skilled nursing care," "personal care," "home care," "specialized care," "assisted living care," and other services shall be defined in relation to the level of skill required, the nature of the care and the setting in which care must be delivered.

(19) "Toileting" means getting to and from the toilet, getting on and off the toilet, and performing associated personal hygiene.

(20) "Transferring" means moving into or out of a bed, chair, or wheelchair.

(21) "Skilled nursing facility," "extended care facility," "convalescent nursing home," "personal care facility," "specialized care providers," "assisted living facility," "home care agency," and all other providers of services shall be defined in relation to the services and facilities required to be available and the licensure, certification, registration, or degree status of those providing or supervising the services. When the definition requires that the provider be appropriately licensed, certified, or registered, it shall also state what requirements a provider must meet in lieu of licensure, certification, or registration when the state in which the service is to be furnished does not require a provider of these services to be licensed, certified, or registered, or when the state licenses, certifies, or registers the provider of services under another name.

### **R590-285-5. Policy Practices and Provisions.**

(1) Renewability. The terms "guaranteed renewable" and "noncancellable" may not be used in any individual limited long-term care insurance policy without further explanatory language in accordance with the disclosure requirements of Section R590-285-7.

(a) A policy issued to an individual may not contain renewal provisions other than "guaranteed renewable" or "noncancellable."

(b) The term "guaranteed renewable" may be used only when the insured has the right to continue the limited long-term care insurance in force by the timely payment of premiums and when the insurer has no unilateral right to make any change in any provision of the policy or rider while the insurance is in force, and cannot decline to renew, except that rates may be revised by the insurer on a class basis.



(c) The term "noncancellable" may be used only when the insured has the right to continue the limited long-term care insurance in force by the timely payment of premiums during which period the insurer has no right to unilaterally make any change in any provision of the insurance or in the premium rate.

(d) The term "level premium" may only be used when the insurer does not have the right to change the premium.

(2)(a) Limitations and Exclusions. A policy may not be delivered or issued for delivery in this state as limited long-term care insurance if the policy limits or excludes coverage by type of illness, treatment, medical condition, or accident, except as follows:

(i) alcoholism and drug addiction;

(ii) illness, treatment, or medical condition arising out of:

(A) war or act of war, whether declared or undeclared;

(B) participation in a felony, riot, or insurrection, when the insured is a voluntary participant;

(C) service in the armed forces or units auxiliary thereto;

(D) suicide, sane or insane, attempted suicide, or intentionally self-inflicted injury; or

(E) aviation, only to a non-fare-paying passenger;

(iii) mental or nervous disorders; however, this may not permit exclusion or limitation of benefits on the basis of cognitive impairment;

(iv) preexisting conditions or diseases; and

(v) treatment provided in a government facility, unless otherwise required by law, services for which benefits are available under Medicare or other governmental program, except Medicaid, any state or federal workers' compensation, employer's liability or occupational disease law, or any motor vehicle no-fault law, services provided by a member of the covered person's immediate family and services for which no charge is normally made in the absence of insurance.

(b)(i) This Subsection R590-285-5(2), is not intended to prohibit exclusions and limitations by type of provider. However, no limited long-term care issuer may deny a claim because services are provided in a state other than the state of policy issued under the following conditions:

(A) when the state other than the state of policy issue does not have the provider licensing, certification, or registration required in the policy, but where the provider satisfies the policy requirements outlined for providers in lieu of licensure, certification, or registration; or

(B) when the state other than the state of policy issue licenses, certifies, or registers the provider under another name.

(ii) For purposes of this subsection, "state of policy issue" means the state in which the individual policy or certificate was originally issued.

(iii) This subsection is not intended to prohibit territorial limitations outside of the United States.

(3) Extension of Benefits.

(a) Termination of limited long-term care insurance shall be without prejudice to any benefits payable for institutionalization if the institutionalization began while the limited long-term care insurance was in force and continues without interruption after termination.

(b) The extension of benefits beyond the period the limited long-term care insurance was in force may be limited to the duration of the benefit period, if any, or to payment of the maximum benefits

and may be subject to any policy waiting period, and all other applicable provisions of the policy.

(4) Continuation or Conversion.

(a) Group limited long-term care insurance issued in this state shall provide covered individuals with a basis for continuation or conversion of coverage.

(b) For the purposes of this Subsection R590-285-5(4):

(i) "a basis for continuation of coverage" means a policy provision that maintains coverage under the existing group policy when the coverage would otherwise terminate, and which is subject only to the continued timely payment of premium when due. Group policies that restrict provision of benefits and services to or contain incentives to use certain providers or facilities may provide continuation benefits that are substantially equivalent to the benefits of the existing group policy. The commissioner shall make a determination as to the substantial equivalency of benefits, and in doing so, shall take into consideration the differences between managed care and non-managed care plans, including, but not limited to, provider system arrangements, service availability, benefit levels, and administrative complexity;

(ii) "a basis for conversion of coverage" means a policy provision that an individual whose coverage under the group policy would otherwise terminate or has been terminated for any reason, including discontinuance of the group policy in its entirety or with respect to an insured class, and who has been continuously insured under the group policy, and any group policy which it replaced, for at least six months immediately prior to termination, shall be entitled to the issuance of a converted policy by the insurer under whose group policy he or she is covered, without evidence of insurability; and

(iii) "converted policy" means an individual policy of limited long-term care insurance providing benefits identical to or benefits determined by the commissioner to be substantially equivalent to or in excess of those provided under the group policy from which conversion is made. Where the group policy from which conversion is made restricts provision of benefits and services to, or contains incentives to use certain providers or facilities, the commissioner, in making a determination as to the substantial equivalency of benefits, shall take into consideration the differences between managed care and non-managed care plans, including, but not limited to, provider system arrangements, service availability, benefit levels, and administrative complexity.

(c) Written application for the converted policy shall be made and the first premium due, if any, shall be paid as directed by the insurer not later than 60 days after termination of coverage under the group policy. The converted policy shall be issued effective on the day following the termination of coverage under the group policy and shall be renewable annually.

(d) Unless the group policy from which conversion is made replaced previous group coverage, the premium for the converted policy shall be calculated on the basis of the insured's age at inception of coverage under the group policy from which conversion is made. Where the group policy from which conversion is made replaced previous group coverage, the premium for the converted policy shall be calculated on the basis of the insured's age at inception of coverage under the group policy replaced.

(e) Continuation of coverage or issuance of a converted policy shall be mandatory, except where:

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(i) termination of group coverage resulted from an individual's failure to make any required payment of premium or contribution when due; or

(ii) the terminating coverage is replaced not later than 31 days after termination, by group coverage effective on the day following the termination of coverage:

(A) providing benefits identical to or benefits determined by the commissioner to be substantially equivalent to or in excess of those provided by the terminating coverage; and

(B) the premium for which is calculated in a manner consistent with the requirements of Subsection R590-285-5(4)(d).

(f) Notwithstanding any other provision of this section, a converted policy issued to an individual who at the time of conversion is covered by another limited long-term care insurance policy that provides benefits on the basis of incurred expenses, may contain a provision that results in a reduction of benefits payable if the benefits provided under the additional coverage, together with the full benefits provided by the converted policy, would result in payment of more than 100% of incurred expenses. The provision shall only be included in the converted policy if the converted policy also provides for a premium decrease or refund which reflects the reduction in benefits payable.

(g) The converted policy may provide that the benefits payable under the converted policy, together with the benefits payable under the group policy from which conversion is made, may not exceed those that would have been payable had the individual's coverage under the group policy remained in force and effect.

(h) Notwithstanding any other provision of this section, an insured individual whose eligibility for group limited long-term care coverage is based upon his or her relationship to another person shall be entitled to continuation of coverage under the group policy upon termination of the qualifying relationship by death or dissolution of marriage.

(5) Discontinuance and Replacement. If a group limited long-term care policy is replaced by another group limited long-term care policy issued to the same policyholder, the succeeding insurer shall offer coverage to all persons covered under the previous group policy on its date of termination. Coverage provided or offered to individuals by the insurer and premiums charged to persons under the new group policy:

(a) may not result in an exclusion for preexisting conditions that would have been covered under the group policy being replaced; and

(b) may not vary or otherwise depend on the individual's health or disability status, claim experience or use of limited long-term care services.

(6) Premium Changes.

(a) The premium charged to an insured may not increase due to either:

(i) the increasing age of the insured at age 66 or older; or

(ii) the duration the insured has been covered under the policy.

(b) The purchase of additional coverage may not be considered a premium rate increase, but for purposes of the calculation required under Section R590-285-22, the portion of the premium attributable to the additional coverage shall be added to, and considered part of, the initial annual premium.

(c) A reduction in benefits may not be considered a premium change, but for purposes of the calculation required under

Section R590-285-22, the initial annual premium shall be based on the reduced benefits.

(7) Electronic Enrollment for Group Policies.

(a) In the case of a group defined in Subsection 31A-22-2002(3), any requirement that a signature of an insured be obtained by an agent or insurer shall be deemed satisfied if:

(i) the consent is obtained by telephonic or electronic enrollment by the group policyholder or insurer. A verification of enrollment information shall be provided to the enrollee;

(ii) the telephonic or electronic enrollment provides necessary and reasonable safeguards to assure the accuracy, retention, and prompt retrieval of records; and

(iii) the telephonic or electronic enrollment provides necessary and reasonable safeguards to assure that the confidentiality of individually identifiable information and privileged information is maintained.

(b) The insurer shall make available, upon request of the commissioner, records that will demonstrate the insurer's ability to confirm enrollment and coverage amounts.

### **R590-285-6. Unintentional Lapse.**

Each insurer offering limited long-term care insurance shall, as a protection against unintentional lapse, comply with the following:

(1)(a) Notice before lapse or termination.

(i) No individual limited long-term care policy or certificate shall be issued until the insurer has received from the applicant either a written designation of at least one person, in addition to the applicant, who is to receive notice of lapse or termination of the policy or certificate for nonpayment of premium, or a written waiver dated and signed by the applicant electing not to designate additional persons to receive notice.

(ii) The applicant has the right to designate at least one person who is to receive the notice of termination, in addition to the insured.

(iii) Designation may not constitute acceptance of any liability on the third party for services provided to the insured.

(iv) The form used for the written designation must provide space clearly designated for listing at least one person.

(v) The designation shall include each person's full name and home address.

(vi) In the case of an applicant who elects not to designate an additional person, the waiver shall state: "Protection against unintended lapse. I understand that I have the right to designate at least one person other than myself to receive notice of lapse or termination of this limited long-term care insurance policy for nonpayment of premium. I understand that notice will not be given until 30 days after a premium is due and unpaid. I elect NOT to designate a person to receive this notice."

(vii) The insurer shall notify the insured of the right to change this written designation, no less often than once every two (2) years.

(b) When the policyholder or certificateholder pays premium for a limited long-term care insurance policy or certificate through a payroll or pension deduction plan, the requirements contained in Subsection R590-285-6(1) need not be met until 60 days after the policyholder or certificateholder is no longer on such a payment plan. The application or enrollment form for such policies

or certificates shall clearly indicate the payment plan selected by the applicant.

(c) Lapse or termination for nonpayment of premium.

(i) No individual limited long-term care policy or certificate shall lapse or be terminated for nonpayment of premium unless the insurer, at least 30 days before the effective date of the lapse or termination, has given notice to the insured and to those persons designated pursuant to Subsection R590-285-6(1), at the address provided by the insured for purposes of receiving notice of lapse or termination.

(ii) Notice shall be given by first class United States mail, postage prepaid; and notice may not be given until 30 days after a premium is due and unpaid.

(iii) Notice shall be deemed to have been given as of five days after the date of mailing.

(2) Reinstatement.

(a) In addition to the requirement in Subsection R590-285-6(1), a limited long-term care insurance policy or certificate shall include a provision that provides for reinstatement of coverage, in the event of lapse if the insurer is provided proof that the policyholder or certificateholder was cognitively impaired or had a loss of functional capacity before the grace period contained in the policy expired.

(b) This option shall be available to the insured if requested within five months after termination and shall allow for the collection of past due premium, where appropriate.

(c) The standard of proof of cognitive impairment or loss of functional capacity may not be more stringent than the benefit eligibility criteria on cognitive impairment or the loss of functional capacity contained in the policy and certificate.

#### **R590-285-7. Required Disclosure Provisions.**

(1) Renewability. Individual limited long-term care insurance policies shall contain a renewability provision.

(a) The provision shall be appropriately captioned, shall appear on the first page of the policy, and shall clearly state that the coverage is guaranteed renewable or noncancellable.

(b) A limited long-term care insurance policy or certificate, other than one where the insurer does not have the right to change the premium, shall include a statement that premium rates may change.

(2) Riders and Endorsements.

(a) Except for riders or endorsements by which the insurer effectuates a request made in writing by the insured under an individual limited long-term care insurance policy, all riders or endorsements added to an individual limited long-term care insurance policy after date of issue or at reinstatement or renewal that reduce or eliminate benefits or coverage in the policy shall require signed acceptance by the individual insured.

(b) After the date of policy issue, any rider or endorsement that increases benefits or coverage with a concomitant increase in premium during the policy term must be agreed to in writing signed by the insured, except if the increased benefits or coverage are required by law.

(c) Where a separate additional premium is charged for benefits provided in connection with riders or endorsements, the premium charge shall be set forth in the policy, rider, or endorsement.

(3) Payment of Benefits. A limited long-term care insurance policy that provides for the payment of benefits based on standards described as "usual and customary," "reasonable and customary," or words of similar import shall include a definition of

these terms and an explanation of the terms in its accompanying outline of coverage.

(4) Limitations. If a limited long-term care insurance policy or certificate contains any limitations with respect to preexisting conditions, the limitations shall appear as a separate paragraph of the policy or certificate and shall be labeled as "Preexisting Condition Limitations."

(5) Other Limitations or Conditions on Eligibility for Benefits. A limited long-term care insurance policy or certificate containing any limitations or conditions for eligibility other than those prohibited in Subsection 31A-22-2004(3)(b) shall set forth a description of the limitations or conditions, including any required number of days of confinement, in a separate paragraph of the policy or certificate and shall label such paragraph "Limitations or Conditions on Eligibility for Benefits."

(6) Benefit Triggers.

(a) Activities of daily living and cognitive impairment shall be used to measure an insured's need for limited long-term care and shall be described in the policy or certificate in a separate paragraph and shall be labeled "Eligibility for the Payment of Benefits." Any additional benefit triggers shall also be explained in this section.

(b) If these triggers differ for different benefits, explanation of the trigger shall accompany each benefit description.

(c) If an attending physician or other specified person must certify a certain level of functional dependency in order to be eligible for benefits, this too shall be specified.

#### **R590-285-8. Required Disclosure of Rating Practices to Consumers.**

(1) This section shall apply as follows:

(a) Except as provided in Subsection R590-285-8(2), this section applies to any limited long-term care policy or certificate issued in this state on or after July 1, 2021.

(b) For certificates issued on or after the effective date of this regulation under a group limited long-term care insurance policy as defined in Subsection 31A-22-2002(3), which policy was in force at the time this regulation became effective, the provisions of this section shall apply on the policy anniversary following January 1, 2022.

(2) Other than policies for which no applicable premium rate or rate schedule increases can be made, insurers shall provide all of the information listed in this subsection to the applicant at the time of application or enrollment, unless the method of application does not allow for delivery at that time. In such a case, an insurer shall provide all of the information listed in this section to the applicant no later than at the time of delivery of the policy or certificate.

(a) A statement that the policy may be subject to rate increases in the future.

(b) An explanation of potential future premium rate revisions, and the policyholder's or certificateholder's options in the event of a premium rate revision.

(c) The premium rate or rate schedules applicable to the applicant that will be in effect until a request is made for an increase.

(d) A general explanation for applying premium rate or rate schedule adjustments that shall include:

(i) a description of when premium rate or rate schedule adjustments will be effective, e. g., next anniversary date, next billing date, etc.; and

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(ii) the right to a revised premium rate or rate schedule as provided in Subsection R590-285-8(2)(c) if the premium rate or rate schedule is changed.

(e)(i) Information regarding each premium rate increase on this policy form or similar policy forms over the past 10 years for this state or any other state that, at a minimum, identifies:

(A) the policy forms for which premium rates have been increased;

(B) the calendar years when the form was available for purchase; and

(C) the amount or percent of each increase. The percentage may be expressed as a percentage of the premium rate prior to the increase and may also be expressed as minimum and maximum percentages if the rate increase is variable by rating characteristics.

(ii) The insurer may provide additional explanatory information related to the rate increases.

(iii) An insurer shall have the right to exclude from the disclosure premium rate increases that only apply to blocks of business acquired from other nonaffiliated insurers or the limited long-term care policies acquired from other nonaffiliated insurers when those increases occurred prior to the acquisition.

(iv) If an acquiring insurer files for a rate increase on a limited long-term care policy form acquired from nonaffiliated insurers or a block of policy forms acquired from nonaffiliated insurers, on or before the later of the effective date of this section, or the end of a 24-month period following the acquisition of the block or policies, the acquiring insurer may exclude that rate increase from the disclosure. However, the nonaffiliated selling company shall include the disclosure of that rate increase in accordance with Subsection R590-285-8(2)(e)(i).

(v) If the acquiring insurer in Subsection R590-285-8(2)(e)(iv) files for a subsequent rate increase, even within the twenty-four-month period, on the same policy form acquired from nonaffiliated insurers or block of policy forms acquired from nonaffiliated insurers referenced in Subsection R590-285-8(2)(e)(iv), the acquiring insurer shall make all disclosures required by R590-285-8(2)(e), including disclosure of the earlier rate increase referenced in Subsection R590-285-8(2)(e)(iv).

(3) An applicant shall sign an acknowledgement at the time of application, unless the method of application does not allow for signature at that time, that the insurer made the disclosure required under Subsection R590-285-8(2)(a) and (e). If, due to the method of application, the applicant cannot sign an acknowledgement at the time of application, the applicant shall sign no later than at the time of delivery of the policy or certificate.

(4) An insurer shall use the form in Appendix A to comply with the requirements of Subsections R590-285-8(2) and (3).

(5) An insurer shall provide notice of an upcoming premium rate schedule increase to all policyholders or certificateholders, if applicable, at least 45 days prior to the implementation of the premium rate schedule increase by the insurer. The notice shall include the information required by Subsection R590-285-8(2) when the rate increase is implemented.

### **R590-285-9. Initial Filing Requirements.**

(1) This section applies to any limited long-term care policy issued in this state on or after July 1, 2021.

(2) An insurer shall provide the information listed in this subsection to the commissioner prior to making a limited long-term care insurance form available for sale:

(a) a copy of the disclosure documents required in Section R590-285-8;

(b) a complete rate schedule; and

(c) an actuarial memorandum that shall include:

(i) a statement regarding actuary's qualifications;

(ii) an explanation of the review performed by the actuary;

(iii) complete description of all pricing assumptions, including sources and credibility of data;

(iv) development of the anticipated lifetime loss ratio supported by an exhibit showing lifetime projection of earned premiums and incurred claims based upon the pricing assumptions;

(v) a statement that the premium rate schedule is expected to result in a lifetime loss ratio not less than 55%;

(vi) a statement that the policy design and coverage provided have been reviewed and taken into consideration;

(vii) a statement that the underwriting and claim adjudication processes have been reviewed and taken into consideration;

(viii) a sensitivity analysis of the anticipated lifetime loss ratio to the changes in the individual assumptions, including sensitivity to the mix of business;

(ix) a statement that the reserve requirements have been reviewed and taken in consideration;

(x) a description of the valuation assumptions with sufficient detail or sample calculation as to have a complete depiction of the reserve amounts to be held;

(xi) a statement that the difference between the gross premium and the net valuation premium for renewal years is sufficient to cover expected renewal expenses; or if such statement cannot be made, a complete description of the situations where this does not occur. An aggregate distribution of anticipated issues may be used as long as the underlying gross premiums maintain a reasonably consistent relationship; and

(xii) an actuarial certification dated and signed by the qualified actuary that all information presented in the actuarial memorandum is accurate and complete.

(3) Retention Requirements.

(a) An insurer offering a limited long-term care policy shall retain sufficient documentation from the initial pricing that a qualified actuary could recreate the initial rates at a later date.

(i) The documentation shall be sufficient to provide actual to expected analyses of:

(A) claims;

(B) incidence rates;

(C) persistency;

(D) mix of business; and

(E) loss ratios at the same level of detail used in the initial pricing.

(ii) If an insurer retains a consultant to price a limited long-term care product, the insurer shall require that the documentation be provided to the insurer, rather than being retained solely by the consultant.

(iii) If an insurer sells or cedes complete risk responsibility for a limited long-term care product, the insurer or cedant shall provide to the buyer or reinsurer the initial pricing documentation.

(b) An insurer that requests a future premium rate schedule increase but has not retained the initial pricing documentation shall be limited to a lifetime loss ratio not less than 80%.

(c) The insurer shall retain the initial pricing documentation at least until one year after the final policyholder is no longer eligible for benefits under the policy.

**R590-285-10. Prohibition Against Post-Claims Underwriting.**

(1) All applications for limited long-term care insurance policies or certificates except those that are guaranteed issue shall contain clear and unambiguous questions designed to ascertain the health condition of the applicant.

(2)(a) If an application for limited long-term care insurance contains a question that asks whether the applicant has had medication prescribed by a physician, it must also ask the applicant to list the medication that has been prescribed.

(b) If the medications listed in the application were known by the insurer or should have been known at the time of application, to be directly related to a medical condition for which coverage would otherwise be denied, then the policy or certificate may not be rescinded for that condition.

(3) Except for policies or certificates that are guaranteed issue:

(a) the following language shall be set out conspicuously and in close conjunction with the applicant's signature block on an application for a limited long-term care insurance policy or certificate: "Caution: If your answers on this application are incorrect or untrue, (insert name of insurer) has the right to deny benefits or rescind your policy"; and

(b) the following language, or language substantially similar to the following, shall be set out conspicuously on the limited long-term care insurance policy or certificate at the time of delivery: "Caution: The issuance of this limited long-term care insurance (insert either policy or certificate) is based upon your responses to the questions on your application. A copy of your (insert either application or enrollment form) (insert either is enclosed or was retained by you when you applied). If your answers are incorrect or untrue, the insurer has the right to deny benefits or rescind your policy. The best time to clear up any questions is now, before a claim arises! If, for any reason, any of your answers are incorrect, contact the company at this address: (insert address)."

(c) A copy of the completed application or enrollment form, whichever is applicable, shall be delivered to the insured no later than at the time of delivery of the policy or certificate unless it was retained by the applicant at the time of application.

**R590-285-11. Minimum Standards for Home and Community Care Benefits in Limited Long-Term Care Insurance Policies.**

(1) A limited long-term care insurance policy or certificate may not, if it provides benefits for home care or community care services, limit or exclude benefits:

(a) by requiring that the insured or claimant would need care in a skilled nursing facility if home care services were not provided;

(b) by requiring that the insured or claimant first or simultaneously receive nursing or therapeutic services, or both, in a home, community, or institutional setting before home care services are covered;

(c) by limiting eligible services to services provided by registered nurses or licensed practical nurses;

(d) by requiring that a nurse or therapist provide services covered by the policy that can be provided by a home health aide, or other licensed or certified home care worker acting within the scope of his or her licensure or certification;

(e) by excluding coverage for personal care services provided by a home health aide;

(f) by requiring that the provision of home care services be at a level of certification or licensure greater than that required by the eligible service;

(g) by requiring that the insured or claimant have an acute condition before home care services are covered;

(h) by limiting benefits to services provided by Medicare-certified agencies or providers; or

(i) by excluding coverage for adult day care services.

(2) A limited long-term care insurance policy or certificate, if it provides for home or community care services, shall provide total home or community care coverage that is a dollar amount equivalent to at least one-half of the coverage available for nursing home benefits under the policy or certificate, at the time covered home or community care services are being received. This requirement may not apply to policies or certificates issued to residents of continuing care retirement communities.

(3) Home care coverage may be applied to the non-home care benefits provided in the policy or certificate when determining maximum coverage under the terms of the policy or certificate.

**R590-285-12. Requirement to Offer Inflation Protection.**

(1) No insurer may offer a limited long-term care insurance policy unless the insurer also offers to the policyholder, in addition to any other inflation protection, the option to purchase a policy that provides for benefit levels to increase with benefit maximums or reasonable durations that are meaningful to account for reasonably anticipated increases in the costs of limited long-term care services covered by the policy. Insurers must offer to each policyholder, at the time of purchase, the option to purchase a policy with an inflation protection feature no less favorable than one of the following:

(a) increases benefit levels annually in a manner that the increases are compounded annually at a rate not less than 3%;

(b) guarantees the insured individual the right to periodically increase benefit levels without providing evidence of insurability or health status so long as the option for the previous period has not been declined. The amount of the additional benefit shall be no less than the difference between the existing policy benefit and that benefit compounded annually at a rate of at least 3% for the period beginning with the purchase of the existing benefit and extending until the year in which the offer is made; or

(c) covers a specified percentage of actual or reasonable charges and does not include a maximum specified indemnity amount or limit.

(2) Where the policy is issued to a group, the required offer in Subsection R590-285-12(1) shall be made to the group policyholder and to each proposed certificateholder.

(3)(a) An insurer shall include the following information in or with the outline of coverage:

(i) a graphic comparison of the benefit levels of a policy that increases benefits over the policy period with a policy that does

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not increase benefits. The graphic comparison shall show benefit levels over at least a 20-year period; and

(ii) any expected premium increases or additional premiums to pay for automatic or optional benefit increases.

(b) An insurer may use a reasonable hypothetical, or a graphic demonstration, for the purposes of this disclosure.

(4) Inflation protection benefit increases under a policy that contains these benefits shall continue without regard to an insured's age, claim status or claim history, or the length of time the person has been insured under the policy.

(5) An offer of inflation protection that provides for automatic benefit increases shall include an offer of a premium that the insurer expects to remain constant. The offer shall disclose in a conspicuous manner that the premium may change in the future unless the premium is guaranteed to remain constant.

(6)(a) Inflation protection as provided in Subsection R590-285-12(1)(a) shall be included in a limited long-term care insurance policy unless an insurer obtains a rejection of inflation protection signed by the policyholder as required in this subsection. The rejection may be either in the application or on a separate form.

(b) The rejection shall be considered a part of the application and shall state: "I have reviewed the outline of coverage and the graphs that compare the benefits and premiums of this policy with and without inflation protection. Specifically, I have reviewed Plans \_\_\_\_\_, and I reject inflation protection."

### **R590-285-13. Requirements for Application Forms and Replacement Coverage.**

(1) Application forms shall include the following questions designed to elicit information as to whether, as of the date of the application, the applicant has another limited long-term care insurance policy or long-term care insurance policy, or certificate in force, or whether a limited long-term care policy, or long-term care insurance policy, or certificate is intended to replace any other accident and sickness, or limited long-term care policy, or long-term care insurance policy, or certificate presently in force. A supplementary application or other form to be signed by the applicant and agent containing the questions may be used, except where the coverage is sold without an agent. With regard to a replacement policy issued to a group, the following questions may be modified only to the extent necessary to elicit information about health or limited long-term care insurance policies other than the group policy being replaced, provided that the certificateholder has been notified of the replacement.

(a) Do you have another limited long-term care insurance policy, or long-term care insurance policy, or certificate in force (including health care service contract, health maintenance organization contract)?

(b) Did you have another limited long-term care insurance policy, or long-term care insurance policy, or certificate in force during the last twelve (12) months?

(i) If so, with which company?

(ii) If that policy lapsed, when did it lapse?

(c) Are you covered by Medicaid?

(d) Do you intend to replace any of your medical or health insurance coverage with this policy or certificate?

(2) Agents shall list any other health insurance policies they have sold to the applicant.

(a) List policies sold that are still in force.

(b) List policies sold in the past five years that are no longer in force.

(3) Direct Response Solicitations. Insurers using direct response solicitation methods shall deliver a notice regarding replacement of accident and sickness or limited long-term care or long-term care coverage to the applicant upon issuance of the policy. The required notice shall be provided in the following manner:

(a) Where replacement is intended, the replacing insurer shall notify, in writing, the existing insurer of the proposed replacement. The existing policy shall be identified by the insurer, name of the insured, and policy number or address including zip code. Notice shall be made within five working days from the date the application is received by the insurer or the date the policy is issued, whichever is sooner.

(b) Solicitations Other than Direct Response. Upon determining that a sale will involve replacement, an insurer, other than an insurer using direct response solicitation methods or its agent, shall furnish the applicant, prior to issuance or delivery of the individual limited long-term care insurance policy, a notice regarding replacement of accident and sickness or limited long-term care or long-term care coverage. One copy of the notice shall be retained by the applicant and an additional copy signed by the applicant shall be retained by the insurer. The required notice shall be provided in the manner described in Appendix B.

### **R590-285-14. Reporting Requirements.**

(1) Every insurer shall maintain records for each agent of that agent's amount of replacement sales as a percent of the agent's total annual sales and the amount of lapses of limited long-term care insurance policies sold by the agent as a percent of the agent's total annual sales.

(2) Every insurer shall report annually by June 30 the 10% of its agents with the greatest percentages of lapses and replacements as measured by Subsection R590-285-14(1).

(3) Reported replacement and lapse rates do not alone constitute a violation of insurance laws or necessarily imply wrongdoing. The reports are for the purpose of reviewing more closely agent activities regarding the sale of limited long-term care insurance.

(4) Every insurer shall report annually by June 30 the number of lapsed policies as a percent of its total annual sales and as a percent of its total number of policies in force as of the end of the preceding calendar year. Refer to Appendix E.

(5) Every insurer shall report annually by June 30 the number of replacement policies sold as a percent of its total annual sales and as a percent of its total number of policies in force as of the preceding calendar year. Refer to Appendix E.

(6) For purposes of this section:

(a) "Policy" means only limited long-term care insurance.

(b) "Report" means on a statewide basis.

(7) Reports required under this section shall be filed with the commissioner.

(8) Annual rate certification requirements.

(a) This subsection applies to any limited long-term care policy issued in this state on or after ~~January~~ July 1, 2021.

(b) The following annual submission requirements apply subsequent to initial rate filings for individual limited long-term care insurance policies made under this section.

(c) An actuarial certification prepared, dated and signed by a qualified actuary who provides the information shall be included and shall provide at least the following information:

(i) a statement of the sufficiency of the current premium rate schedule;

(ii) for the rate schedules that are no longer marketed;

(A) that the premium rate schedule continues to be sufficient to cover anticipated costs under best estimate assumptions; or

(B) that the premium rate schedule may no longer be sufficient. In this situation, the insurer shall provide to the commissioner, within 60 days of the date the actuarial certification is submitted to the commissioner, a plan of action, including a time frame, for the re-establishment of adequate margins for moderately adverse experience; and

(iii) a description of the review performed that led to the statement.

(d) An actuarial memorandum dated and signed by a qualified actuary who prepares the information shall be prepared to support the actuarial certification and provide at least the following information:

(i) a detailed explanation of the data sources and review performed by the actuary prior to making the statement;

(ii) a complete description of experience assumptions and their relationship to the initial pricing assumptions;

(iii) a description of the credibility of the experience data; and

(iv) an explanation of the analysis and testing performed in determining the current presence of margins.

(e) The actuarial certification required pursuant to Subsection R590-285-14(8)(c) must be based on calendar year data and submitted annually no later than May 1 of each year, starting in the second year following the year in which the initial rate schedules are first used. The actuarial memorandum required pursuant to R590-285-14(8)(d) must be submitted at least once every three years with the certification.

**R590-285-15. Premium Rate Schedule Increases.**

(1) This section applies to any limited long-term care policy or certificate issued in this state, on or after ~~January~~ July 1, 2021.

(2) No rate increase may be requested by an insurer until the projected lifetime loss ratio, under best estimate assumptions, exceeds the anticipated lifetime loss ratio plus 2%.

(3) An insurer shall provide notice of a pending premium rate schedule increase to the commissioner prior to the notice to the policyholders and shall include:

(a) a revised rate schedule;

(b) an actuarial memorandum that shall include:

(i) a statement regarding the actuary's qualifications;

(ii) an explanation of the review performed by the actuary;

(iii) complete description of all pricing assumptions and any changes from the initial and any prior filing;

(iv) an exhibit showing policy count, actual incurred claims, and earned premiums by duration both on a state and nationwide basis, and any revised projections based on the revised pricing assumptions;

(v) an exhibit showing actual to expected loss ratios by duration;

(vi) a statement that the revised premium schedule is expected to result in a lifetime loss ratio not less than 55%;

(vii) a sensitivity analysis of the anticipated lifetime loss ratio to the changes in the individual assumptions, including any revised assumptions, including sensitivity to the mix of business;

(viii) a description of the valuation assumptions, including any revisions since the initial and any prior filing, with sufficient detail or sample calculation to have a complete depiction of the reserve amounts to be held; and

(ix) a statement that the difference between the gross premium and the net valuation premium for renewal years is sufficient to cover expected renewal expenses; or if such statement cannot be made, a complete description of the situation where this does not occur; and

(c) an actuarial certification dated and signed by the actuary that all information presented in the actuarial memorandum is accurate and complete.

(4) An insurer that is granted a premium rate schedule increase shall retain similar documentation related to the rate increase request as is required in Section R590-285-9(3).

**R590-285-16. Filing Requirements for Advertising.**

(1) Every insurer providing limited long-term care insurance or benefits in this state shall provide a copy of any limited long-term care insurance advertisement intended for use or used in this state, whether through written, radio, or television medium to the commissioner, for review or approval by the commissioner, when requested.

(2) All advertisements shall be retained for at least three years from the date the advertisement was first used.

**R590-285-17. Standards for Marketing.**

(1) Every insurer or other entity marketing limited long-term care insurance coverage in this state, directly or through a producer, shall:

(a)(i) establish marketing procedures and training requirements to assure that:

(ii) any marketing activities, including any comparison of policies, by its producers will be fair and accurate; and

(b) excessive insurance is not sold or issued;

(c) display prominently by type, stamp, or other appropriate means, on the first page of the outline of coverage and policy the following: "Notice to buyer: This policy may not cover all of the costs associated with limited long-term care incurred by the buyer during the period of coverage. The buyer is advised to review carefully all policy limitations";

(d) provide copies of the disclosure form required in Appendix A to the applicant;

(e) inquire and otherwise make every reasonable effort to identify whether a prospective applicant or enrollee for limited long-term care or long-term care insurance already has accident and sickness or limited long-term care insurance and the types and amounts of any such insurance;

(f) establish auditable procedures for verifying compliance with Subsection R590-285-17(1);

(g) use the terms "noncancellable" or "level premium" only when the policy or certificate conforms to Subsection R590-285-5(1)(c) or (d), as applicable; and

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(h) provide an explanation of contingent benefit upon lapse provided for in Subsection R590-285-22(4).

(2) In addition to the practices prohibited in Section 31A-23a-402, the following acts and practices are prohibited.

(a) Twisting. Knowingly making any misleading representation or incomplete or fraudulent comparison of any insurance policies or insurers for the purpose of inducing, or tending to induce, any person to lapse, forfeit, surrender, terminate, retain, pledge, assign, borrow on, or convert any insurance policy, or to take out a policy of insurance with another insurer.

(b) High pressure tactics. Employing any method of marketing having the effect of, or tending to induce the purchase of, insurance through force, fright, threat, whether explicit or implied, or undue pressure to purchase, or recommend the purchase of insurance.

(c) Cold lead advertising. Making use directly or indirectly of any method of marketing which fails to disclose in a conspicuous manner that a purpose of the method of marketing is solicitation of insurance and that contact will be made by an insurance agent or insurance company.

(d) Misrepresentation. Misrepresenting a material fact in selling or offering to sell a limited long-term care insurance policy.

(3)(a) An insurer offering a limited long-term care policy to an association, shall require the association:

(i) when endorsing or selling limited long-term care insurance to educate its members concerning limited long-term care issues in general so that its members can make informed decisions;

(ii) to provide objective information regarding limited long-term care insurance policies or certificates endorsed or sold by such associations to ensure that members of such associations receive a balanced and complete explanation of the features in the policies or certificates that are being endorsed or sold; and

(iii) disclose in any limited long-term care insurance solicitation:

(A) the specific nature and amount of the compensation arrangements, including all fees, commissions, administrative fees, and other forms of financial support, that the association receives from endorsement or sale of the policy or certificate to its members; and

(B) a brief description of the process under which the policies and the insurer issuing the policies were selected.

(b) If the association and the insurer have interlocking directorates or trustee arrangements, the insurer shall require the association to disclose that fact to its members.

(c) The insurer shall require the board of directors of associations selling or endorsing limited long-term care insurance policies or certificates to review and approve the insurance policies as well as the compensation arrangements made with the insurer.

(d) The insurer shall also:

(i) actively monitor the marketing efforts of the association and any producer; and

(ii) review and approve all marketing materials or other insurance communications used to promote sales or marketing sent to members, regarding the policies or certificates.

(e) The insurer may not issue a limited long-term care policy or certificate to an association or continue to market such a policy or certificate unless the insurer certifies annually that the association has complied with the requirements set forth in this subsection.

(f) An insurer's failure to comply with the filing and certification requirements of this section constitutes an unfair trade practice in violation of Section 31A-23a-402.

### **R590-285-18. Suitability.**

(1) An insurer marketing limited long-term care insurance shall:

(a) develop and use suitability standards and procedures to determine whether the purchase or replacement of limited long-term care insurance is appropriate for the needs of the applicant;

(b) include in its suitability standards and procedures:

(i) consideration of the advantages and disadvantages of insurance to meet the needs of the applicant; and

(ii) discussion with applicants of how the benefits and costs of limited long-term care insurance compare with long-term care insurance;

(c) train its producers in its suitability standards and procedures; and

(d) maintain a copy of its suitability standards and procedures and make them available for inspection upon request by the commissioner.

(2) If the issuer determines that the applicant does not meet its financial suitability standards, or if the applicant has declined to provide the information, the issuer may reject the application. However, if the applicant has declined to provide financial information, the issuer may use some other method to verify the applicant's intent. Either the applicant's returned letter or a record of the alternative method of verification shall be made part of the applicant's file.

### **R590-285-19. Prohibition Against Preexisting Conditions and Probationary Periods in Replacement Policies or Certificates.**

If a limited long-term care insurance policy or certificate replaces another limited long-term care policy or certificate, the replacing insurer shall waive any time periods applicable to preexisting conditions and probationary periods in the new limited long-term care policy for similar benefits to the extent that similar exclusions have been satisfied under the original policy.

### **R590-285-20. Availability of New Services or Providers.**

(1) An insurer shall notify policyholders of the availability of any new limited long-term policy series that provides coverage for new limited long-term care services or new providers material in nature not previously available through the insurer to the general public. The notice shall be provided within 12 months of the date that the new policy series is made available for sale in this state.

(2) Notwithstanding Subsection R590-285-20(1), notification is not required for any policy issued prior to the effective date of this rule or to any policyholder or certificateholder who is currently eligible for benefits, within an elimination period or on a claim, or who previously had been in claim status, or who would not be eligible to apply for coverage due to issue age limitations under the new policy. The insurer may require that policyholders meet all eligibility requirements, including underwriting and payment of the required premium to add such new services or providers.

(3) The insurer shall make the new coverage available in one of the following ways:



(a) by adding a rider to the existing policy and charging a separate premium for the new rider based on the insured's attained age;

(b) by exchanging the existing policy or certificate for one with an issue age based on the present age of the insured and recognizing past insured status by granting premium credits toward the premiums for the new policy or certificate. The premium credits shall be based on premiums paid or reserves held for the prior policy or certificate;

(c) by exchanging the existing policy or certificate for a new policy or certificate in which consideration for past insured status shall be recognized by setting the premium for the new policy or certificate at the issue age of the policy or certificate being exchanged. The cost for the new policy or certificate may recognize the difference in reserves between the new policy or certificate and the original policy or certificate; or

(d) by an alternative program developed by the insurer that meets the intent of this section.

(4) An insurer is not required to notify policyholders of a new proprietary policy series created and filed for use in a limited distribution channel. For purposes of this subsection, "limited distribution channel" means through a discrete entity, such as a financial institution or brokerage, for which specialized products are available that are not available for sale to the general public. Policyholders who purchased such a new proprietary policy shall be notified when a new limited long-term care policy series that provides coverage for new limited long-term care services or new providers material in nature and were not previously available to that limited distribution channel.

(5) Policies issued pursuant to this Section R590-285-20 shall be considered exchanges and not replacements. These exchanges may not be subject to Sections R590-285-13 and R590-285-19, and the reporting requirements of Subsections R590-285-14(1) through (5).

(6) Where the policy is offered through an employer, labor organization, professional, trade, or occupational association, the required notification in Subsection R590-285-20(1) shall be made to the offering entity. However, if the policy is issued to a group under Subsection 31A-22-701(2)(b) or (c), the notification shall be made to each certificateholder.

(7) Nothing in this section shall prohibit an insurer from offering any policy, rider, certificate, or coverage change to any policyholder or certificateholder. However, upon request, any policyholder may apply for currently available coverage that includes the new services or providers. The insurer may require that policyholders meet all eligibility requirements, including underwriting and payment of the required premium to add such new services or providers.

(8) This section does not apply to life insurance policies or riders containing accelerated limited long-term care benefits.

(9) This section shall become effective on policies issued on or after ~~January~~ July 1, 2021.

**R590-285-21. Right to Reduce Coverage and Lower Premiums.**

(1)(a) Every limited long-term care insurance policy and certificate shall include a provision that allows the policyholder or certificateholder to reduce coverage and lower the policy or certificate premium in at least one of the following ways:

(i) reducing the maximum benefit; or

(ii) reducing the daily, weekly, or monthly benefit amount.

(b) The insurer may also offer other reduction options that are consistent with the policy or certificate design, or the insurer's administrative processes.

(c) In the event the reduction in coverage involves the reduction or elimination of the inflation protection provision, the insurer shall allow the policyholder to continue the benefit amount in effect at the time of the reduction.

(2) The provision shall include a description of the process for requesting and implementing a reduction in coverage.

(3) The premium for the reduced coverage shall:

(a) be based on the same age and underwriting class used to determine the premium for the coverage currently in force; and

(b) be consistent with the approved rate table.

(4) The insurer may limit any reduction in coverage to plans or options available for that policy form and to those for which benefits will be available after consideration of claims paid or payable.

(5) If a policy or certificate is about to lapse, the insurer shall provide a written reminder to the policyholder or certificateholder of the policyholder's or certificateholder's right to reduce coverage and premiums in the notice required by Subsection R590-285-6(1)(c) of this regulation.

(6) The requirements of Subsections R590-285-21(1) through (5) shall apply to any limited long-term care policy issued in this state on or after January 1, 2022.

(7)(a) A premium increase notice required by Subsection R590-285-8(5) shall include:

(i) an offer to reduce policy benefits provided by the current coverage consistent with the requirements of this section; and

(ii) a disclosure stating that all options available to the policyholder may not be of equal value.

(b) The requirements of this Subsection R590-285-21(7) shall apply to any rate increase implemented in this state on or after January 1, 2022.

**R590-285-22. Nonforfeiture Benefit Requirement.**

(1) To comply with the option to offer a nonforfeiture benefit pursuant to the provisions of Section 31A-22-2005:

(a) a policy or certificate offered with nonforfeiture benefits shall have coverage elements, eligibility, benefit triggers, and benefit length that are the same as coverage to be issued without nonforfeiture benefits. The nonforfeiture benefit included in the offer shall be the benefit described in Subsection R590-285-22(4); and

(b) the offer shall be in writing if the nonforfeiture benefit is not otherwise described in the outline of coverage or other materials given to the prospective policyholder.

(2) Should the offer made under Section 31A-22-2005 be rejected, the insurer shall provide the contingent benefit upon lapse described in this section. Even if this offer is accepted for a policy with a fixed or limited premium paying period, the contingent benefit on lapse in Subsection R590-285-22(3)(d) shall still apply.

(3)(a) After rejection of the offer made under Section 31A-22-2005, for individual and group policies without nonforfeiture benefits, the insurer shall provide a contingent benefit upon lapse.

(b) In the event a group policyholder elects to make the nonforfeiture benefit an option to the certificateholder, a certificate shall provide either the nonforfeiture benefit or the contingent benefit upon lapse.

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(c) A contingent benefit on lapse shall be triggered every time an insurer increases the premium rates to a level which results in a cumulative increase of the annual premium equal to or exceeding 50% of the insured's initial annual premium. Unless otherwise required, policyholders shall be notified at least 45 days prior to the due date of the premium reflecting the rate increase.

(d) On or before the effective date of a substantial premium increase as defined in R590-285-22(3)(c), the insurer shall:

(i) offer to reduce policy benefits provided by the current coverage consistent with the requirements of Section R590-285-21 so that required premium payments are not increased;

(ii) offer to convert the coverage to a paid-up status with a shortened benefit period in accordance with the terms of Subsection R590-285-22(4). This option may be elected at any time during the 45-day period referenced in Subsection R590-285-22(3)(c); and

(iii) notify the policyholder or certificateholder that a default or lapse at any time during the 45-day period referenced in Subsection R590-285-22(3)(c) shall be deemed to be the election of the offer to convert in Subsection R590-285-22(3)(d)(ii).

(4) Benefits continued as nonforfeiture benefits, including contingent benefits upon lapse in accordance with Subsection R590-285-22(3)(c), are described in this subsection.

(a) For purposes of this subsection, the nonforfeiture benefit shall be of a shortened benefit period providing paid-up limited long-term care insurance coverage after lapse. The same benefits, amounts, and frequency in effect at the time of lapse but not increased thereafter, will be payable for a qualifying claim, but the lifetime maximum dollars or days of benefits shall be determined as specified in Subsection R590-285-22(4)(c).

(b) The standard nonforfeiture credit will be equal to 100% of the sum of all premiums paid, including the premiums paid prior to any changes in benefits. The insurer may offer additional shortened benefit period options, as long as the benefits for each duration equal or exceed the standard nonforfeiture credit for that duration. In either event, the calculation of the nonforfeiture credit is subject to the limitation of Subsection R590-285-22(5).

(c) The nonforfeiture benefit shall begin no later than the end of the third year following the policy or certificate issue date. The contingent benefit upon lapse shall be effective during the first three years as well as thereafter.

(d) Nonforfeiture credits may be used for all care and services qualifying for benefits under the terms of the policy or certificate, up to the limits specified in the policy or certificate.

(5) All benefits paid by the insurer while the policy or certificate is in premium paying status and in the paid-up status will not exceed the maximum benefits that would be payable if the policy or certificate had remained in premium paying status.

(6) There shall be no difference in the minimum nonforfeiture benefits as required under this section for group and individual policies.

(7) To determine whether contingent nonforfeiture upon lapse provisions are triggered under Subsection R590-285-22(3)(c) or (d), a replacing insurer that purchased or otherwise assumed a block or blocks of limited long-term care insurance policies from another insurer shall calculate the percentage increase based on the initial annual premium paid by the insured when the policy was first purchased from the original insurer.

### **R590-285-23. Standards for Benefit Triggers.**

(1) A limited long-term care insurance policy shall condition the payment of benefits on a determination of the insured's ability to perform activities of daily living and on cognitive impairment. Eligibility for the payment of benefits may not be more restrictive than requiring either a deficiency in the ability to perform not more than three of the activities of daily living or the presence of cognitive impairment.

(2)(a) Activities of daily living shall include at least the following as defined in Subsection R590-285-4(1) and in the policy:

- (i) bathing;
- (ii) continence;
- (iii) dressing;
- (iv) eating;
- (v) toileting; and
- (vi) transferring.

(b) Insurers may use activities of daily living to trigger covered benefits in addition to those contained in Subsection R590-285-23(2)(a) as long as they are defined in the policy.

(3) An insurer may use additional provisions for the determination of when benefits are payable under a policy or certificate; however, the provisions may not restrict, and are not in lieu of, the requirements contained in Subsections R590-285-23(1) and (2).

(4) For purposes of this section, the determination of a deficiency may not be more restrictive than:

(a) requiring the hands-on assistance of another person to perform the prescribed activities of daily living; or

(b) if the deficiency is due to the presence of a cognitive impairment, supervision or verbal cueing by another person is needed in order to protect the insured or others.

(5) Assessments of activities of daily living and cognitive impairment shall be performed by licensed or certified professionals, such as physicians, nurses, or social workers.

(6) Limited long-term care insurance policies shall include a clear description of the process for appealing and resolving benefit determinations.

### **R590-285-24. Appealing an Insurer's Determination That the Benefit Trigger is Not Met.**

(1) For purposes of this section, "authorized representative" is authorized to act as the covered person's personal representative within the meaning of 45 CFR 164.502(g) promulgated by the Secretary under the Administrative Simplification provisions of the Health Insurance Portability and Accountability Act and means the following:

(a) a person to whom a covered person has given express written consent to represent the covered person in an external review;

(b) a person authorized by law to provide substituted consent for a covered person; or

(c) a family member of the covered person or the covered person's treating health care professional only when the covered person is unable to provide consent.

(2) If an insurer determines that the benefit trigger of a limited long-term care insurance policy has not been met, it shall provide a clear, written notice to the insured and the insured's authorized representative, if applicable, of all of the following:

(a) the reason that the insurer determined that the insured's benefit trigger has not been met;

(b) the insured's right to internal appeal in accordance with Subsection R590-285-24(3), and the right to submit new or additional information relating to the benefit trigger denial with the appeal request; and

(c) the insured's right, after exhaustion of the insurer's internal appeal process, to have the benefit trigger determination reviewed under the independent review process in accordance with Section R590-285-25.

(3) Internal Appeal.

(a) The insured or the insured's authorized representative may appeal the insurer's adverse benefit trigger determination by sending a written request to the insurer, along with any additional supporting information, within 180 days after the insured and the insured's authorized representative, if applicable, receives the insurer's benefit determination notice.

(b) The internal appeal shall be considered by an individual or group of individuals designated by the insurer, provided that the individual or individuals making the internal appeal decision may not be the same individual or individuals who made the initial benefit determination.

(c) The internal appeal shall be completed, and written notice of the internal appeal decision shall be sent to the insured and the insured's authorized representative, if applicable, within 30 calendar days of the insurer's receipt of all necessary information upon which a final determination can be made.

(d) If the insurer's original determination is upheld after the internal appeal process has been exhausted and new or additional information has not been provided to the insurer, the insurer shall provide a written description of the insured's right to request an independent review of the benefit determination as described in Section R590-285-25 to the insured and the insured's authorized representative, if applicable.

(e) As part of the written description of the insured's right to request an independent review, an insurer shall include the following, or substantially equivalent, language: "We have determined that the benefit eligibility criteria ("benefit trigger") of your (policy) (certificate) has not been met. You may have the right to an independent review of our decision conducted by long-term care professionals who are not associated with us. Please send a written request for independent review to us at (address). You must inform us, in writing, of your election to have this decision reviewed within 180 days of receipt of this letter. We will choose an independent review organization for you and refer the request for independent review to it."

(f) If the insurer does not believe the benefit trigger decision is eligible for independent review, the insurer shall inform the insured and the insured's authorized representative, if applicable, in writing and include in the notice the reasons for its determination of independent review ineligibility.

(g) The appeal process is not deemed to be a "new service or provider" as referenced in Section R590-285-20 and therefore does not trigger the notice requirements of that section.

**R590-285-25. Independent Review of Benefit Trigger Determination.**

(1) Request. The insured or the insured's authorized representative may request an independent review of the insurer's

benefit trigger determination after the internal appeal process outlined in Subsection R590-285-24(3) has been exhausted. A written request for independent review may be made by the insured or the insured's authorized representative to the insurer within 180 days after the insurer's written notice of the final internal appeal decision is received by the insured and the insured's authorized representative, if applicable.

(2) Cost. The cost of the independent review shall be borne by the insurer.

(3) Independent Review Process.

(a) Within five business days of receiving a written request for independent review, the insurer shall refer the request to the independent review organization. The insurer shall choose an independent review organization approved by the commissioner. The insurer shall vary its selection of authorized independent review organizations on a rotating basis.

(b) The insurer shall refer the request for independent review of a benefit trigger determination to an independent review organization, subject to the following:

(i) the independent review organization shall be on a list of approved independent review organizations that satisfy the requirements of a qualified long-term care insurance independent review organization contained in this section;

(ii) the independent review organization may not have any conflicts of interest with the insured, the insured's authorized representative, if applicable, or the insurer; and

(iii) such review shall be limited to the information or documentation provided to and considered by the insurer in making its determination, including any information or documentation considered as part of the internal appeal process.

(c) If the insured or the insured's authorized representative has new or additional information not previously provided to the insurer, whether submitted to the insurer or the independent review organization, such information shall first be considered in the internal review process, as set forth in Subsection R590-285-24(3).

(i) While this information is being reviewed by the insurer, the independent review organization shall suspend its review and the time period for review is suspended until the insurer completes its review.

(ii) The insurer shall complete its review of the information and provide written notice of the results of the review to the insured and the insured's authorized representative, if applicable, and the independent review organization within five business days of the insurer's receipt of such new or additional information.

(iii)(A) If the insurer maintains its denial after such review, the independent review organization shall continue its review, and render its decision within the time period specified in Subsection R590-285-25(3)(i).

(B) If the insurer overturns its decision following its review, the independent review request shall be considered withdrawn.

(d) The insurer shall acknowledge in writing to the insured and the insured's authorized representative, if applicable, and the commissioner that the request for independent review has been received, accepted, and forwarded to an independent review organization for review. Such notice will include the name and address of the independent review organization.

(e) Within five business days of receipt of the request for independent review, the independent review organization assigned

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shall notify the insured and the insured's authorized representative, if applicable, and the insurer, that it has accepted the independent review request and identify the type of licensed health care professional assigned to the review. The assigned independent review organization shall include in the notice a statement that the insured or the insured's authorized representative may submit in writing to the independent review organization, within seven days following the date of receipt of the notice, additional information and supporting documentation that the independent review organization should consider when conducting its review.

(f) The independent review organization shall review all of the information and documents that are provided to the independent review organization. The independent review organization shall provide copies of any documentation or information provided by the insured or the insured's authorized representative to the insurer for its review, if it is not part of the information or documentation submitted by the insurer to the independent review organization. The insurer shall review the information and provide its analysis of the new information in accordance with Subsection R590-285-25(3)(h).

(g) The insured or the insured's authorized representative may submit, at any time, new or additional information not previously provided to the insurer but that is pertinent to the benefit trigger denial. The insurer shall consider such information and affirm or overturn its benefit trigger determination. If the insurer affirms its benefit trigger determination, the insurer shall promptly provide such new or additional information to the independent review organization for its review, along with the insurer's analysis of such information.

(h) If the insurer overturns its benefit trigger determination:

(i) the insurer shall provide notice to the independent review organization, the insured, and the insured's authorized representative, if applicable, of its decision; and

(ii) the independent review process shall immediately cease.

(i) The independent review organization shall provide the insured and the insured's authorized representative, if applicable, and the insurer written notice of its decision, within 30 days from receipt of the referral. If the independent review organization overturns the insurer's decision, it shall:

(i) establish the precise date within the specific period of time under review that the benefit trigger was deemed to have been met; and

(ii) specify the specific period of time under review for which the insurer declined eligibility, but during which the independent review organization deemed the benefit trigger to have been met.

(j) The decision of the independent review organization with respect to whether the insured met the benefit trigger will be final and binding on the insurer.

(k) The independent review organization's determination shall be used solely to establish liability for benefit trigger decisions, and is intended to be admissible in any proceeding only to the extent it establishes the eligibility of benefits payable.

(l) Nothing in this section shall restrict the insured's right to submit a new request for benefit trigger determination after the independent review decision, should the independent review organization uphold the insurer's decision.

(m)(i) The commissioner shall utilize the criteria set forth in Appendix F, Guidelines for Long-Term Care Independent Review

Entities, in approving entities to review long-term care insurance benefit trigger decisions.

(ii) The commissioner shall accept another state's certification of an independent review organization, provided such state requires the independent review organization to meet substantially similar qualifications as those contained in Appendix F.

(n) The commissioner shall maintain and periodically update a list of approved independent review organizations.

(4) Certification of Long-Term Care Insurance Independent Review Organizations. The commissioner shall certify or approve a qualified long-term care insurance independent review organization, provided the independent review organization demonstrates to the satisfaction of the commissioner that it is unbiased and meets the following qualifications:

(a) have on staff, or contract with, a qualified and licensed health care professional in an appropriate field for determining an insured's functional or cognitive impairment such as physical therapy, occupational therapy, neurology, physical medicine, and rehabilitation, to conduct the review;

(b) neither it nor any of its licensed health care professionals may, in any manner, be related to or affiliated with an entity that previously provided medical care to the insured;

(c) utilize a licensed health care professional who is not an employee of the insurer or related in any manner to the insured;

(d) neither it nor its licensed health care professional who conducts the reviews may receive compensation of any type that is dependent on the outcome of the review;

(e) be approved by the commissioner to conduct such reviews if the state requires such approvals or certifications;

(f) provide a description of the fees to be charged by it for independent reviews of a limited long-term care insurance benefit trigger decision. Such fees shall be reasonable and customary for the type of limited long-term care insurance benefit trigger decision under review; and

(g) provide the name of the medical director or health care professional responsible for the supervision and oversight of the independent review procedure.

(5) Maintenance of Records and Reporting Obligations by Independent Review Organizations. Each certified independent review organization shall comply with the following:

(a) maintain written documentation establishing the date it receives a request for independent review, the date each review is conducted, the resolution, the date such resolution was communicated to the insurer and the insured, the name and professional status of the reviewer conducting such review in an easily accessible and retrievable format for the year in which it received the information, plus three calendar years;

(b) be able to document measures taken to appropriately safeguard the confidentiality of such records and prevent unauthorized use and disclosures in accordance with applicable federal and state law;

(c) report annually to the commissioner, by June 1 for the previous calendar year, in the aggregate and for each limited long-term care insurer all of the following:

(i) the total number of requests received for independent review of limited long-term care benefit trigger decisions;

(ii) the total number of reviews conducted and the resolution of such reviews;

(iii) the number of reviews withdrawn prior to review; and

(iv) the percentage of reviews conducted within the prescribed timeframe set forth in Subsection R590-285-25(3)(i); and

(d) report immediately to the commissioner any change in its status which would cause it to cease meeting any of the qualifications required of an independent review organization performing independent reviews of limited long-term care benefit trigger decisions.

(6) Additional Rights. Nothing contained in this section shall limit the ability of an insurer to assert any rights an insurer may have under the policy related to:

- (a) an insured's misrepresentation;
- (b) changes in the insured's benefit eligibility; and
- (c) terms, conditions, and exclusions of the policy, other than failure to meet the benefit trigger.

**R590-285-26. Standard Format Outline of Coverage.**

(1) The outline of coverage shall be substantially similar to Appendix D.

(2) The outline of coverage shall be a free-standing document, using no smaller than ten-point type.

(2) The outline of coverage shall contain no material of an advertising nature.

(3) Text that is capitalized or underscored in the standard format outline of coverage may be emphasized by other means that provide prominence equivalent to the capitalization or underscoring.

(4) Use of the text and sequence of text of the standard format outline of coverage is mandatory, unless otherwise specifically indicated.

**R590-285-27. Documents Incorporated by Reference.**

(1) Appendix A. Potential Premium Increase Disclosure Form, January 2021 revision.

(2) Appendix B. Notice to Applicant Regarding Replacement of Individual Accident and Sickness or Limited Long-Term Care Insurance or Long-Term Care Insurance, January 2021 revision.

(3) Appendix C. Notice to Applicant Regarding Replacement of Accident and Sickness or Limited Long-Term Care Insurance or Long-Term Care Insurance, January 2021 revision.

(4) Appendix D. Outline of Coverage, January 2021 revision.

(5) Appendix E. Replacement and Lapse Reporting Form, January 2021 revision.

(6) Appendix F. Guidelines for Long-Term Care Independent Review Entities, January 2021 revision.

**R590-285-28. Effective Date.**

The commissioner will begin enforcing the provisions of this rule on ~~January~~ July 1, 2021.

**R590-285-29. Severability.**

If any provision of this rule, R590-285, or its application to any person or situation is held invalid, such invalidity does not affect any other provision or application of this rule which can be given effect without the invalid provision or application. The remainder of this rule shall be given effect without the invalid provision or application.

**KEY: insurance, health, long-term care**

**Date of Enactment or Last Substantive Amendment: ~~2021~~[2020] Authorizing, and Implemented or Interpreted Law: 31A-2-201(3)(a), 31A-22-2006**

**End of the Notices of Changes in Proposed Rules Section**

## NOTICES OF 120-DAY (EMERGENCY) RULES

An agency may file a **120-DAY (EMERGENCY) RULE** when it finds that regular rulemaking procedures would:

- (a) cause an imminent peril to the public health, safety, or welfare;
- (b) cause an imminent budget reduction because of budget restraints or federal requirements; or
- (c) place the agency in violation of federal or state law (Subsection 63G-3-304(1)).

As with a **PROPOSED RULE**, a **120-DAY RULE** is preceded by a **RULE ANALYSIS**. This analysis provides summary information about the **120-DAY RULE** including the name of a contact person, justification for filing a **120-DAY RULE**, anticipated cost impact of the rule, and legal cross-references.

Following the **RULE ANALYSIS**, the text of the **120-DAY RULE** is printed. New text is underlined (example) and text to be deleted is struck out with brackets surrounding the deleted text (~~example~~). An emergency rule that is new is entirely underlined. Likewise, an emergency rule that repeals an existing rule shows the text completely struck out. A row of dots in the text (. . . . .) indicates that unaffected text was removed to conserve space.

A **120-DAY RULE** is effective when filed with the Office of Administrative Rules, or on a later date designated by the agency. A **120-DAY RULE** is effective for 120 days or until it is superseded by a permanent rule. Because of its temporary nature, a **120-DAY RULE** is not codified as part of the *Utah Administrative Code*.

The law does not require a public comment period for **120-DAY RULES**. However, when an agency files a **120-DAY RULE**, it may file a **PROPOSED RULE** at the same time, to make the requirements permanent.

Emergency or **120-DAY RULES** are governed by Section 63G-3-304, and Section R15-4-8.

NOTICE OF EMERGENCY (120-DAY) RULE		
Utah Admin. Code Ref (R no.):	R25-7-10	Filing No. 53273

### Agency Information

<b>1. Department:</b>	Administrative Services	
<b>Agency:</b>	Finance	
<b>Building:</b>	Taylorsville State Office Building	
<b>Street address:</b>	4315 S 2700 W, Floor 3	
<b>City, state, zip:</b>	Taylorsville, UT 84129-2128	
<b>Mailing address:</b>	PO Box 141031	
<b>City, state, zip:</b>	Salt Lake City, UT 84114-1031	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Marilee P. Richins	801-957-7734	mprichins@utah.gov
Cory Weeks	801-957-7713	cweeks@utah.gov
Please address questions regarding information on this notice to the agency.		

### General Information

<b>2. Rule or section catchline:</b>
R25-7-10. Reimbursement for Transportation
<b>3. Effective Date:</b>
01/01/2021
<b>4. Purpose of the new rule or reason for the change:</b>
This section is amended because the IRS announced a decrease in the reimbursement rate for private vehicle use from 57 cents per mile to 56 cents per mile. The Division of Finance (Division) has determined that the reimbursement rate for private vehicles should decrease to 56 cents per mile to avoid exceeding federal mileage reimbursements.
<b>5. Summary of the new rule or change:</b>
This change decreases reimbursement rates for mileage on private vehicles from 57 cents per mile to 56 cents per mile. (EDITOR'S NOTE: A corresponding proposed amendment to Section R25-7-10 is under Filing No. 53269 in this issue, January 15, 2021, of the Bulletin.)

<b>6. Regular rulemaking would:</b>	
<input type="checkbox"/>	cause an imminent peril to the public health, safety, or welfare;
<input type="checkbox"/>	cause an imminent budget reduction because of budget restraints or federal requirements; or
<input checked="" type="checkbox"/>	place the agency in violation of federal or state law.
<b>Specific reason and justification:</b>	
The IRS announced a decrease in the reimbursement rate for private vehicle use from 57 cents per mile to 56 cents per mile effective 01/01/2021. If the state continued to pay 57 cents per mile, the extra 1 cent per mile would be taxable to each recipient. The state does not have a cost-effective way to track and record this taxable income. Therefore, reducing the state rate to match the federal rate would prevent the state from violating federal tax law.	

**Fiscal Information**

<b>7. Aggregate anticipated cost or savings to:</b>	
<b>A) State budget:</b>	
There will potentially be a decrease in cost to the state as mileage reimbursements are decreasing. However, the Division cannot determine exactly what the decrease will be because it is impossible to anticipate how much travel state employees will do.	
<b>B) Local governments:</b>	
There will be no cost to local governments because this rule only governs reimbursements by the state to individuals traveling on state business.	
<b>C) Small businesses ("small business" means a business employing 1-49 persons):</b>	
Because the change deals only with reimbursement rates for mileage for state employees, small businesses are not affected.	
<b>D) Persons other than small businesses, non-small businesses, state, or local government entities ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an <i>agency</i>):</b>	
Individuals eligible for reimbursement will see a slight decrease in their mileage reimbursement amounts for travel in private vehicles.	
<b>8. Compliance costs for affected persons:</b>	
Because the amendment only changes mileage reimbursement rates and does not require any new action on the part of persons applying for reimbursements, there are no compliance costs.	

<b>9. A) Comments by the department head on the fiscal impact this rule may have on businesses:</b>
I have reviewed these changes with the Division of Finance interim director and believe these changes are warranted. Individuals may see a slight decrease in reimbursement amounts. However, the Division cannot determine exactly what the decrease will be as that depends on the amount of travel by individuals eligible for mileage reimbursement. This change will have no impact on business.
<b>B) Name and title of department head commenting on the fiscal impacts:</b>
Tani Pack Downing, Executive Director

**Citation Information**

<b>10. This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws. State code or constitution citations (required):</b>		
Section 63A-3-107	Section 63A-3-106	

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	Marilee P. Richins, Interim Director	<b>Date:</b>	12/28/2020
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**R25. Administrative Services, Finance.**

**R25-7. Travel-Related Reimbursements for State Travelers.**

**R25-7-10. Reimbursement for Transportation.**

A Traveler who travels on business may be eligible for a transportation Reimbursement.

(1) Air transportation is limited to Air Coach or Excursion class. Priority seating charges will not be reimbursed unless preapproved by the Executive Director or designee.

(a) For Agency Travelers, all reservations should be made through the State Travel Office for the least expensive air fare available at the time reservations are made.

(b) Only one change fee per trip will be reimbursed.

(c) The explanation for the change and any other exception to this rule must be given and approved by the Executive Director or designee.

(2) A Traveler may be reimbursed for mileage to and from the airport and long-term parking or away-from-the-airport parking.

(a) The maximum Reimbursement for parking, whether a Traveler parks at the airport or away from the airport, is the long term parking Rate at the airport they are flying out of.

(b) The parking receipt must be included with the Travel Reimbursement Request, form FI 51A, FI 51B, in ESS Travel or equivalent form or system for amounts of \$20 or more.

(c) A Traveler may be reimbursed, up to the maximum Reimbursement Rate, for mileage to and from the airport to allow someone to drop them off and to pick them up.

(3) A Traveler may use a private vehicle with approval from the Executive Director or designee.



(a) Only one person in a vehicle may receive the Reimbursement, regardless of the number of people in the vehicle.

(b) Reimbursement for a private vehicle will be at the Rate of 38 cents per mile or ~~57~~56 cents per mile if a Fleet Vehicle is not available to the Traveler.

(i) To determine which Rate to use, the Traveler must first determine if a Fleet Vehicle is available that meets the Traveler's needs. This does not apply to special purpose vehicles. If reasonably available, the Traveler should use a Fleet Vehicle. If a Fleet Vehicle is not reasonably available, the Agency or Political Subdivision may approve the Traveler to use a private vehicle. If a Fleet Vehicle is not reasonably available, the Traveler may be reimbursed at ~~57~~56 cents per mile.

(ii) If a trip is estimated to average 100 miles or more per day, the Agency or Political Subdivision should approve the Traveler to reserve a Fleet Vehicle if one is reasonably available. Doing so will cost less than if the Traveler takes a private vehicle. If the Agency or Political Subdivision approves the Traveler to take a private vehicle, the Traveler will be reimbursed at the lower Rate of 38 cents per mile not to exceed the expense calculated in the link located in Subsection (e).

(c) A Reimbursement Rate that is more restrictive than the Rate established in this Section may be established by the Agency or Political Subdivision.

(d) Any exceptions to this mileage Reimbursement Rate guidance must be approved in writing by the Traveler's Executive Director or designee.

(e) A cost comparison worksheet is available at: <http://fleet.utah.gov/motor-pool-a/demand-motor-pool/personal-vehicle-vs-rental-vehicle/>

(f) Mileage will be computed using Mapquest, GoogleMaps or other generally accepted route planning website, or from the latest official state road map and will be limited to the most economical, usually traveled routes.

(g) If the Traveler uses a private vehicle on official business and is reimbursed for mileage, parking charges may be reimbursed as an incidental expense.

(h) For an Agency Traveler, an approved "Private Vehicle Usage Report", form FI 40, should be included with the documentation reporting miles driven on business during the payroll period.

(i) Mileage Reimbursement may be allowed on an approved "Travel Reimbursement Request", form FI 51A, FI 51B, or in ESS Travel, or equivalent form or system, if other costs associated with the trip are to be reimbursed at the same time.

(4) A Traveler may choose to drive instead of flying if preapproved by the Executive Director or designee.

(a) If the Traveler drives a Fleet Vehicle, the Traveler may be reimbursed for meals and lodging for a reasonable amount of travel time; however, the total cost of the trip must not exceed the equivalent cost of the airline trip. The Traveler may also be reimbursed for incidental expenses such as toll fees and parking fees.

(b) If the Traveler drives a privately-owned vehicle, Reimbursement will be at the Rate of 38 cents per mile or the airplane fare, whichever is less, unless otherwise approved by the Executive Director or designee.

(i) The lowest fare available within 30 days prior to the departure date will be used when calculating the cost of travel for comparison to private vehicle cost.

(ii) A comparison printout which is available through the State Travel Office is required when the Traveler is taking a private vehicle.

(iii) The Traveler may be reimbursed for meals and lodging for a reasonable amount of travel time; however, the total cost of the trip must not exceed the equivalent cost of an airline trip.

(iv) If the Traveler uses a private vehicle on official business and is reimbursed for mileage, parking charges may be reimbursed as an incidental expense.

(c) When submitting the Reimbursement form, attach a schedule comparing the cost of driving with the cost of flying. The schedule should show that the total cost of driving was less than or equal to the total cost of flying for the trip.

(d) If the travel time taken for driving during the Traveler's normal work week is greater than that which would have occurred had the Traveler flown, the excess time used must not count as time worked.

(5) Use of non-fleet rental vehicles must be approved in writing in advance by the Executive Director or designee.

(a) An exception to advance approval of the use of rental vehicles shall be fully explained in writing with the request for Reimbursement and approved by the Executive Director or designee.

(b) Detailed explanation is required if a rental vehicle is requested for a Traveler staying at a conference hotel.

(c) When making rental car arrangements through the State Travel Office, reserve the vehicle you need. Upgrades in size or model made when picking up the rental vehicle will not be reimbursed.

(i) A Traveler should rent vehicles to be used for business in their own names, using a contract available to the Traveler's Agency or Political Subdivision to ensure the Agency's or Political Subdivision's insurance coverage is extended in the rental.

(ii) For Agency Travelers, a rental vehicle reservation not made through the State Travel Office must be approved in advance by the Executive Director or designee.

(iii) The Traveler will be reimbursed the actual Rate charged by the rental agency.

(iv) The Traveler must have approval for a rental car in order to be reimbursed for rental car parking.

(6) Travel by private airplane for official business must be approved in advance by the Executive Director or designee.

(a) The pilot must certify to the Executive Director or designee that the pilot is certified to fly the plane being used for business.

(b) If the plane is owned by the pilot, the pilot must certify the existence of at least \$500,000 of liability insurance coverage.

(c) If the plane is a rental, the pilot must provide written certification from the rental agency that the insurance covers the Traveler and the Agency or Political Subdivision as insured. The insurance must be adequate to cover any physical damage to the plane and at least \$500,000 for liability coverage.

(d) Reimbursement will be made at ~~57~~56 cents per mile.

(e) Mileage calculation is based on air mileage and is limited to the most economical, usually-traveled route.

(7) Travel by private motorcycle must be approved prior to the trip by the Executive Director or designee. Travel will be reimbursed at 20 cents per mile.

(8) For Agency Travelers, a car allowance may be allowed in lieu of mileage Reimbursement in certain cases. Prior written approval from the Executive Director, the Executive Director of the Department of Administrative Services, and the Governor is required.

NOTICES OF 120-DAY (EMERGENCY) RULES

**KEY:** air travel, per diem allowances, state travelers,  
transportation  
**Date of Enactment or Last Substantive Amendment:** January 1,  
2021

**Notice of Continuation:** February 8, 2018  
**Authorizing, and Implemented or Interpreted Law:** 63A-3-107;  
63A-3-106

**End of the Notices of 120-Day (Emergency) Rules Section**

## FIVE-YEAR NOTICES OF REVIEW AND STATEMENTS OF CONTINUATION

Within five years of an administrative rule's original enactment or last five-year review, the agency is required to review the rule. This review is intended to help the agency determine, and to notify the public, that the administrative rule in force is still authorized by statute and necessary. Upon reviewing a rule, an agency may: repeal the rule by filing a **PROPOSED RULE**; continue the rule as it is by filing a **FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION (REVIEW)**; or amend the rule by filing a **PROPOSED RULE** and by filing a **REVIEW**. By filing a **REVIEW**, the agency indicates that the rule is still necessary.

A **REVIEW** is not followed by the rule text. The rule text that is being continued may be found in the online edition of the *Utah Administrative Code* available at <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.

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION		
Utah Admin. Code Ref (R no.):	R25-15	Filing No. 50052

### Agency Information

<b>1. Department:</b>	Administrative Services	
<b>Agency:</b>	Finance	
<b>Building:</b>	Taylorsville State Office Building	
<b>Street address:</b>	4315 S 2700 W Floor 3	
<b>City, state, zip:</b>	Taylorsville, UT 84127-2128	
<b>Mailing address:</b>	PO Box 141031	
<b>City, state, zip:</b>	Salt Lake City, UT 84114-1031	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Marilee P. Richins	801-957-7752	mprichins@utah.gov
Please address questions regarding information on this notice to the agency.		

### General Information

<b>2. Rule catchline:</b>
R25-15. Change Date and Set Aside Provisions for Annual Leave II
<b>3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:</b>
This rule is required by statute. Section 67-19-14.6 requires the Division of Finance to make rules to establish a change date for annual leave II; and for the determination, collection, and deposit of set-aside rates for annual leave II.

<b>4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:</b>
No comments have been received in the last five years.

<b>5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:</b>
The statutory policy need for the change date for annual leave II still exists. Therefore, this rule should be continued.

### Agency Authorization Information

<b>Agency head or designee, and title:</b>	Marilee P. Richins, Interim Director	<b>Date:</b>	12/21/2020
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION		
Utah Admin. Code Ref (R no.):	R131-4	Filing No. 50212

### Agency Information

<b>1. Department:</b>	Capitol Preservation Board (State)	
<b>Agency:</b>	Administration	
<b>Building:</b>	State Capitol Building	
<b>Street address:</b>	350 N State Street	
<b>City, state, zip:</b>	Salt Lake City, UT 84114	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Dana Jones		danajones@utah.gov

FIVE-YEAR NOTICES OF REVIEW AND STATEMENTS OF CONTINUATION

Please address questions regarding information on this notice to the agency.

**General Information**

**2. Rule catchline:**  
R131-4. Capitol Preservation Board General Procurement Rule

**3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:**

This rule is required by Section 63C-9-301 which requires that the Capitol Preservation Board adopt procurement rules substantially similar to the requirements of Title 63G, Chapter 6a, Utah Procurement Code.

**4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:**

There were no written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule.

**5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:**

This rule is required by Section 63C-9-301. Therefore, this rule should be continued.

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	Dana Jones, Interim Director	<b>Date:</b>	12/29/2020
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION		
<b>Utah Admin. Code Ref (R no.):</b>	<b>R414-512</b>	<b>Filing No. 51004</b>

**Agency Information**

<b>1. Department:</b>	Health
<b>Agency:</b>	Health Care Financing, Coverage and Reimbursement Policy
<b>Building:</b>	Cannon Health Building
<b>Street address:</b>	288 N 1460 W
<b>City, state, zip:</b>	Salt Lake City, UT
<b>Mailing address:</b>	PO Box 143102
<b>City, state, zip:</b>	Salt Lake City, UT 84114-3102
<b>Contact person(s):</b>	

<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Craig Devashrayee	801-538-6641	cdevashrayee@utah.gov

Please address questions regarding information on this notice to the agency.

**General Information**

**2. Rule catchline:**  
R414-512. Use of Extrapolation in Provider Audits

**3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:**

Section 26-18-3 requires the Department of Health (Department) to implement the Medicaid program through administrative rules while Section 26-1-5 authorizes the Department to adopt rules as necessary for program implementation. Additionally, Section 26-18-20 requires the Department to adopt rules that establish fair and consistent audit and investigation procedures.

**4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:**

The Department did not receive any written comments regarding this rule.

**5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:**

The Department will continue this rule because it establishes procedures, limits, and rights of appeal for the use of extrapolation in provider audits.

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	Richard G. Saunders, Interim Executive Director	<b>Date:</b>	12/21/2020
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION		
<b>Utah Admin. Code Ref (R no.):</b>	<b>R455-6</b>	<b>Filing No. 51142</b>

**Agency Information**

<b>1. Department:</b>	Heritage and Arts
<b>Agency:</b>	History
<b>Building:</b>	Rio Grande Depot
<b>Street address:</b>	300 S Rio Grande St
<b>City, state, zip:</b>	Salt Lake City, UT 84101

Contact person(s):		
Name:	Phone:	Email:
Josh Loftin	801-245-7205	jloftin@utah.gov
Please address questions regarding information on this notice to the agency.		

Contact person(s):		
Name:	Phone:	Email:
Josh Loftin	801-245-7205	jloftin@utah.gov
Please address questions regarding information on this notice to the agency.		

**General Information**

2. Rule catchline:
R455-6. State Register for Historic Resources and Archaeological Sites
3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:
The purpose of this rule is to establish compatibility between the state and National Register, and to establish standards for state landmarks consistent with Sections 9-8-306, 9-8-401, 9-8-402, and 9-8-403.
4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:
No written comments were received.
5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:
The continuation of this rule is justified to ensure continued compatibility between the state and National Register. The State Register for properties and sites incorporates by reference, within this rule, 36 CFR 60.4 (1996 Edition), for the selecting of properties and sites as historical places within Utah.

**General Information**

2. Rule catchline:
R455-9. Board of State History as the Cultural Sites Review Committee Review Board
3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:
Rules for the Board of State History, those federal regulations regarding activities of the Cultural Sites Review Committee, Review Board as established by Subsection 9-8-205(1)(d).
4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:
No written comments were received.
5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:
The continuation of this rule is justified for the state to comply with the requirements of the National Historic Preservation Act of 1966 as amended and the appropriate Code of Federal Regulations as now constituted.

**Agency Authorization Information**

Agency head or designee, and title:	Josh Loftin, Public Information Officer	Date:	12/04/2020
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**Agency Authorization Information**

Agency head or designee, and title:	Josh Loftin, Public Information Officer	Date:	12/04/2020
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION			
Utah Admin. Code Ref (R no.):	R455-9	Filing No.	51128

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION			
Utah Admin. Code Ref (R no.):	R600-3	Filing No.	51488

**Agency Information**

1. Department:	Heritage and Arts
Agency:	History
Building:	Rio Grande Depot
Street address:	300 S Rio Grande St
City, state, zip:	Salt Lake City, UT 84101

**Agency Information**

1. Department:	Labor Commission
Agency:	Administration
Room no.:	Third Floor
Building:	Heber M. Wells
Street address:	160 E 300 S
City, state, zip:	Salt Lake City, UT 84111

FIVE-YEAR NOTICES OF REVIEW AND STATEMENTS OF CONTINUATION

<b>Mailing address:</b>	PO Box 146600	
<b>City, state, zip:</b>	Salt Lake City, UT 84114-6600	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Chris Hill		chill@utah.gov
Please address questions regarding information on this notice to the agency.		

**General Information**

<b>2. Rule catchline:</b>
R600-3. Definitions Applicable to Construction Licensees
<b>3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:</b>
Subsections 34-28-2(2), 34A-2-103(8)(c), 34A-5-103(2), and 34A-6-103(2) authorize the Labor Commission (Commission) to adopt rules to establish the manner in which unincorporated entities can rebut a presumption that they are an employer in wage claim, workers' compensation, discrimination, and occupational safety and health claims before the Labor Commission. Pursuant to that authority, and as required by Section 63G-4-503, the Commission has adopted Rule R600-3, which

establishes definitions and the manner to rebut the employer presumption.
<b>4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:</b>
During the last five-year period, the Commission has received no written comments supporting or opposing this rule.
<b>5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:</b>
The Commission continues to handle unpaid wages, occupational safety and health, discrimination, and workers' compensation claims. In each type of case, the relationship between an employee and employer is a determining factor. Therefore, this rule should be continued.

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	Jaceson R. Maughan, Commissioner	<b>Date:</b>	12/21/2020
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**End of the Five-Year Notices of Review and Statements of Continuation Section**

## NOTICES OF FIVE-YEAR REVIEW EXTENSIONS

Rulewriting agencies are required by law to review each of their administrative rules within five years of the date of the rule's original enactment or the date of last review (Section 63G-3-305). If the agency finds that it will not meet the deadline for review of the rule (the five-year anniversary date), it may file a **NOTICE OF FIVE-YEAR REVIEW EXTENSION (EXTENSION)** with the Office of Administrative Rules. The **EXTENSION** permits the agency to file the review up to 120 days beyond the anniversary date.

Agencies have filed **EXTENSIONS** for the rules listed below. The "Extended Due Date" is 120 days after the anniversary date.

**EXTENSIONS** are governed by Subsection 63G-3-305(6).

NOTICE OF FIVE-YEAR REVIEW EXTENSION		
Utah Admin. Code Ref (R no.):	R495-862	Filing No. 51168

### Agency Information

<b>1. Department:</b>	Human Services	
<b>Agency:</b>	Administration	
<b>Building:</b>	MASOB	
<b>Street address:</b>	195 N 1950 W	
<b>City, state, zip:</b>	Salt Lake City, UT 84115	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Jonah Shaw	801-538-4219	jshaw@utah.gov
Please address questions regarding information on this notice to the agency.		

### General Information

<b>2. Rule catchline:</b>
R495-862. Compliance with Communicable Disease Control Act
<b>3. Reason for requesting the extension and the new deadline date:</b>
This request for extension is being processed to allow enough time for the Department of Human Services and the Office of Administrative Rules to process, publish, and make the repeal effective for this rule. The new deadline date is Tuesday, 05/04/2021. (EDITOR'S NOTE: The proposed repeal of Rule R495-862 is under Filing No. 53267 in this issue, January 15, 2021, of the Bulletin.)

### Agency Authorization Information

<b>Agency head or designee, and title:</b>	Mark Brasher, Deputy Director	<b>Date:</b>	12/21/2020
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**End of the Notices of Five-Year Review Extensions Section**





## NOTICES OF RULE EFFECTIVE DATES

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State law provides for agencies to make their administrative rules effective and enforceable after publication in the *Utah State Bulletin*. In the case of **PROPOSED RULES** or **CHANGES IN PROPOSED RULES** with a designated comment period, the law permits an agency to make a rule effective no fewer than seven calendar days after the close of the public comment period, nor more than 120 days after the publication date. In the case of **CHANGES IN PROPOSED RULES** with no designated comment period, the law permits an agency to make a rule effective on any date including or after the thirtieth day after the rule's publication date, but not more than 120 days after the publication date. If an agency fails to file a **NOTICE OF EFFECTIVE DATE** within 120 days from the publication of a **PROPOSED RULE** or a related **CHANGE IN PROPOSED RULE** the rule lapses.

Agencies have notified the Office of Administrative Rules that the rules listed below have been made effective.

**NOTICES OF EFFECTIVE DATE** are governed by Subsection 63G-3-301(12), Section 63G-3-303, and Sections R15-4-5a and R15-4-5b.

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### Administrative Services

#### Administration

No. 53213 (Amendment) R13-2: Management of Records and Access to Records  
Published: 12/01/2020  
Effective: 01/07/2021

### Agriculture and Food

#### Plant Industry

No. 53205 (Amendment) R68-26: Industrial Hemp Product Registration and Labeling  
Published: 12/01/2020  
Effective: 01/08/2021

No. 53103 (Amendment) R68-29: Quality Assurance Testing on Cannabis  
Published: 11/01/2020  
Effective: 12/18/2020

No. 53110 (New Rule) R68-32: Sale and Transfer of Industrial Hemp Waste Material to Medical Cannabis Cultivators  
Published: 11/01/2020  
Effective: 12/18/2020

No. 53151 (New Rule) R68-34: Educational Event and Educational Material Rules  
Published: 12/01/2020  
Effective: 01/08/2021

### Commerce

#### Administration

No. 53220 (Amendment) R151-4: Department of Commerce Administrative Procedures Act Rule  
Published: 12/01/2020  
Effective: 01/08/2021

### Occupational and Professional Licensing

No. 53108 (Amendment) R156-11a: Cosmetology and Associated Professions Licensing Act Rule  
Published: 11/01/2020  
Effective: 12/17/2020

No. 53200 (Amendment) R156-31b: Nurse Practice Act Rule  
Published: 12/01/2020  
Effective: 01/08/2021

No. 53102 (Amendment) R156-46a: Hearing Instrument Specialist Licensing Act Rule  
Published: 11/01/2020  
Effective: 12/10/2020

No. 53162 (Repeal) R156-82: Electronic Prescribing Act Rule  
Published: 11/15/2020  
Effective: 12/24/2020

### Education

#### Administration

No. 53206 (Amendment) R277-100: Definitions for Utah State Board of Education (Board) Rules.  
Published: 12/01/2020  
Effective: 01/08/2021

No. 53207 (New Rule) R277-311: Specialized Endorsements  
Published: 12/01/2020  
Effective: 01/08/2021

No. 53037 (Amendment) R277-326: Early Learning Professional Learning Grant Program  
Published: 09/15/2020  
Effective: 01/05/2021

NOTICES OF RULE EFFECTIVE DATES

No. 53038 (Amendment) R277-327: School Leadership Development Grant  
Published: 09/15/2020  
Effective: 01/05/2021

No. 53208 (Amendment) R277-445: Classifying Small Schools as Necessarily Existent  
Published: 12/01/2020  
Effective: 01/08/2021

No. 53111 (Amendment) R277-462: School Counseling Program  
Published: 11/01/2020  
Effective: 12/16/2020

No. 53112 (Amendment) R277-494: Charter, Online, Home, and Private School Student Participation in Extracurricular or Co-curricular School Activities  
Published: 11/01/2020  
Effective: 12/16/2020

No. 53209 (Repeal) R277-507: Driver Education Endorsement  
Published: 12/01/2020  
Effective: 01/08/2021

No. 53107 (Repeal) R277-508: Employment of Substitute Teachers  
Published: 11/01/2020  
Effective: 12/16/2020

No. 53113 (Repeal) R277-611: Certified Volunteer Instructors and Material Approval Requirements and Process for Firearm Safety in the Public Schools  
Published: 11/01/2020  
Effective: 12/16/2020

No. 53114 (Amendment) R277-616: Education for Homeless and Emancipated Students  
Published: 11/01/2020  
Effective: 12/16/2020

No. 53210 (New Rule) R277-626: Special Needs Opportunity Scholarship Program  
Published: 12/01/2020  
Effective: 01/08/2021

No. 53106 (Amendment) R277-706: Public Education Regional Service Centers  
Published: 11/01/2020  
Effective: 12/16/2020

No. 53221 (Amendment) R277-726: Statewide Online Education Program  
Published: 12/01/2020  
Effective: 01/08/2021

No. 53109 (Amendment) R277-752: Special Education Intensive Services Fund  
Published: 11/01/2020  
Effective: 12/16/2020

No. 53222 (Amendment) R277-920: School Improvement - Implementation of the School Turnaround and Leadership Development Act  
Published: 12/01/2020  
Effective: 01/08/2021

Governor

Energy Development (Office of)  
No. 53145 (Amendment) R362-4: High Cost Infrastructure Development Tax Credit Act  
Published: 11/15/2020  
Effective: 01/11/2021

Health

Disease Control and Prevention, Environmental Services  
No. 53095 (New Rule) R392-105: Agritourism Food Establishment Sanitation  
Published: 10/15/2020  
Effective: 12/21/2020

Health Care Financing, Coverage and Reimbursement Policy  
No. 53161 (Amendment) R414-49: Dental, Oral and Maxillofacial Surgeons and Orthodontia  
Published: 11/15/2020  
Effective: 01/01/2021

No. 53214 (Amendment) R414-60: Medicaid Policy for Pharmacy Program  
Published: 12/01/2020  
Effective: 01/12/2021

Human Services

Aging and Adult Services  
No. 53036 (Amendment) R510-302: Adult Protective Services  
Published: 10/01/2020  
Effective: 01/04/2021

Insurance

Administration  
No. 53218 (Amendment) R590-244: Individual and Agency Licensing Requirements  
Published: 12/01/2020  
Effective: 01/08/2021

No. 53178 (Amendment) R590-281: License Applications Submitted by Individuals Who Have a Criminal Conviction  
Published: 11/15/2020  
Effective: 12/23/2020

Labor Commission

Industrial Accidents  
No. 53180 (Amendment) R612-100: Forms Used By Industrial Accidents Division  
Published: 11/15/2020  
Effective: 01/01/2021

No. 53176 (Amendment) R612-200: Reporting and investigating Injuries  
 Published: 11/15/2020  
 Effective: 01/01/2021

No. 53174 (Amendment) R612-300: Workers' Compensation Rules - Medical Care  
 Published: 11/15/2020  
 Effective: 01/01/2021

No. 53166 (Amendment) R612-400: Premium Rates for the Uninsured Employers' Fund and the Employers' Reinsurance Fund  
 Published: 11/15/2020  
 Effective: 01/01/2021

Natural Resources

Parks and Recreation  
 No. 53117 (Amendment) R651-601: Posted  
 Published: 11/15/2020  
 Effective: 01/05/2021

No. 53116 (Amendment) R651-606: Camping  
 Published: 11/15/2020  
 Effective: 01/05/2021

Wildlife Resources

No. 53118 (Repeal) R657-48: Wildlife Sensitive Species  
 Published: 11/15/2020  
 Effective: 12/23/2020

No. 53119 (Amendment) R657-58: Fishing Contests and Clinics  
 Published: 11/15/2020  
 Effective: 01/07/2021

No. 53120 (Amendment) R657-62: Deployed Military  
 Published: 11/15/2020  
 Effective: 01/07/2021

Public Safety

Fire Marshal  
 No. 53085 (Repeal) R710-10: Rules Pursuant to Fire Service Training, Education, and Certification  
 Published: 10/15/2020  
 Effective: 01/11/2021

Criminal Investigations and Technical Services, Criminal Identification

No. 53147 (New Rule) R722-930: Automatic Expungement  
 Published: 11/15/2020  
 Effective: 01/11/2021

Transportation

Motor Carrier  
 No. 53158 (Amendment) R909-3: Standards for Utah School Buses  
 Published: 11/15/2020  
 Effective: 12/30/2020

Operations, Traffic and Safety

No. 53061 (Amendment) R920-8: Flashing Light Usage on Highway Construction or Maintenance Vehicles  
 Published: 10/01/2020  
 Effective: 12/16/2020

Transportation Commission

Administration  
 No. 53160 (Amendment) R940-6: Prioritization of New Transportation Capacity Projects  
 Published: 11/15/2020  
 Effective: 12/30/2020

**End of the Notices of Rule Effective Dates Section**

