

# UTAH STATE BULLETIN

OFFICIAL NOTICES OF UTAH STATE GOVERNMENT  
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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 Government Operations, 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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### Extending Public Comment for Proposed Amendments to R35 Rules

The State Records Committee under the Department of Government Operations has requested to extend the public comment period for the proposed amendments published in the June 15, 2023, Bulletin.

They are:

ID 55397, R35-1, State Records Committee Appeal Hearing Procedures

ID 55398, R35-1a, State Records Committee Definitions

ID 55399, R35-2, Declining Appeal Hearings

ID 55400, R35-4, Compliance with State Records Committee Decisions and Orders

ID 55401, R35-5, Subpoenas Issued by the Records Committee

ID 55402, R35-6, Expedited Hearing

The original comment end date was 07/17/2023. The extended due date for comments for all of them is 08/08/2023.

Questions can be directed to: Rebekkah Shaw by phone at 801-531-3851 or by email at [rshaw@utah.gov](mailto:rshaw@utah.gov)

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### Publishing Error for Rule R657-4, ID 55466

On 07/17/2023, the Office of Administrative Rules (OAR) discovered that the Division of Wildlife Resources (DWR) did not want the repeal and reenact on Rule R657-4, ID 55466, published in the July 15, 2023, Utah State Bulletin (after it was published).

So OAR is withdrawing that filing, and DWR has filed a replacement repeal and reenact filing on Rule R657-4 under ID 55534 that will be published in the August 15, 2023, Bulletin.

Questions about the filing can be directed to: Staci Coons, by phone at 801-450-3039; or by email at [stacicoons@utah.gov](mailto:stacicoons@utah.gov).

Questions about the publishing process can be directed to: OAR by email at [rulesonline@utah.gov](mailto:rulesonline@utah.gov).

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### Codification Error for Rule R68-26, ID 55411

A proposed amendment to Rule R68-26, Cannabinoid Product Registration and Labeling, was published in the June 1, 2023, Bulletin under ID 55411.

It was made effective on 07/11/2023. During codification of this filing, it was discovered that the word "may" was added to Subsection R68-26-5(12) without being underlined. As the text was published in the Bulletin, the Office of Administrative Rules has chosen to allow the addition of "may" even though it was missing the correct marking.

Questions about this issue can be sent to the Office of Administrative Rules at [rulesonline@utah.gov](mailto:rulesonline@utah.gov)

### End of the Editor's Notes 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 July 01, 2023, 12:00 a.m., and July 14, 2023, 11:59 p.m. are included in this, the August 01, 2023, 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 August 31, 2023. 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 November 29, 2023, 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 FILING: Amendment		
Rule or Section Number:	R313-12-3	Filing ID: 55531

#### Agency Information

<b>1. Department:</b>	Environmental Quality	
<b>Agency:</b>	Waste Management and Radiation Control, Radiation	
<b>Room number:</b>	2nd Floor	
<b>Building:</b>	MASOB	
<b>Street address:</b>	195 N 1950 W	
<b>City, state and zip:</b>	Salt Lake City, UT 84116	
<b>Mailing address:</b>	PO Box 144880	
<b>City, state and zip:</b>	Salt Lake City, UT 84114-4880	
<b>Contact persons:</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Tom Ball	385-454-5574	tball@utah.gov
Spencer Wickham	385-499-4895	swickham@utah.gov
<b>Please address questions regarding information on this notice to the persons listed above.</b>		

#### General Information

<b>2. Rule or section catchline:</b>
R313-12-3. Definitions
<b>3. Purpose of the new rule or reason for the change:</b>
The NRC is amending its regulations to implement the Social Security Number Fraud Prevention Act of 2017 and to make miscellaneous corrections.
These changes include amending regulations to prohibit the inclusion of an individual's Social Security number on any document sent through the mail, redesignating footnotes, correcting references, typographical errors, nomenclature, titles, email addresses, and contact information.
As an Agreement State, Utah must adopt these changes into the Radiation Control Rules to maintain compatibility with the federal program.
<b>4. Summary of the new rule or change:</b>
This amendment adds the year 2020 to two incorporations by reference found in the definition "A2".

Additionally, the Division of Waste Management and Radiation Control, Radiation is correcting typographical and formatting errors that have been discovered in this rule.

#### Fiscal Information

<b>5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:</b>
<b>A) State budget:</b>
It is not anticipated that there will be any additional costs or savings to the state budget due to this amendment because it does not add or remove any requirements or duties to the agency.
<b>B) Local governments:</b>
It is not anticipated that there will be any additional costs or savings to local governments due to this amendment because it does not add or remove any requirements that a local government would be required to follow.
<b>C) Small businesses</b> ("small business" means a business employing 1-49 persons):
It is not anticipated that there will be any additional costs or savings to any small businesses due to this amendment because it does not add or remove any requirements that a small business would be required to follow.
<b>D) Non-small businesses</b> ("non-small business" means a business employing 50 or more persons):
It is not anticipated that there will be any additional costs or savings to any non-small businesses due to this amendment because it does not add or remove any requirements that a non-small business would be required to follow.
<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> ):
It is not anticipated that there will be any additional costs or savings to any persons other than small businesses, non-small businesses or state or local governments due to this amendment because it does not add or remove any requirements that any such persons would be required to follow.
<b>F) Compliance costs for affected persons</b> (How much will it cost an impacted entity to adhere to this rule or its changes?):
There will be no additional compliance costs for affected persons due to this amendment beyond any costs that they already incur to comply with this rule prior to this 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.)

**Regulatory Impact Table**

Fiscal Cost	FY2024	FY2025	FY2026
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>
Fiscal Benefits	FY2024	FY2025	FY2026
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 comments on fiscal impact and approval of regulatory impact analysis:**

The Executive Director of the Department of Environmental Quality, Kimberly D Shelley, has reviewed and approved this regulatory impact analysis.

**Citation Information**

**6. Provide citations to the statutory authority for the rule. If there is also a federal requirement for the rule, provide a citation to that requirement:**

Section 19-3-104	Section 19-6-104	
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**Incorporations by Reference Information**

**7. Incorporations by Reference:**

**A) This rule adds, updates, or removes the following title of materials incorporated by references:**

<b>Official Title of</b>	Title 10 - Energy, Chapter I – Nuclear
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<b>Materials Incorporated (from title page)</b>	Regulatory Commission, Part 71 – Packaging and Transportation of Radioactive Material Appendix A to Part 71 – Determination of A1 and A2
<b>Publisher</b>	United States Government, Nuclear Regulatory Commission
<b>Issue Date</b>	10/16/2020

**Public Notice Information**

**8. 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. See Section 63G-3-302 and Rule R15-1 for more information.)

**A) Comments will be accepted until:** 08/31/2023

**9. This rule change MAY become effective on:** 09/18/2023

NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date.

**Agency Authorization Information**

<b>Agency head or designee and title:</b>	Douglas J Hansen, Division Director	<b>Date:</b>	07/13/2023
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**R313. Environmental Quality, Waste Management and Radiation Control, Radiation.**

**R313-12. General Provisions.**

**R313-12-3. Definitions.**

As used in Rules R313-12, R313-14 through R313-19, R313-21, R313-22, R313-24 through R313-26, R313-28, R313-30, R313-32, R313-34 through R313-38 and R313-70, these terms shall have the definitions set forth in Section R313-12-3. Additional definitions used only in a certain rule will be found in that rule.

"A1" means the maximum activity of special form radioactive material permitted in a Type A package.

"A2" means the maximum activity of radioactive material, other than special form radioactive material, low specific activity, and surface contaminated object material permitted in a Type A package. These values are either listed in 10 CFR 71, Appendix A, (2020) which is incorporated by reference in Section R313-19-100 or may be derived in accordance with the procedures prescribed in 10 CFR 71, Appendix A, (2020) which is incorporated by reference in Section R313-19-100.

"Absorbed dose" means the energy imparted by ionizing radiation per unit mass of irradiated material. The units of absorbed dose are the gray (Gy) and the rad.

"Accelerator produced radioactive material" means material made radioactive by a particle accelerator.

"Act" means Utah Radiation Control Act, Title 19, Chapter 3.

"Activity" means the rate of disintegration or transformation or decay of radioactive material. The units of activity are the becquerel (Bq) and the curie (Ci).

## NOTICES OF PROPOSED RULES

"Adult" means an individual 18 or more years of age.

"Address of use" means the building or buildings that are identified on the license and where radioactive material may be received, used or stored.

"Advanced practice registered nurse" means an individual licensed by this state to engage in the practice of advanced practice registered nursing. See Sections 58-31b-101 through 58-31b-801, Nurse Practice Act.

"Agreement State" means a state with which the United States Nuclear Regulatory Commission or the Atomic Energy Commission has entered into an effective agreement under Section 274 b. of the Atomic Energy Act of 1954, as amended, [§]73 Stat. 689[§].

"Airborne radioactive material" means a radioactive material dispersed in the air in the form of dusts, fumes, particulates, mists, vapors, or gases.

"Airborne radioactivity area" means[±] a room, enclosure, or area in which airborne radioactive material exists in concentrations:

(a) [F]in excess of the derived air concentrations (DACs), specified in Rule R313-15; or

(b) [F]to a degree that an individual present in the area without respiratory protective equipment could exceed, during the hours an individual is present in a week, an intake of 0.6% of the annual limit on intake (ALI), or 12 DAC-hours.

"As low as reasonably achievable" (ALARA) means making [every]each reasonable effort to maintain exposures to radiation as far below the dose limits as is practical, consistent with the purpose for which the licensed or registered activity is undertaken, taking into account the state of technology, the economics of improvements in relation to state of technology, the economics of improvements in relation to benefits to the public health and safety, and other societal and socioeconomic considerations, and in relation to utilization of nuclear energy and licensed or registered sources of radiation in the public interest.

"Area of use" means a portion of an address of use that has been set aside to receive, use, or store radioactive material.

"Background radiation" means radiation from cosmic sources; naturally occurring radioactive materials, including radon, except as a decay product of source or special nuclear material, and including global fallout as it exists in the environment from the testing of nuclear explosive devices or from past nuclear accidents such as Chernobyl that contribute to background radiation and are not under the control of the licensee. [§]Background radiation[§] does not include sources of radiation from radioactive materials regulated by the Division of Waste Management and Radiation Control under the Radiation Control Act or Rules R313-12, R313-14 through R313-19, R313-21, R313-22, R313-24 through R313-26, R313-28, R313-30, R313-32, R313-34 through R313-38 and R313-70.

"Becquerel" (Bq) means the SI unit of activity. One becquerel is equal to one disintegration or transformation per second.

"Bioassay" means the determination of kinds, quantities or concentrations, and in some cases, the locations of radioactive material in the human body, whether by direct measurement, in vivo counting, or by analysis and evaluation of materials excreted or removed from the human body. For purposes of these rules, "radiobioassay" is an equivalent term.

"Board" means the Waste Management and Radiation Control Board created under Section 19-1-106.

"Byproduct material" means:

(a) a radioactive material, with the exception of special nuclear material, yielded in or made radioactive by exposure to the

radiation incident to the process of producing or utilizing special nuclear material;

(b) the tailings or wastes produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its source material content, including discrete surface wastes resulting from uranium solution extraction processes. Underground ore bodies depleted by these solution extraction operations do not constitute [§]byproduct material[§] within this definition;

(c) (i) a discrete source of radium-226 that is produced, extracted, or converted after extraction, before, on, or after August 8, 2005, for use for a commercial, medical, or research activity; or

(ii) material that:

(A) has been made radioactive by use of a particle accelerator; and

(B) is produced, extracted, or converted after extraction, before, on, or after August 8, 2005, for use for a commercial, medical, or research activity; and

(d) a discrete source of naturally occurring radioactive material, other than source material, that

(i) The Commission, in consultation with the Administrator of the Environmental Protection Agency, the Secretary of Energy, the Secretary of Homeland Security, and the head of any other appropriate [F]federal agency, has determined would pose a threat similar to the threat posed by a discrete source of radium-226 to the public health and safety or the common defense and security; and

(ii) [B]before, on, or after August 8, 2005, is extracted or converted after extraction for use in a commercial, medical, or research activity.

"Calibration" means the determination of:

(a) the response or reading of an instrument relative to a series of known radiation values over the range of the instrument; or

(b) the strength of a source of radiation relative to a standard.

"CFR" means Code of Federal Regulations.

"Chelating agent" means a chemical ligand that can form coordination compounds in which the ligand occupies more than one coordination position. The agents include beta diketones, certain proteins, amine polycarboxylic acids, hydroxycarboxylic acids, gluconic acid, and polycarboxylic acids.

"Chiropractor" means an individual licensed by this state to engage in the practice of chiropractic. See Sections 58-73-101 through 58-73-701, Chiropractic Physician Practice Act.

"Collective dose" means the sum of the individual doses received in a given period of time by a specified population from exposure to a specified source of radiation.

"Commencement of construction" means taking any action defined as [§]construction[§] or any other activity at the site of a facility subject to these rules that have a reasonable nexus to radiological health and safety.

"Commission" means the U.S. Nuclear Regulatory Commission.

"Committed dose equivalent" (HT,50), means the dose equivalent to organs or tissues of reference (T), that will be received from an intake of radioactive material by an individual during the 50-year period following the intake.

"Committed effective dose equivalent" (HE,50), is the sum of the products of the weighting factors applicable to each of the body organs or tissues that are irradiated and the committed dose equivalent to each of these organs or tissues.

"Consortium" means an association of medical use licensees and a PET radionuclide production facility in the same geographical area that jointly own or share in the operation and maintenance cost of the PET radionuclide production facility that produces PET radionuclides for use in producing radioactive drugs within the consortium for noncommercial distributions among its associated members for medical use. The PET radionuclide production facility within the consortium shall be located at an educational institution, a Federal facility, or a medical facility.

"Construction" means the installation of wells associated with radiological operations[?], for example, production, injection, or monitoring well networks associated with in situ recovery or other facilities[?], the installation of foundations, or in-place assembly, erection, fabrication, or testing for any structure, system, or component of a facility or activity subject to these rules that are related to radiological safety or security. The term "[?]"construction"[?]" does not include:

(a) changes for temporary use of the land for public recreational purposes;

(b) site exploration, including necessary borings to determine foundation conditions or other preconstruction monitoring to establish background information related to the suitability of the site, the environmental impacts of construction or operation, or the protection of environmental values;

(c) preparation of the site for construction of the facility, including clearing of the site, grading, installation of drainage, erosion and other environmental mitigation measures, and construction of temporary roads and borrow areas;

(d) erection of fences and other access control measures that are not related to the safe use of, or security of, radiological materials subject to this part;

(e) excavation;

(f) erection of support buildings[?], for example, construction equipment storage sheds, warehouse and shop facilities, utilities, concrete mixing plants, docking and unloading facilities, and office buildings[?], for use in connection with the construction of the facility;

(g) building of service facilities[?], for example, paved roads, parking lots, railroad spurs, exterior utility and lighting systems, potable water systems, sanitary sewerage treatment facilities, and transmission lines;

(h) procurement or fabrication of components or portions of the proposed facility occurring at other than the final, in-place location at the facility; or

(i) taking any other action that has no reasonable nexus to radiological health and safety.

"Controlled area" means an area, outside of a restricted area but inside the site boundary, access to which can be limited by the licensee or registrant for any reason.

"Critical group" means the group of individuals reasonably expected to receive the greatest exposure to residual radioactivity for any applicable set of circumstances.

"Curie" means a unit of measurement of activity. One curie (Ci) is that quantity of radioactive material which decays at the rate of  $3.7 \times 10^{10}$  to the tenth power disintegrations or transformations per second (dps or tps).

"Cyclotron" means a particle accelerator in which the charged particles travel in an outward spiral or circular path. A cyclotron accelerates charged particles at energies usually in excess of ~~10~~<sup>ten</sup> megaelectron volts and is commonly used for production of short half-life radionuclides for medical use.

"Decommission" means to remove a facility or site safely from service and reduce residual radioactivity to a level that permits:

(a) release of property for unrestricted use and termination of the license; or

(b) release of the property under restricted conditions and termination of the license.

"Deep dose equivalent" ( $H_d$ ), which applies to external whole body exposure, means the dose equivalent at a tissue depth of one centimeter ( $1000 \text{ mg/cm}^2$ ).

"Dentist" means an individual licensed by this state to engage in the practice of dentistry. See Sections 58-69-101 through 58-69-806, Dentist and Dental Hygienist Practice Act.

"Department" means the Utah Department of Environmental Quality.

"Depleted uranium" means the source material uranium in which the isotope uranium-235 is less than 0.711 weight percent of the total uranium present. Depleted uranium does not include special nuclear material.

"Diffuse source" means a radionuclide that has been unintentionally produced or concentrated during the processing of materials for use for commercial, medical, or research activities.

"Director" means the [?]director of the Division of Waste Management and Radiation Control.

"Discrete source" means a radionuclide that has been processed so that its concentration within a material has been purposely increased for use for commercial, medical, or research activities.

"Distinguishable from background" means that the detectable concentration of a radionuclide is statistically different from the background concentration of that radionuclide in the vicinity of the site or, in the case of structures, in similar materials using adequate measurement technology, survey, and statistical techniques.

"Dose" is a generic term that means absorbed dose, dose equivalent, effective dose equivalent, committed dose equivalent, committed effective dose equivalent, or total effective dose equivalent. For purposes of these rules, "radiation dose" is an equivalent term.

"Dose equivalent" ( $H_T$ ), means the product of the absorbed dose in tissue, quality factor, and other necessary modifying factors at the location of interest. The units of dose equivalent are the sievert (Sv) and rem.

"Dose limits" means the permissible upper bounds of radiation doses established in accordance with these rules. For purpose of these rules, "limits" is an equivalent term.

"Effective dose equivalent" ( $H_E$ ), means the sum of the products of the dose equivalent to each organ or tissue ( $H_T$ ), and the weighting factor ( $w_T$ ), applicable to each of the body organs or tissues that are irradiated.

"Embryo/fetus" means the developing human organism from conception until the time of birth.

"Entrance or access point" means an opening through which an individual or extremity of an individual could gain access to radiation areas or to licensed or registered radioactive materials. This includes entry or exit portals of sufficient size to permit human entry, irrespective of their intended use.

"Explosive material" means a chemical compound, mixture, or device which produces a substantial instantaneous release of gas and heat spontaneously or by contact with sparks or flame.

"EXPOSURE" ~~when~~ if capitalized, means the quotient of dQ by dm where  $[Q]$  is the absolute value of the total charge of the ions of one sign produced in air when ~~all~~ the electrons, both negatrons and positrons, liberated by photons in a volume element of air having a mass of  $[m]$  are completely stopped in air. The special unit of EXPOSURE is the roentgen (R). See Section R313-12-20 Units of exposure and dose for the SI equivalent. For purposes of these rules, this term is used as a noun.

"Exposure" ~~when~~ if not capitalized, means being exposed to ionizing radiation or to radioactive material. For purposes of these rules, this term is used as a verb.

"EXPOSURE rate" means the EXPOSURE per unit of time, such as roentgen per minute and milliroentgen per hour.

"External dose" means that portion of the dose equivalent received from a source of radiation outside the body.

"Extremity" means hand, elbow, arm below the elbow, foot, knee, and leg below the knee.

"Facility" means the location within one building, vehicle, or under one roof and under the same administrative control

(a) at which the use, processing or storage of radioactive material is or was authorized; or

(b) at which one or more radiation-producing machines or radioactivity-inducing machines are installed or located.

"Former United States Atomic Energy Commission (AEC) or United States Nuclear Regulatory Commission (NRC) licensed facilities" means nuclear reactors, nuclear fuel reprocessing plants, uranium enrichment plants, or critical mass experimental facilities where AEC or NRC licenses have been terminated.

"Generally applicable environmental radiation standards" means standards issued by the U.S. Environmental Protection Agency under the authority of the Atomic Energy Act of 1954, as amended, that impose limits on radiation exposures or levels, or concentrations or quantities of radioactive material, in the general environment outside the boundaries of locations under the control of persons possessing or using radioactive material.

"Gray" (Gy) means the SI unit of absorbed dose. One gray is equal to an absorbed dose of one joule per kilogram.

"Hazardous waste" means those wastes designated as hazardous by the U.S. Environmental Protection Agency ~~rules~~ regulations in 40 CFR Part 261.

"Healing arts" means the disciplines of medicine, dentistry, osteopathy, chiropractic, and podiatry.

"High radiation area" means an area, accessible to individuals, in which radiation levels from radiation sources external to the body could result in an individual receiving a dose equivalent in excess of one mSv (0.1 rem), in one hour at 30 centimeters from the source of radiation or from a surface that the radiation penetrates. For purposes of these rules, rooms or areas in which diagnostic x-ray systems are used for healing arts purposes are not considered high radiation areas.

"Human use" means the intentional internal or external administration of radiation or radioactive material to human beings.

"Individual" means a human being.

"Individual monitoring" means the assessment of:

(a) dose equivalent, by the use of individual monitoring devices or, by the use of survey data; or

(b) committed effective dose equivalent by bioassay or by determination of the time weighted air concentrations to which an individual has been exposed, that is, DAC-hours.

"Individual monitoring devices" means devices designed to be worn by a single individual for the assessment of dose equivalent. For purposes of these rules, individual monitoring equipment and

personnel monitoring equipment are equivalent terms. Examples of individual monitoring devices are film badges, thermoluminescence dosimeters (TLD's), pocket ionization chambers, and personal air sampling devices.

"Inspection" means an official examination or observation including tests, surveys, and monitoring to determine compliance with rules, orders, requirements and conditions applicable to radiation sources.

"Interlock" means a device arranged or connected requiring the occurrence of an event or condition before a second condition can occur or continue to occur.

"Internal dose" means that portion of the dose equivalent received from radioactive material taken into the body.

"Lens dose equivalent" (LDE) applies to the external exposure of the lens of the eye and is taken as the dose equivalent at a tissue depth of 0.3 centimeter (300 mg/cm<sup>2</sup>).

"License" means a license issued by the ~~D~~ director in accordance with the rules adopted by the ~~B~~ board.

"Licensee" means a person who is licensed by the ~~D~~ department in accordance with these rules and the Act.

"Licensed or registered material" means radioactive material, received, possessed, used or transferred or disposed of under a general or specific license issued by the ~~D~~ director.

"Licensing state" means a state which, before November 30, 2007, was provisionally or finally designated as ~~such~~ a licensing state by the Conference of Radiation Control Program Directors, Inc., which reviewed state regulations to establish equivalency with the Suggested State Regulations and ascertained whether a ~~S~~ state has an effective program for control of natural occurring or accelerator produced radioactive material.

"Limits". See "Dose limits".

"Lost or missing source of radiation" means licensed or registered sources of radiation whose location is unknown. This definition includes radioactive material that has been shipped but has not reached its planned destination and whose location cannot be readily traced in the transportation system.

"Major processor" means a user processing, handling, or manufacturing radioactive material exceeding Type A quantities as unsealed sources or material, or exceeding four times Type B quantities as sealed sources, but does not include nuclear medicine programs, universities, industrial radiographers, or small industrial programs. Type A and B quantities are defined in 10 CFR 71.4.

"Member of the public" means an individual except when that individual is receiving an occupational dose.

"Minor" means an individual less than 18 years of age.

"Monitoring" means the measurement of radiation, radioactive material concentrations, surface area activities or quantities of radioactive material, and the use of the results of these measurements to evaluate potential exposures and doses. For purposes of these rules, radiation monitoring and radiation protection monitoring are equivalent terms.

"Natural radioactivity" means radioactivity of naturally occurring nuclides.

"Nuclear Regulatory Commission" (NRC) means the U.S. Nuclear Regulatory Commission or its duly authorized representatives.

"Occupational dose" means the dose received by an individual in the course of employment in which the individual's assigned duties for the licensee or registrant involve exposure to sources of radiation, whether or not the sources of radiation are in the possession of the licensee, registrant, or other person. Occupational dose does not include doses received from background radiation,

from any medical administration the individual has received, from exposure to individuals administered radioactive material and released in accordance with Rule R313-32, from voluntary participation in medical research programs, or as a member of the public.

"Package" means the packaging together with its radioactive contents as presented for transport.

"Particle accelerator" means a machine capable of accelerating electrons, protons, deuterons, or other charged particles in a vacuum and of discharging the resultant particulate or other radiation into a medium at energies usually in excess of one megaelectron volt. For purposes of these rules, "accelerator" is an equivalent term.

"Permit" means a permit issued by the [D]director in accordance with the rules adopted by the [B]board.

"Permitee" means a person who is permitted by the [D]director in accordance with these rules and the Act.

"Person" means an individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, agency, political subdivision of this state, or another state or political subdivision or agency thereof, and a legal successor, representative, agent or agency of the foregoing.

"Personnel monitoring equipment," see individual monitoring devices.

"Pharmacist" means an individual licensed by this state to engage in the practice of pharmacy. See Sections 58-17b-101 through 58-17b-806, Pharmacy Practice Act.

"Physician" means both physicians and surgeons licensed under Section 58-67-301, Utah Medical Practice Act, and osteopathic physicians and surgeons licensed under Section 58-68-301, Utah Osteopathic Medical Practice Act.

"Physician assistant" means an individual licensed by this state to engage in practice as a physician assistant. See Sections 58-70a-101 through 58-70a-504, Physician Assistant Act.

"Podiatrist" means an individual licensed by this state to engage in the practice of podiatry. See Sections 58-5a-101 through 58-5a-501, Podiatric Physician Licensing Act.

"Practitioner" means an individual licensed by this state in the practice of a healing art. For these rules, only the following are considered to be a practitioner: physician, dentist, podiatrist, chiropractor, physician assistant, and advanced practice registered nurse.

"Protective apron" means an apron made of radiation-attenuating materials used to reduce exposure to radiation.

"Public dose" means the dose received by a member of the public from exposure to radiation or to radioactive materials released by a licensee, or to any other source of radiation under the control of a licensee or registrant. Public dose does not include occupational dose or doses received from background radiation, from any medical administration the individual has received, from exposure to individuals administered radioactive material and released in accordance with Rule R313-32, or from voluntary participation in medical research programs.

"Pyrophoric material" means any liquid that ignites spontaneously in dry or moist air at or below 130 degrees Fahrenheit (54.4 degrees Celsius) or any solid material, other than one classed as an explosive, which under normal conditions is liable to cause fires through friction, retained heat from manufacturing or processing, or which can be ignited and, when ignited, burns so vigorously and persistently as to create a serious transportation, handling, or disposal hazard. Included are spontaneously combustible and water-reactive materials.

"Quality factor" (Q) means the modifying factor, listed in Tables 1 and 2 of Section R313-12-20 that is used to derive dose equivalent from absorbed dose.

"Rad" means the special unit of absorbed dose. One rad is equal to an absorbed dose of 100 erg per gram or 0.01 joule per kilogram

"Radiation" means alpha particles, beta particles, gamma rays, x-rays, neutrons, high speed electrons, high speed protons, and other particles capable of producing ions. For purposes of these rules, ionizing radiation is an equivalent term. Radiation, as used in these rules, does not include non-ionizing radiation, like radiowaves or microwaves, visible, infrared, or ultraviolet light.

"Radiation area" means an area, accessible to individuals, in which radiation levels could result in an individual receiving a dose equivalent in excess of 0.05 mSv (0.005 rem), in one hour at 30 centimeters from the source of radiation or from a surface that the radiation penetrates.

"Radiation machine" means a device capable of producing radiation except those devices with radioactive material as the only source of radiation.

"Radiation safety officer" means an individual who has the knowledge and responsibility to apply appropriate radiation protection rules and has been assigned this responsibility by the licensee or registrant. For a licensee authorized to use radioactive materials in accordance with the requirements of Rule R313-32[7]:

(1) the individual named as the [2]Radiation Safety Officer[2] shall meet the training requirements for a Radiation Safety Officer as stated in Rule R313-32; or

(2) the individual shall be identified as a [2]Radiation Safety Officer[2] on:

(a) a specific license issued by the [D]director, the U.S. Nuclear Regulatory Commission, or an Agreement State that authorizes the medical use of radioactive materials; or

(b) a medical use permit issued by a U.S. Nuclear Regulatory Commission master material licensee.

"Radiation source". See "Source of radiation."

"Radioactive material" means a solid, liquid, or gas which emits radiation spontaneously.

"Radioactivity" means the transformation of unstable atomic nuclei by the emission of radiation.

"Radiobioassay". See "Bioassay".

"Registrant" means any person who is registered with respect to radioactive materials or radiation machines with the [D]director or is legally obligated to register with the [D]director pursuant to these rules and the Act.

"Registration" means registration with the [D]director in accordance with the rules adopted by the [B]board.

"Regulations of the U.S. Department of Transportation" means 49 CFR 100 through 189 and 49 CFR 390 through 397, as referenced in 49 CFR 177.

"Rem" means the special unit of any of the quantities expressed as dose equivalent. The dose equivalent in rem is equal to the absorbed dose in rad multiplied by the quality factor. One rem equals 0.01 sievert (Sv).

"Research and development" means:

(a) theoretical analysis, exploration, or experimentation; or

(b) the extension of investigative findings and theories of a scientific or technical nature into practical application for experimental and demonstration purposes, including the experimental production and testing of models, devices, equipment, materials, and processes. Research and development does not

## NOTICES OF PROPOSED RULES

include the internal or external administration of radiation or radioactive material to human beings.

"Residual radioactivity" means radioactivity in structures, materials, soils, groundwater, and other media at a site resulting from activities under the licensee's control. This includes radioactivity from any licensed and unlicensed sources used by the licensee, but excludes background radiation. It also includes radioactive materials remaining at the site as a result of routine or accidental releases of radioactive material at the site and previous burials at the site, even if those burials were made in accordance with Rule R313-15.

"Restricted area" means an area, access to which is limited by the licensee or registrant for the purpose of protecting individuals against undue risks from exposure to sources of radiation. A ["]Restricted area["] does not include areas used as residential quarters, but separate rooms in a residential building may be set apart as a restricted area.

"Roentgen" (R) means the special unit of EXPOSURE. One roentgen equals  $2.58 \times 10^{-4}$  coulombs per kilogram of air. See EXPOSURE.

"Sealed source" means radioactive material that is permanently bonded or fixed in a capsule or matrix designed to prevent release and dispersal of the radioactive material under the most severe conditions which are likely to be encountered in normal use and handling.

"Sealed source and device registry" means the national registry that contains [aH]the registration certificates, generated by both NRC and the Agreement States, that summarize the radiation safety information for the sealed sources and devices and describe the licensing and use conditions approved for the product.

"Shallow dose equivalent" (Hs) which applies to the external exposure of the skin of the whole body or the skin of an extremity, is taken as the dose equivalent at a tissue depth of 0.007 centimeter (seven mg per square centimeter).

"SI" means an abbreviation of the International System of Units.

"Sievert" (Sv) means the SI unit of any of the quantities expressed as dose equivalent. The dose equivalent in sievert is equal to the absorbed dose in gray multiplied by the quality factor. One Sv equals 100 rem.

"Site boundary" means that line beyond which the land or property is not owned, leased, or otherwise controlled by the licensee or registrant.

"Source container" means a device in which sealed sources are transported or stored.

"Source material" means:

(a) uranium or thorium, or any combination thereof, in any physical or chemical form, or

(b) ores that contain by weight one-twentieth of one percent (0.05%), or more of, uranium, thorium, or any combination of uranium and thorium. Source material does not include special nuclear material.

"Source material milling" means any activity that results in the production of byproduct material as defined by (b) of "byproduct material".

"Source of radiation" means any radioactive material, or a device or equipment emitting or capable of producing ionizing radiation.

"Special form radioactive material" means radioactive material which satisfies the following conditions:

(a) it is either a single solid piece or is contained in a sealed capsule that can be opened only by destroying the capsule;

(b) the piece or capsule has at least one dimension not less than five millimeters (0.197 inch); and

(c) it satisfies the test requirements specified by the U.S. Nuclear Regulatory Commission in 10 CFR 71.75. A special form encapsulation designed in accordance with the U.S. Nuclear Regulatory Commission requirements of 10 CFR 71.4 in effect on June 30, 1983, and constructed before July 1, 1985, may continue to be used. A special form encapsulation designed in accordance with the requirements of 10 CFR 71.4 in effect on March 31, 1996, see 10 CFR 71 revised January 1, 1996, and constructed before April 1, 1998, and special form material that was successfully tested before September 10, 2015 in accordance with the requirements of 10 CFR 71.75(d) in effect before September 10, 2015 may continue to be used. Any other special form encapsulation shall meet the specifications of this definition.

"Special nuclear material" means:

(a) plutonium, uranium-233, uranium enriched in the isotope 233 or in the isotope 235, and other material that the U.S. Nuclear Regulatory Commission, pursuant to Section 51 of the Atomic Energy Act of 1954, as amended, determines to be special nuclear material, but does not include source material; or

(b) any material artificially enriched by any of the foregoing but does not include source material.

"Special nuclear material in quantities not sufficient to form a critical mass" means uranium enriched in the isotope U-235 in quantities not exceeding 350 grams of contained U-235; uranium-233 in quantities not exceeding 200 grams; plutonium in quantities not exceeding 200 grams or a combination of them in accordance with the following formula: For each kind of special nuclear material, determine the ratio between the quantity of that special nuclear material and the quantity specified previously in this definition for the same kind of special nuclear material. The sum of the ratios for [aH]the kinds of special nuclear material in combination shall not exceed one. For example, the following quantities in combination would not exceed the limitation and are within the formula [f:

$$\frac{1}{\text{---}} \left[ \left( \frac{175(\text{Grams contained U-235})}{350} \right) + \left( \frac{50(\text{Grams U-233})}{200} \right) + \left( \frac{50(\text{Grams Pu})}{200} \right) \right]$$
 is equal to one.

"Survey" means an evaluation of the radiological conditions and potential hazards incident to the production, use, transfer, release, disposal, or presence of sources of radiation. [When]If appropriate, this evaluation includes tests, physical examinations and measurements of levels of radiation or concentrations of radioactive material present.

"Test" means the process of verifying compliance with an applicable rule.

"These rules" means ["]Utah Radiation Control Rules R313-12, R313-14 through R313-19, R313-21, R313-22, R313-24 through R313-26, R313-28, R313-30, R313-32, R313-34 through R313-38 and R313-70["].

"Total effective dose equivalent" (TEDE) means the sum of the effective dose equivalent for external exposures and the committed effective dose equivalent for internal exposures.

"Total organ dose equivalent" (TODE) means the sum of the deep dose equivalent and the committed dose equivalent to the organ receiving the highest dose as described in Subsection R313-15-1107(1)(f).

"U.S. Department of Energy" means the Department of Energy established by Public Law 95-91, August 4, 1977, 91 Stat. 565, 42 U.S.C. 7101 et seq., to the extent that the [D]department exercises functions formerly vested in the U.S. Atomic Energy Commission, its Chairman, members, officers and components and

transferred to the U.S. Energy Research and Development Administration and to the Administrator thereof pursuant to Sections 104(b), (c), and (d) of Public Law 93-438, October 11, 1974, 88 Stat. 1233 at 1237, effective January 19, 1975 known as the Energy Reorganization Act of 1974, and retransferred to the Secretary of Energy pursuant to Section 301(a) of Public Law 95-91, August 14, 1977, 91 Stat. 565 at 577-578, 42 U.S.C. 7151, effective October 1, 1977 known as the Department of Energy Organization Act.

"Unrefined and unprocessed ore" means ore in its natural form prior to processing, like grinding, roasting or beneficiating, or refining. Processing does not include sieving or encapsulation of ore or preparation of samples for laboratory analysis.

"Unrestricted area" means an area, to which access is neither limited nor controlled by the licensee or registrant. For purposes of these rules, "uncontrolled area" is an equivalent term.

"Waste" means those low-level radioactive wastes containing radioactive material that are acceptable for disposal in a land disposal facility. For the purposes of this definition, low-level radioactive waste means radioactive waste not classified as high-level radioactive waste, transuranic waste, spent nuclear fuel, or byproduct material as defined in paragraphs (b), (c), and (d) of the definition of byproduct material found in Section R313-12-3.

"Week" means seven consecutive days starting on Sunday.

"Whole body" means, for purposes of external exposure, head, trunk including male gonads, arms above the elbow, or legs above the knees.

"Worker" means an individual engaged in work under a license or registration issued by the [D]director and controlled by a licensee or registrant, but does not include the licensee or registrant.

"Working level" (WL), means any combination of short-lived radon daughters in one liter of air that will result in the ultimate emission of  $1.3 \times 10^5$  MeV of potential alpha particle energy. The short-lived radon daughters are, for radon-222: polonium-218, lead-214, bismuth-214, and polonium-214[5], and for radon 220: polonium-216, lead-212, bismuth-212, and polonium-212.

"Working level month" (WLM), means an exposure to one working level for 170 hours. 2,000 working hours per year divided by 12 months per year is approximately equal to 170 hours per month.

"Year" means the period of time beginning in January used to determine compliance with these rules. The licensee or registrant may change the starting date of the year used to determine compliance by the licensee or registrant if the decision to make the change is made before December 31 of the previous year. If a licensee or registrant changes in a year, the licensee or registrant shall assure that no day is omitted or duplicated in consecutive years.

**KEY: definitions, units, inspections, exemptions**

**Date of Last Change:** ~~2023~~**May 16, 2022**

**Notice of Continuation:** April 8, 2021

**Authorizing, and Implemented or Interpreted Law:** 19-3-104; 19-6-104

**NOTICE OF PROPOSED RULE**

**TYPE OF FILING:** Amendment

<b>Rule or Section Number:</b>	<b>R313-32-2</b>	<b>Filing ID:</b> <b>55532</b>
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**Agency Information**

<b>1. Department:</b>	Environmental Quality	
<b>Agency:</b>	Waste Management and Radiation Control, Radiation	
<b>Room number:</b>	2nd Floor	
<b>Building:</b>	MASOB	
<b>Street address:</b>	195 N 1950 W	
<b>City, state and zip:</b>	Salt Lake City, UT 84116	
<b>Mailing address:</b>	PO Box 144880	
<b>City, state and zip:</b>	Salt Lake City, UT 84114-4880	
<b>Contact persons:</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Tom Ball	385-454-5574	tball@utah.gov
Spencer Wickham	385-499-4895	swickham@utah.gov
<b>Please address questions regarding information on this notice to the persons listed above.</b>		

**General Information**

<b>2. Rule or section catchline:</b>
R313-32-2. Clarifications for Exceptions
<b>3. Purpose of the new rule or reason for the change:</b>
The NRC is amending its regulations to implement the Social Security Number Fraud Prevention Act of 2017 and to make miscellaneous corrections. These changes include amending regulations to prohibit the inclusion of an individual's Social Security number on any document sent through the mail, redesignating footnotes, correcting references, typographical errors, nomenclature, titles, e-mail addresses, and contact information.
As an Agreement State, Utah must adopt these changes into the Radiation Control Rules to maintain compatibility with the federal program.
<b>4. Summary of the new rule or change:</b>
This amendment changes the year 2019 to 2020 for the incorporation by reference found in the opening subsection of Section R313-32-2.
Additionally, the Division of Waste Management and Radiation Control, Radiation is correcting typographical and formatting errors that have been discovered in this rule.



**Fiscal Information****5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:****A) State budget:**

It is not anticipated that there will be any additional costs or savings to the state budget due to this amendment because it does not add or remove any requirements or duties to the agency.

**B) Local governments:**

It is not anticipated that there will be any additional costs or savings to local governments due to this amendment because it does not add or remove any requirements that a local government would be required to follow.

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

It is not anticipated that there will be any additional costs or savings to any small businesses due to this amendment because it does not add or remove any requirements that a small business would be required to follow.

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

It is not anticipated that there will be any additional costs or savings to any non-small businesses due to this amendment because it does not add or remove any requirements that a non-small business would be required to follow.

**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**):

It is not anticipated that there will be any additional costs or savings to any persons other than small businesses, non-small businesses or state or local governments due to this amendment because it does not add or remove any requirements that any such persons would be required to follow.

**F) Compliance costs for affected persons** (How much will it cost an impacted entity to adhere to this rule or its changes?):

There will be no additional compliance costs for affected persons due to this amendment beyond any costs that they already incur to comply with this rule prior to this 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.)**Regulatory Impact Table**

<b>Fiscal Cost</b>	<b>FY2024</b>	<b>FY2025</b>	<b>FY2026</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>	<b>FY2024</b>	<b>FY2025</b>	<b>FY2026</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 comments on fiscal impact and approval of regulatory impact analysis:**

The Executive Director of the Department of Environmental Quality, Kimberly D Shelley, has reviewed and approved this regulatory impact analysis.

**Citation Information****6. Provide citations to the statutory authority for the rule. If there is also a federal requirement for the rule, provide a citation to that requirement:**

Section 19-3-104	Section 19-6-107	
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**Incorporations by Reference Information****7. Incorporations by Reference:****A) This rule adds, updates, or removes the following title of materials incorporated by references:**

<b>Official Title of Materials Incorporated (from title page)</b>	
Title 10 - Energy, Chapter I – Nuclear Regulatory Commission, Part 35 – Medical Use of Byproduct Material, Subpart M – Reports 35.3045 Report notification of a medical event	



<b>Publisher</b>	United States Government, Nuclear Regulatory Commission
<b>Issue Date</b>	09/01/2020

**Public Notice Information**

**8. 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. See Section 63G-3-302 and Rule R15-1 for more information.)

**A) Comments will be accepted until:** 08/31/2023

**9. This rule change MAY become effective on:** 09/18/2023

NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date.

**Agency Authorization Information**

<b>Agency head or designee and title:</b>	Douglas J Hansen, Division Director	<b>Date:</b>	07/13/2023
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**R313. Environmental Quality, Waste Management and Radiation Control, Radiation.****R313-32. Medical Use of Radioactive Material.****R313-32-2. Clarifications or Exceptions.**

For the purposes of Rule R313-32, 10 CFR 35.2 through 35.7; 35.10(d) through 35.10(f); 35.11(a) through 35.11(b); 35.12; and 35.13(b) through 35.3204 [(2019)](2020) are incorporated by reference with the following clarifications or exceptions:

(1) The exclusion of the following:

(a) In 10 CFR 35.2, exclude definitions for "Address of Use," "Agreement State," "Area of Use," "Dentist," "Pharmacist," "Physician," "Podiatrist," and "Sealed Source";

(b) In 10 CFR 35.19, exclude "or the common defense and security";

(c) In 10 CFR 35.3067, exclude ", with a copy to the Director, Office of Nuclear Material Safety and Safeguards"; and

(d) In 10 CFR 35.3045(d), 10 CFR 3047(d), 10 CFR 35.3067, and 10 CFR 35.3204(b), exclude "By an appropriate method listed in Sec. 30.6(a) of this chapter,".

(2) The substitution of the following date references:

(a) "May 13, 2005" for "October 24, 2002"; and

(b) "December 31, 2019" for "January 14, 2019" [i].

(3) The substitution of the following rule references:

(a) "Rules R313-32 and R313-15" for reference to "this part and 10 CFR Part 20" in 10 CFR 35.61(a);

(b) "Rule R313-15 for reference to "Part 20 of this chapter" in 10 CFR 35.70(a) and 10 CFR 35.80(a)(4);

(c) "Rules R313-19 and R313-22" for reference to "Part 30 of this chapter" in 10 CFR 35.18(a)(4);

(d) "Rules R313-19 and R313-22 or equivalent Nuclear Regulatory Commission or Agreement State requirements for reference to "10 CFR Part 30 or the equivalent requirements of an Agreement State" in 10 CFR 35.49(c);

(e) "10 CFR Part 30" for reference to "Part 30 of this chapter" as found in 10 CFR 35.65(a)(4);

(f) "Rules R313-15, R313-19, and R313-22" for reference to "parts 20 and 30 of this chapter" as found in 10 CFR 35.63(e)(1);

(g) "Section R313-12-110" for reference to "Sec. 30.6 of this chapter" as found in 10 CFR 35.14(c)[-];

(h) "Section R313-15-101" for reference to "Sec. 20.1101 of this chapter" as found in 10 CFR 35.24(a);

(i) "Subsection R313-15-301(1)(a)" for reference to "Sec. 20.1301(a)(1) of this chapter" as found in 10 CFR 35.310(a)(2)(i) and 10 CFR 35.410(a)(4)(i);

(j) "Subsection R313-15-301(1)(c)" for reference to "Sec. 20.1301(c) of this chapter" as found in 10 CFR 35.310(a)(2)(ii) and 10 CFR 35.410(a)(4)(ii);

(k) "Section R313-15-501" for reference to "Sec. 20.1501 of this chapter" as found in 10 CFR 35.652(a);

(l) "Section R313-18-12" for reference to "Sec. 19.12 of this chapter" as found in 10 CFR 35.27(a)(1), 10 CFR 35.27(b)(1), 10 CFR 35.310, and 10 CFR 35.410;

(m) "Rules R313-19, R313-22 and Subsection R313-22-75(10) or equivalent U.S. Nuclear Regulatory Commission or Agreement State requirements" for reference to "10 CFR Part 30 and Sec. 32.74 of this chapter or equivalent requirements of an Agreement State" as found in 10 CFR 35.49(a);

(n) "Subsection R313-22-75(10) or equivalent Nuclear Regulatory Commission or Agreement State requirements" for references to "Sec. 32.74 of this chapter or equivalent Agreement State regulations" found in 10 CFR 35.65(a)(1) and 10 CFR 35.65(a)(2);

(o) "Rule R313-70" for reference to "Part 170 of this chapter";

(p) "Subsection R313-19-34(2)" for reference to "Sec. 30.34(b) of this chapter" as found in 10 CFR 35.14(b)(4);

(q) "Section R313-22-50" for reference to "Part 33 of this chapter" in 10 CFR 35.15;

(r) "Subsection R313-22-50(2)" for reference to "Sec. 33.13 of this chapter" in 10 CFR 35.12(e);

(s) "Subsection R313-22-75(9)(b)(iv)" for reference to "Sec. 32.72(b)(4)" in 10 CFR 35.2 for the definition of Authorized Nuclear Pharmacist;

(t) "Subsection R313-22-75(9) or equivalent Nuclear Regulatory Commission or Agreement State requirements" for reference to "Sec. 32.72 of this chapter or equivalent Agreement State requirements" as found in 10 CFR 35.63(b)(2)(i), 10 CFR 35.63(c)(3)(i), 10 CFR 35.100(a)(1), 10 CFR 35.200(a)(1), and 10 CFR 35.300(a)(1); and

(u) "Subsection R313-22-32(9) or equivalent Nuclear Regulatory Commission or Agreement State requirements" for reference to "Sec. 30.32(j) of this chapter or equivalent Agreement State requirements" as found in 10 CFR 35.63(b)(2)(iii), 10 CFR 35.63(c)(3)(ii), 10 CFR 35.100(a)(2), 10 CFR 35.200(a)(2), or 10 CFR 35.300(a)(2).

(4) The substitution of the following terms:

(a) "radioactive material" for reference to "byproduct material";

(b) "a [D]director, a Nuclear Regulatory Commission, or Agreement State" for reference to "an NRC or Agreement State" in 10 CFR 35.63(b)(2)(ii), 10 CFR 35.100(c), 10 CFR 35.200(c), or 10 CFR 35.300(c);

## NOTICES OF PROPOSED RULES

(c) "[D]irector is (801) 536-0200 or after hours, (801) 536-4123" for "NRC Operations Center is (301) 816-5100" as found in the footnote included for 10 CFR 35.3045(c);

(d) "Form DWMRC-01, 'Application for Radioactive Material License'" for reference to "NRC Form 313, 'Application for Material License'" as found in 10 CFR 35.12(b)(1), 10 CFR 35.12(c)(1)(i) and 10 CFR 35.18(a)(1);

(e) "Form DWMRC-01" for reference to "NRC Form 313" as found in 10 CFR 35.12(c)(1)(ii);

(f) "medical use license issued by the [D]irector" for reference to "NRC medical use license" in 10 CFR 35.6(c);

(g) "[D]irector, the U.S. Nuclear Regulatory Commission, or an Agreement State" for reference to "Commission or Agreement State" in 10 CFR 35.2 for the definitions of Authorized Medical Physicist (2)(i), Authorized Nuclear Pharmacist (2)(iii) and Radiation Safety Officer (2)(i), in 10 CFR 35.57(b)(1) (first instance), 10 CFR 35.57(b)(2) (first instance), 10 CFR 35.433(a)(2)(i); or for references to "Commission or an Agreement State" in 10 CFR 35.2 for the definitions of Associate Radiation Safety Officer (2)(i) and Ophthalmic Physicist (2)(i), 10 CFR 35.11(a), in 10 CFR 35.50(a), 10 CFR 35.50(a)(2)(ii)(A), 10 CFR 35.50(c)(1), 10 CFR 35.51(a), 10 CFR 35.51(a)(2)(i), 10 CFR 35.55(a), 10 CFR 35.190(a), 10 CFR 35.290(a), 10 CFR 35.390(a), 10 CFR 35.392(a), 10 CFR 35.394(a), 10 CFR 35.396(a)(3), 10 CFR 35.433(a)(2)(i), 10 CFR 35.490(a), 10 CFR 35.590(a), 10 CFR 35.605(a), 110 CFR 35.605(b), 10 CFR 35.605(c), 10 CFR 35.655(b) and 10 CFR 35.690(a);

(h) "[D]irector, a U.S. Nuclear Regulatory Commission, or an Agreement State" for references to "Commission or Agreement State" in 10 CFR 35.2 for the definitions of Authorized Medical Physicist (2)(iii), Authorized Nuclear Pharmacist (2)(i), Authorized User (2)(i), Authorized User (2)(iii) and Ophthalmic Physicist (2)(ii), in 10 CFR 13(b)(4)(ii), 10 CFR 35.14(a)(2)(second instance), 10 CFR 35.57(a)(1)(second instance), 10 CFR 35.57(b)(1)(second instance), 10 CFR 35.57(b)(2)(second instance), 10 CFR 35.433(a)(2)(ii)(second instance); or for references to "Commission or an Agreement State" in 10 CFR 35.50(c)(2)(second instance);

(i) "license issued by the [D]irector, the Nuclear Regulatory Commission, or the Agreement State" for reference to "Commission or Agreement State license" in 10 CFR 35.14(a)(2)(first instance);

(j) "[D]irector" for reference to "NRC Operations Center" in 10 CFR 35.3045(c), 10 CFR 35.3047(c), and 10 CFR 35.3204(a);

(k) "license issued by the [D]irector, the Nuclear Regulatory Commission or an Agreement State" for reference to "Commission or Agreement State license" in 10 CFR 35.13(b)(4)(i), 10 CFR 35.14(a)(2)(first instance), 10 CFR 35.50(b)(1)(ii) or for reference to "Commission or an Agreement State license" in 10 CFR 35.50(b)(1)(ii), 10 CFR 35.50(c)(2), and 10 CFR 35.57(a)(2);

(l) "[D]irector at the address specified in Section R313-12-110" for reference to "appropriate NRC Regional Office listed in Sec. 30.6 of this chapter" in 10 CFR 35.3045(d), 10 CFR 35.3047(d), 10 CFR 35.3067, and 10 CFR 35.3204(b);

(m) "[B]oard" for reference to "Commission" in 10 CFR 35.18(a)(3)(second instance) and 10 CFR 35.19;

(n) "[D]irector" for reference to "Commission" in 10 CFR 35.12(d)(4), 10 CFR 35.14(a), 10 CFR 35.14(b), 10 CFR 35.18(a), 10 CFR 35.18(a)(3)(first instance), 10 CFR 35.18(b), 10 CFR 35.24(a)(1), 10 CFR 35.24(c), 10 CFR 35.26(a), and 10 CFR 35.1000(b);

(o) "[D]irector" for reference to "NRC" in 10 CFR 35.3045(g)(1), 10 CFR 35.3047(f)(1), and 10 CFR 35.3204(a)(second instance);

(p) "Nuclear Regulatory Commission" for reference to "Commission" in 10 CFR 35.67(b)(2);

(q) "[D]irector" for reference to "NRC" in 10 CFR 35.3045(g)(1), 10 CFR 35.3047(f)(1), and 10 CFR 35.35.3204(a)(second instance); ~~and~~

(r) "the [D]irector" for reference to "NRC" in 10 CFR 35.13(b)(4)(i);

(s) "licenses issued by the [D]irector" for reference to "NRC licenses" in 10 CFR 35.57(c);

(t) "[D]irector, the Nuclear Regulatory Commission, or an Agreement State" for reference to "NRC" in 10 CFR 35.13(b)(5), 10 CFR 35.14(a)(2), 10 CFR 35.57(b)(3), and 10 CFR 35.57(a)(4); and

(u) "(c)" for reference to "(b)" in 10 CFR 35.92.

(5) The addition of the following to 10 CFR 35.92:

(b) The [D]irector may approve a radioactive material with a physical half-life of greater than 120 days but less than 175 days for decay-in-storage before disposal without regard to its radioactivity on a case by case basis if the licensee:

(1) [R]equests an amendment to the licensee's radioactive materials license for the approval;

(2) [C]an demonstrate that the radioactive waste will be safely stored, and accounted for during the decay-in-storage period and that the additional radioactive waste will not exceed the licensee's radioactive waste storage capacity; and

(3) [C]ommits to monitor the waste before disposal as stated in paragraphs (a)(1) and (a)(2) of this section before the waste is disposed."

**KEY:** radioactive materials, radiopharmaceutical, brachytherapy, nuclear medicine

**Date of Last Change:** 2023[August 9, 2019]

**Notice of Continuation:** April 8, 2021

**Authorizing, and Implemented or Interpreted Law:** 19-3-104; 19-6-107

### NOTICE OF PROPOSED RULE

**TYPE OF FILING:** Amendment

<b>Rule or Section Number:</b>	<b>R414-1-31</b>	<b>Filing ID:</b> <b>55528</b>
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### Agency Information

<b>1. Department:</b>	Health and Human Services
<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 and zip:</b>	Salt Lake City, UT 84116
<b>Mailing address:</b>	PO Box 143102
<b>City, state and zip:</b>	Salt Lake City, UT 84114-3102

Contact persons:		
Name:	Phone:	Email:
Craig Devashrayee	801-538-6641	cdevashrayee@utah.gov
Jonah Shaw	385-310-2389	jshaw@utah.gov
Please address questions regarding information on this notice to the persons listed above.		

### General Information

<b>2. Rule or section catchline:</b>
R414-1-31. Withholding of Payments
<b>3. Purpose of the new rule or reason for the change:</b>
The purpose of this change is to implement by rule the False Claims Act as found in the United States Code.
<b>4. Summary of the new rule or change:</b>
In accordance with the Social Security Act and False Claims Act implementation, this amendment requires providers to establish written policies for employees that spell out administrative remedies for false claims and statements, and requires providers to comply with state laws pertaining to penalties, whistleblower protections, and written policies for preventing and detecting fraud, waste, and abuse.

### Fiscal Information

<b>5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:</b>
<b>A) State budget:</b>
There is no impact to the state budget as this amendment only requires providers to set forth policies for employees who submit false claims and statements. It does not affect current payment rates or methodology.
<b>B) Local governments:</b>
There is no impact on local governments as they neither fund nor provide benefits under the Medicaid program.
<b>C) Small businesses</b> ("small business" means a business employing 1-49 persons):
There is no impact on small businesses as this amendment only requires providers to set forth policies for employees who submit false claims and statements. It does not affect current payment rates or methodology.
<b>D) Non-small businesses</b> ("non-small business" means a business employing 50 or more persons):
There is no impact on non-small businesses as this amendment only requires providers to set forth policies for

employees who submit false claims and statements. It does not affect current payment rates or methodology.

**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**):

Medicaid providers that do not comply with the False Claims Act are subject to civil fines and penalties. There is, however, no way to determine how those penalties would be assessed. Usual payments to providers, based on current methodology, remain unaffected.

**F) Compliance costs for affected persons** (How much will it cost an impacted entity to adhere to this rule or its changes?):

A single Medicaid provider that does not comply with the False Claims Act is subject to civil fines and penalties. There is, however, no way to determine how those penalties would be assessed. Usual payments to providers, based on current methodology, remain unaffected.

**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	FY2024	FY2025	FY2026
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>
Fiscal Benefits	FY2024	FY2025	FY2026
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

## NOTICES OF PROPOSED RULES

<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 comments on fiscal impact and approval of regulatory impact analysis:</b>			
The Executive Director of the Department of Health and Human Services, Tracy S Gruber, has reviewed and approved this fiscal analysis.			
Businesses will see neither costs nor revenue as this amendment only requires providers to set forth policies for employees who submit false claims and statements. It does not affect current payment rates or methodology.			

**Citation Information**

<b>6. Provide citations to the statutory authority for the rule. If there is also a federal requirement for the rule, provide a citation to that requirement:</b>	
Section 26B-1-213	Section 26B-3-108

**Public Notice Information**

<b>8. 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. See Section 63G-3-302 and Rule R15-1 for more information.)</b>	
<b>A) Comments will be accepted until:</b>	08/31/2023

<b>9. This rule change MAY become effective on:</b>	09/07/2023
NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date.	

**Agency Authorization Information**

<b>Agency head or designee and title:</b>	Tracy S. Gruber, Executive Director	<b>Date:</b>	07/11/2023
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**R414. Health and Human Services, Health Care Financing, Coverage and Reimbursement Policy.****R414-1. Utah Medicaid Program.****R414-1-31. Withholding of Payments.**

(1) In addition to other remedies allowed by law and unless specified otherwise, the Department may withhold payments to a provider or contractor if:

(a) the provider or contractor fails to provide the requested information within 30 calendar days from the date of a written request for information;

(b) the provider or contractor has an outstanding balance owing the Department for any reason; or

(c) the provider or contractor receives more than \$5,000,000 in reimbursement annually from the Department and fails

to comply with [Section 6032 of the Deficit Reduction Act] 42 U.S.C. 1396a(a)(68).

(2) The Department or the [Utah] Office of the Inspector General of Medicaid Services may determine a provider or contractor to be noncompliant if the provider or contractor cannot submit, upon request:

(i) an attestation of compliance with [Section 6032 of the Deficit Reduction Act]; the Social Security Act, 42 U.S.C. 1396a(a)(68); and

(b) an attestation of compliance with the False Claims Act, 31 U.S.C. Sections 3729 through 3733.

(ii) the provider's policies and procedures for detecting and preventing fraud, waste, and abuse; and

(iii) an employee handbook containing a specific discussion of the rights of employees to be protected as whistleblowers and the provider's policies and procedures for detecting and preventing fraud, waste, and abuse.]

(2)3 The Department shall provide written notice before withholding payments.

(3)4 When the Department rescinds withholding of payments to a provider or contractor, it will, without notice, resume payments according to the regular claims payment cycle.

**KEY: Medicaid**

**Date of Last Change:** 2023[July 1, 2022]

**Notice of Continuation:** December 13, 2021

**Authorizing, and Implemented or Interpreted Law:** 26B-1-[5]213; 26B-[48]3-[3]108; 26B-[34]8-[2]132

**NOTICE OF PROPOSED RULE**

**TYPE OF FILING:** Amendment

<b>Rule or Section Number:</b>	<b>R414-502</b>	<b>Filing ID:</b> <b>55498</b>
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**Agency Information**

<b>1. Department:</b>	Health and Human Services	
<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 and zip:</b>	Salt Lake City, UT 84116	
<b>Mailing address:</b>	PO Box 143102	
<b>City, state and zip:</b>	Salt Lake City, UT 84114-3102	
<b>Contact persons:</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Craig Devashrayee	801-538-6641	cdevashrayee@utah.gov
Jonah Shaw	385-310-2389	jshaw@utah.gov
<b>Please address questions regarding information on this notice to the persons listed above.</b>		



**General Information****2. Rule or section catchline:**

R414-502. Nursing Facility Levels of Care

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

The purpose of this change is to update and clarify the rule text as needed.

Additionally, this rule updates the authorizing citations following the 2023 General Session recodification of the Department of Health and Human Services' (Department) statute.

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

This amendment updates names, terms, and entities in the text.

It also makes other technical and structural changes.

Additionally, this amendment updates the authorizing citations of this rule, this is due to the recodification and consolidation of the Department's statute.

**Fiscal Information****5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:****A) State budget:**

There is no impact to the state budget as there are only minor changes and technical updates.

**B) Local governments:**

There is no impact on local governments as they neither fund nor provide benefits under the Medicaid program.

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

There is no impact on small businesses as there are only minor changes and technical updates.

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

There is no impact on non-small businesses as there are only minor changes and technical updates.

**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 to other persons or entities as there are only minor changes and technical updates.

**F) Compliance costs for affected persons** (How much will it cost an impacted entity to adhere to this rule or its changes?):

There are no compliance costs to a single person or entity as there are only minor changes and technical updates.

**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>FY2024</b>	<b>FY2025</b>	<b>FY2026</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>	<b>FY2024</b>	<b>FY2025</b>	<b>FY2026</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 comments on fiscal impact and approval of regulatory impact analysis:**

The Executive Director of the Department of Health and Human Services, Tracy Gruber, has reviewed and approved this regulatory impact analysis.

**Citation Information****6. Provide citations to the statutory authority for the rule. If there is also a federal requirement for the rule, provide a citation to that requirement:**

Section 26B-1-213 | Section 26B-3-108 |

**Public Notice Information**

**8. 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. See Section 63G-3-302 and Rule R15-1 for more information.)

**A) Comments will be accepted until:** 08/31/2023

**9. This rule change MAY become effective on:** 09/07/2023

NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date.

**Agency Authorization Information**

<b>Agency head or designee and title:</b>	Tracy S Gruber, Executive Director	<b>Date:</b>	06/15/2023
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**R414. Health and Human Services, Health Care Financing, Coverage and Reimbursement Policy.****R414-502. Nursing Facility Levels of Care.****R414-502-1. ~~Introduction~~ Purpose and Authority.**

(1) This rule defines the levels of care provided in nursing facilities.

(2) Sections 26B-1-213 and 26B-3-108 authorize this rule.

**R414-502-2. Definitions.**

The definitions in Section R414-1-2 and Section R414-501-2 apply to this rule.

**R414-502-3. Approval of Level of Care.**

(1) The Department shall document that at least two of the following factors exist when it determines whether an applicant has mental or physical conditions that require the level of care provided in a nursing facility or equivalent care provided through a Medicaid [H]home and [C]community-[B]based [W]waiver program:

(a) due to diagnosed medical conditions, the applicant requires substantial physical assistance with daily living activities above the level of verbal prompting, supervising, or setting up;

(b) the attending physician has determined that the applicant's level of dysfunction in orientation to person, place, or time requires nursing facility care[;], or equivalent care provided through a Medicaid [H]home and [C]community-[B]based [W]waiver program;

(c) the medical condition and intensity of services indicate that the care needs of the applicant cannot be safely met in a less structured setting, or without the services and supports of a Medicaid [H]home and [C]community-[B]based [W]waiver program.

(2) The Department shall determine whether at least two of the factors described in Subsection [R414-502-3](1) exist by reviewing the following clinical documentation:

(a) a current history and physical examination completed by a physician;

(b) a comprehensive resident assessment completed, coordinated, and certified by a registered nurse;

(c) a social services evaluation that meets the criteria in 42 CFR 456.370 and completed by a person licensed as a social worker, or higher degree of training and licensure;

(d) a written plan of care established by a physician;

(e) a physician's written certification that the applicant requires nursing facility placement; and

(f) documentation [which indicates]indicating that [all]less restrictive alternatives or services to prevent or defer nursing facility care have been explored.

(3) If the Department finds that at least two of the factors described in Subsection [R414-502-3](1) exist, the Department shall determine whether the applicant meets nursing facility level of care and is medically-approved for Medicaid reimbursement of nursing facility services or equivalent care provided through a Medicaid [H]home and [C]community-[B]based [W]waiver program. Meeting medical eligibility for nursing facility services does not guarantee Medicaid payment. Financial eligibility and other [H]home and [C]community-[B]based [W]waiver targeting criteria [shall]apply.

(4) During the Coronavirus (COVID-19) public health emergency period, an individual [shall]may temporarily meet nursing facility level of care for a period of illness, [when]if the individual:

(a) is COVID-19 positive;

(b) is experiencing active COVID-19 symptoms; or

(c) is admitting directly from:

(i) a licensed, assisted living facility;

(ii) a licensed intermediate care facility for people with intellectual disabilities; or

(iii) an acute care, inpatient hospital.

**R414-502-4. Approval of Differential Levels of Care.**

The Department shall pay nursing facilities a rate differential for residents who meet nursing facility level of care and any of the criteria listed in Sections R414-502-5 through R414-502-7.

**R414-502-5. Criteria for Intensive-Skilled Care.**

A nursing facility must demonstrate that the applicant meets the following criteria before the Department may authorize Medicaid reimbursement for intensive-skilled care[;].

(1) The applicant meets the need for skilled services provided by a nursing facility certified pursuant to 42 CFR 409.20 through 409.35, or a swing bed hospital approved by the Centers for Medicare and Medicaid Services to furnish skilled nursing facility care in the Medicare program.

(2) The following routine-skilled care does not qualify as intensive-skilled care in making a determination under [Section R414-502-5]this section:

(a) [S]skilled nursing services described in 42 CFR 409.33(b);

(b) [S]skilled rehabilitation services described in 42 CFR 409.33(c);

(c) [R]routine monitoring of medical gases after a therapy regimen;

(d) [R]routine enteral tube and gastronomy feedings; and

(e) [R]routine isolation room and techniques.

(3) The applicant has exhausted Medicare benefits or has been denied by Medicare for other reasons other than level of care requirements.

(4) The applicant requires and receives at least five additional hours of direct, licensed professional nursing care daily, including a combination of specialized care and services, and assessment by a registered nurse and 24-hour observation.

(5) The applicant meets criteria for intensive-skilled care if the attending physician makes any one of the following determinations:

(a) ~~[F]~~there is no reasonable expectation that the applicant will benefit further from any care and services available in an acute care hospital that are not available in a nursing facility~~;~~ or ~~[F]~~ ~~(b)~~ ~~[F]~~the applicant's condition requires physician follow-up at the nursing facility at least once every 30 days;

~~([e]b)~~ ~~[A]~~an interdisciplinary team may indicate a therapeutic leave of absence from the nursing facility is appropriate either to facilitate discharge planning or to enhance the applicant's medical, social, educational, and habilitation potential; and

~~([d]c)~~ ~~[E]~~except in extraordinary circumstances, the applicant has been hospitalized immediately before admission to the nursing facility.

(6) The applicant has continuously required skilled care, either through Medicare or Medicaid, since admission to the nursing facility.

(7) ~~[H]~~~~[t]~~The attending physician has written and signed progress notes at the time of each physician visit that reflect the current medical condition of the applicant.

(8) An applicant who was previously approved for intensive-skilled care and later downgraded to a lower care level may return to intensive-skilled care instead of being hospitalized in an acute care setting if-

(a) ~~[A]~~a complication occurs that involves the condition for which the applicant was originally approved for intensive-skilled care; and

(b) ~~[H]~~it has been less than 30 days since the termination of the previous intensive-skilled care.

#### **R414-502-6. Criteria for Behaviorally Complex Program.**

~~[In order to]~~For the Department to authorize Medicaid coverage for the Behaviorally Complex Program, a nursing facility must:

(1) ~~[D]~~demonstrate that the resident has a history of persistent disruptive behavior that is not easily altered and requires an increase in resources from nursing facility staff as documented by one or more of the following behaviors:

(a) ~~[F]~~the resident engages in wandering behavior with no rational purpose, is oblivious to ~~[his]~~self needs or safety, and places ~~[his]~~self and others at significant risk of physical illness or injury;

(b) ~~[F]~~the resident engages in verbally abusive behavior where ~~[he]~~the resident threatens, screams, or curses at others;

(c) ~~[F]~~the resident presents a threat of hitting, shoving, scratching, or sexually abusing other residents~~;~~ or

(d) ~~[F]~~the resident engages in socially inappropriate and disruptive behavior by doing one of the following:

(i) ~~[M]~~makes disruptive sounds, noises, and screams;

(ii) ~~[E]~~engages in self-abusive acts;

(iii) ~~engages in~~ ~~[F]~~inappropriate sexual behavior;

(iv) ~~[D]~~disrobes in public;

(v) ~~[S]~~smears or throws food or feces;

(vi) ~~[H]~~hoards; and

(vii) rummages through others belongings.

(e) ~~[F]~~the resident refuses assistance with medication administration or activities of daily living; or

(f) ~~[F]~~the resident's behavior interferes significantly with the stability of the living environment and interferes with other residents' ability to participate in activities or engage in social interactions~~;~~ and

(2) ~~[D]~~demonstrate that an appropriate behavioral intervention program has been developed for the resident as follows~~;~~

(a) ~~[All]~~behavior intervention programs shall:

(b) ~~[Be a precisely]~~plan~~ned~~ the systematic application of ~~[the]~~methods and experimental findings of behavioral science with the intent to reduce observable negative behaviors;

(c) ~~[H]~~incorporate processes and methodologies that are the least restrictive alternatives available for producing the desired outcomes;

(d) ~~[B]~~be conducted following ~~[only]~~identification and, if feasible, remediation of environmental and social factors that likely precipitate or reinforce the inappropriate behavior;

(e) ~~[H]~~incorporate a process for identifying and reinforcing a desirable replacement behavior;

(f) ~~[F]~~include a program data sheet; and

(g) ~~[F]~~include a behavior baseline profile that consists of ~~[all of]~~the following:

(i) ~~[A]~~include the applicant name;

(ii) ~~[D]~~include the date, time, location, and specific description of the undesirable behavior;

(iii) ~~[P]~~include persons and conditions present before and at the time of the undesirable behavior;

(iv) ~~demonstrate~~ ~~[I]~~interventions for the undesirable behavior and their results; and

(v) ~~provide~~ ~~[R]~~recommendations for future action~~;~~ and

(h) ~~[F]~~the interdisciplinary team shall include a behavior intervention plan that consists of ~~[all of]~~the following:

(i) ~~[F]~~the applicant's name, the date the plan is prepared, and when the plan will be used;

(ii) ~~[F]~~the objectives stated in terms of specific behaviors;

(iii) ~~[F]~~the names, titles, and signatures of persons responsible for conducting the plan; and

(iv) ~~[F]~~the methods and frequency of data collection and review.

#### **R414-502-7. Criteria for Specialized Rehabilitative Services for Residents with Intellectual Disabilities.**

A nursing facility must demonstrate that the applicant meets the following criteria before the Department may authorize Medicaid coverage for an applicant for specialized rehabilitative services:

(1) ~~[F]~~the nursing facility must arrange for specialized rehabilitative services for ~~[clients]~~members with intellectual disabilities who are residing in nursing homes;

(2) ~~[F]~~the individual must meet the criteria for Nursing Facility III Level of Care, ~~[excluding residents who receive the intensive-skilled or behaviorally complex rate];~~

(3) ~~[F]~~the individual must have a Preadmission Screening and Resident Review (PASRR) Level II Evaluation that indicates the resident needs specialized rehabilitation. The nursing facility must assure that needed services are provided by qualified personnel under the written order of a physician ~~[by qualified personnel];~~ and

(4) ~~[F]~~the nursing facility must document the need for specialized rehabilitative services in the resident's comprehensive plan of care.

(5) Specialized rehabilitative services may include ~~[but are not limited to]~~:

(a) ~~[M]~~medication management and monitoring effectiveness and side effects of medications prescribed to change inappropriate behavior or to alter manifestations of psychiatric illness;

(b) ~~[F]~~the provision of a structured environment to include structured socialization activities to diminish tendencies toward isolation and withdrawal;

(c) ~~[D]~~development, maintenance, and implementation of programs designed to teach individuals daily living skills that may include ~~[but are not limited to]~~:

- (i) ~~[G]~~grooming and personal hygiene;
- (ii) ~~[M]~~mobility;
- (iii) ~~[N]~~nutrition, health, and self-feeding;
- (iv) ~~[M]~~medication management;
- (v) ~~[M]~~mental health education;
- (vi) ~~[M]~~money management;
- (vii) ~~[M]~~maintenance of the living environment; ~~and~~
- (viii) ~~[O]~~occupational, speech, and physical therapy

obtained from providers outside the nursing facility who specialize in providing services for persons with intellectual disabilities at the intensity level necessary to attain the desired goals of independence and self-determination~~[-]~~;

(d) ~~[F]~~formal behavior modification programs; and

(e) ~~[D]~~development of appropriate ~~—~~person support networks.

#### **R414-502-8. Criteria for Intermediate Care Facility for Persons with Intellectual Disability.**

An intermediate care facility for persons with intellectual disabilities (ICF/ID) must demonstrate that the applicant meets the following criteria before the Department may authorize Medicaid coverage for an individual who resides in an ICF/ID.

(1) The individual must have a diagnosis of:

(a) ~~[A]~~an intellectual disability in accordance with 42 CFR 483.102(b)(3); or

(b) ~~[A]~~a condition closely related to intellectual disability in accordance with 42 CFR 435.1010.

(2) For individuals seven years of age and older, the presence of a diagnosis alone is not sufficient to qualify for admission to an intermediate care facility for persons with intellectual disabilities. The diagnosis identified in Subsection ~~[R414-502-8]~~(1) must result in documented substantial functional limitations in three or more of the following seven areas of major life activity that include:

(a) ~~[S]~~self-care~~[-]~~, wherein the individual requires assistance, training, and supervision to eat, dress, groom, bathe, or use the toilet;

~~[-] (i) The individual requires assistance, training and supervision to eat, dress, groom, bathe, or use the toilet. ]~~

(b) the use of [R]eceptive and expressive language, wherein the individual lacks functional communication skills, requires the use of assistive devices to communicate, does not demonstrate an understanding of requests, or cannot follow two-step instructions;

~~[-] (i) The individual lacks functional communication skills, requires the use of assistive devices to communicate, does not demonstrate an understanding of requests, or cannot follow two-step instructions. ]~~

(c) difficulty [L]earning, wherein the individual has a valid diagnosis of an intellectual disability based on criteria found in the Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition, 1994;

~~[-] (i) The individual has a valid diagnosis of an intellectual disability based on criteria found in the Diagnostic and Statistical Manual of Mental Disorders (DSM), Fourth Edition, 1994. ]~~

(d) lack of [M]obility, wherein the individual requires the use of assistive devices to be mobile and cannot physically self-evacuate from a building during an emergency without an assistive device;

~~[-] (i) The individual requires the use of assistive devices to be mobile and cannot physically self-evacuate from a building during an emergency without an assistive device. ]~~

(e) lack of [S]elf-direction, wherein the individual is a danger to self or others without supervision, and wherein the individual is seven through 17 years of age and significantly at risk in making age-appropriate decisions, or, in the case of an adult, the individual cannot provide informed consent for medical care, personal safety, or for legal, financial, rehabilitative, and residential issues, and has been declared legally incompetent;

~~[-] (i) The individual is seven through 17 years of age and significantly at risk in making age-appropriate decisions. Or, in the case of an adult, cannot provide informed consent for medical care, personal safety, or for legal, financial, rehabilitative, and residential issues, and has been declared legally incompetent. The individual is a danger to himself or others without supervision. ]~~

(f) lack of [The]capacity for independent living, wherein the individual who is seven through 17 years of age cannot locate and use a telephone, cross the street safely, or understand that it is unsafe to accept rides, food or money from strangers, or an adult who lacks basic skills in the areas of shopping, preparing food, housekeeping, or paying bills; or

~~[-] (i) The individual who is seven through 17 years of age cannot locate and use a telephone, cross the street safely, or understand that it is unsafe to accept rides, food or money from strangers, or an adult who lacks basic skills in the areas of shopping, preparing food, housekeeping, or paying bills. ]~~

(g) lack of [E]conomic self-sufficiency, wherein the individual receives disability benefits, cannot work more than 20 hours a week, or is paid less than minimum wage without employment support. This does not apply to children under 18 years of age~~[-] (not applicable to children under 18 years of age); ]~~

~~[-] (i) The individual receives disability benefits, cannot work more than 20 hours a week, or is paid less than minimum wage without employment support. ]~~

(3) The Department considers a child under ~~[the age of]~~ seven years of age to be at risk for functional limitation in three or more areas of major life activity. The child may satisfy ~~[this]the~~ criteria for functional limitations if the child has been diagnosed with an intellectual disability or a condition closely related to intellectual disability. The Department does not require separate documentation of the limitations defined in Subsection ~~[R414-502-8]~~(2) until the child turns seven years of age.

(4) To meet the criteria of a condition closely related to an intellectual disability, an individual must manifest the condition before the individual turns 22 years of age and the condition must be likely to continue. ~~[A diagnosis may qualify as a condition closely related to an intellectual disability only if the child meets the criteria defined in 42 CFR 435.1010. ]~~ The following criteria further specify the Department's consideration of a closely related condition ~~[- is a list of diagnoses the Department considers to be conditions closely related to an intellectual disability. ]~~

(a) ~~[Cerebral palsy. ]~~ The Department does not require ~~[individuals]~~ an individual to demonstrate an intellectual impairment ~~[for this diagnosis]~~ of cerebral palsy, but ~~[they-]the individual~~ must demonstrate ~~[they have-]~~functional limitations as described in Subsection ~~[R414-502-8]~~(2)~~[-]~~.

(b) ~~[Epilepsy. ]~~ The Department does not require ~~[individuals]~~ an individual to demonstrate an intellectual impairment ~~[for this diagnosis]~~ of epilepsy, but ~~[they-]the individual~~ must demonstrate ~~[they have-]~~functional limitations as described in Subsection ~~[R414-502-8]~~(2)~~[-]~~.



~~\_\_\_\_\_ (e) Autism Spectrum Disorder. The Department requires an individual to meet the following criteria under this category:~~

~~\_\_\_\_\_ (i) Persistent deficits in social communication and social interaction across contexts, not accounted for by general developmental delays, and manifests by all three of the following:~~

~~\_\_\_\_\_ (A) Deficits in social-emotional reciprocity, ranging from abnormal social approach and failure of normal back and forth conversation through reduced sharing of interests, emotions, and affect and response to total lack of initiation of social interaction;~~

~~\_\_\_\_\_ (B) Deficits in non-verbal communicative behaviors used for social interaction, ranging from poorly integrated verbal and non-verbal communication through abnormalities in eye contact and body language, or deficits in understanding and use of non-verbal communication to total lack of facial expression or gestures;~~

~~\_\_\_\_\_ (C) Deficits in developing and maintaining relationships appropriate to developmental level (beyond those with caregivers), ranging from difficulties adjusting behavior to suit different social contexts through difficulties in sharing imaginative play, and in making friends to an apparent absence of interest in people.~~

~~\_\_\_\_\_ (ii) Restricted, repetitive patterns of behavior, interests, or activities as manifested by at least two of the following:~~

~~\_\_\_\_\_ (A) Stereotyped or repetitive speech, motor movements, or use of objects (such as simple motor stereotypies, echolalia, repetitive use of objects, or idiosyncratic phrases);~~

~~\_\_\_\_\_ (B) Excessive adherence to routines, ritualized patterns of verbal or non-verbal behavior, or excessive resistance to change (such as motoric rituals, insistence on same route or food, repetitive questioning or extreme distress at small changes);~~

~~\_\_\_\_\_ (C) Highly restricted, fixated interests with abnormal intensity or focus (such as strong attachment to or preoccupation with unusual objects, excessively circumscribed or perseverative interests);~~

~~\_\_\_\_\_ (D) Hyper or hypo reactivity to sensory input or unusual interest in sensory aspects of environment (such as apparent indifference to pain, heat and cold, adverse response to specific sounds or textures, excessive smelling or touching of objects, fascination with lights or spinning objects);]~~

~~\_\_\_\_\_ (5)(a) The Department requires an individual to meet the following criteria under the category of autism spectrum disorder:~~

~~\_\_\_\_\_ (i) persistent deficits in social communication and social interaction across contexts, not accounted for by general developmental delays, and manifested by the following:~~

~~\_\_\_\_\_ (A) deficits in social-emotional reciprocity, ranging from abnormal social approach and failure of normal back and forth conversation through reduced sharing of interests, emotions, and affect and response to total lack of initiation of social interaction;~~

~~\_\_\_\_\_ (B) deficits in non-verbal communicative behaviors used for social interaction, ranging from poorly integrated verbal and non-verbal communication through abnormalities in eye contact and body language, or deficits in understanding and use of non-verbal communication to total lack of facial expression or gestures; and~~

~~\_\_\_\_\_ (C) deficits in developing and maintaining relationships appropriate to developmental level, ranging from difficulties adjusting behavior to suit different social contexts through difficulties in sharing imaginative play and in making friends, to an apparent absence of interest in people; and~~

~~\_\_\_\_\_ (ii) restricted, repetitive patterns of behavior, interests, or activities as manifested by at least two of the following:~~

~~\_\_\_\_\_ (A) stereotyped or repetitive speech, motor movements, or use of objects;~~

~~\_\_\_\_\_ (B) excessive adherence to routines, ritualized patterns of verbal or non-verbal behavior, or excessive resistance to change;~~

\_\_\_\_\_ (C) highly restricted, fixated interests with abnormal intensity or focus, such as strong attachment to or preoccupation with unusual objects and excessively circumscribed or perseverative interests; or

\_\_\_\_\_ (D) hyper or hypo-reactivity to sensory input or unusual interest in sensory aspects of environment, such as apparent indifference to pain, heat and cold, adverse response to specific sounds or textures, excessive smelling or touching of objects, fascination with lights or spinning objects.

\_\_\_\_\_ ([iii]b) Symptoms must be present in early childhood. [but may not become fully manifest until social demands exceed limited capacities];]

\_\_\_\_\_ ([iv]c) Symptoms must together limit and impair everyday functioning.

\_\_\_\_\_ ([d]d) An individual must have a [S]evere brain injury [but May be] that is the result of an acquired brain injury, traumatic brain injury, stroke, anoxia, or meningitis[;].

\_\_\_\_\_ ([e]e) An individual must have a diagnosis of [F]etal alcohol syndrome[;].

\_\_\_\_\_ ([f]f) An individual must have [C]hromosomal disorders such as Down syndrome, fragile x syndrome, and Prader-Willi syndrome[;].

\_\_\_\_\_ ([g]g) Individuals with [O]ther genetic disorders [but Examples] that include Williams syndrome, spina bifida, and phenylketonuria may qualify.

\_\_\_\_\_ ([5]6) The following conditions do not qualify as conditions closely related to intellectual disabilities. Nevertheless, the Department may consider a person with any of these conditions if there is a simultaneous occurrence of a qualifying condition as cited in Subsections [R414-502-8](1)(a) and (b):

\_\_\_\_\_ (a) [L]earning disability;

\_\_\_\_\_ (b) [B]ehavior or conduct disorders;

\_\_\_\_\_ (c) [S]ubstance abuse;

\_\_\_\_\_ (d) [H]earing [impairment] or vision impairment;

\_\_\_\_\_ (e) [M]ental illness that includes psychotic disorders, adjustment disorders, reactive attachment disorders, impulse control disorders, and paraphilias;

\_\_\_\_\_ (f) [B]orderline intellectual functioning, a related condition that does not result in an intellectual impairment, developmental delay, or ["]at risk["] designations;

\_\_\_\_\_ (g) [P]hysical problems such as multiple sclerosis, muscular dystrophy, spinal cord injuries, and amputations;

\_\_\_\_\_ (h) [M]edical health problems such as cancer, acquired immune deficiency syndrome, and terminal illnesses;

\_\_\_\_\_ (i) [N]eurological problems not associated with intellectual deficits. Examples include Tourette's syndrome, fetal alcohol effects, and non-verbal learning disability; and

\_\_\_\_\_ (j) [M]ild traumatic brain injury such as minimal brain injury and post-concussion syndrome.

\_\_\_\_\_ ([6]7) An individual who was admitted to an ICF/ID before August 27, 2009, is eligible for continued stay as long as the individual continues to meet the requirements in effect before that date. A resident who was admitted to an ICF/ID before August 27, 2009, is only required to meet the revised eligibility criteria [when] if there is a break in stay wherein the individual resides in a setting that is not a Medicaid-certified ICF/ID [nursing] facility or hospital.

\_\_\_\_\_ ([7]8) Before admission to an ICF/ID, the facility must provide each potential resident with a two-sided fact sheet known as a Community Supports Waiver and ICF/ID Fact Sheet or [c]Form IFS 10[ ]-that, which offers information about ICFs/IDs and the Community Supports Waiver for People with Intellectual Disabilities and Other Related Conditions. Each resident's record must also

## NOTICES OF PROPOSED RULES

contain a Freedom of Choice Acknowledgement Form or [an acknowledgement (Form IFS 20)] signed by the resident or legal representative, which verifies that the facility provided the Form IFS 10 before admission.

**KEY: Medicaid**

**Date of Last Change:** ~~2023~~ September 22, 2020

**Notice of Continuation:** May 31, 2019

**Authorizing, and Implemented or Interpreted Law:** ~~26B-1-5~~ 213; ~~26-18-3~~ 26B-3-108

### NOTICE OF PROPOSED RULE

**TYPE OF FILING:** Amendment

<b>Rule or Section Number:</b>	<b>R414-505</b>	<b>Filing ID:</b> <b>55527</b>
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### Agency Information

<b>1. Department:</b>	Health and Human Services	
<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 and zip:</b>	Salt Lake City, UT 84116	
<b>Mailing address:</b>	PO Box 143102	
<b>City, state and zip:</b>	Salt Lake City, UT 84114-3102	
<b>Contact persons:</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Craig Devashrayee	801-538-6641	cdevashrayee@utah.gov
Jonah Shaw	385-310-2389	jshaw@utah.gov
<b>Please address questions regarding information on this notice to the persons listed above.</b>		

### General Information

<b>2. Rule or section catchline:</b>
R414-505. Participation in the Nursing Facility Non-State Government-Owned Upper Payment Limit Program
<b>3. Purpose of the new rule or reason for the change:</b>
The purpose of this change is to update and clarify the rule text as needed.
Additionally, this rule updates the authorizing citations following the 2023 General Session recodification of the Department of Health and Human Services' (Department) statute.

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

This amendment updates names, terms, and entities in the text.

It also makes other technical and structural changes.

Additionally, this amendment updates the authorizing citations of this rule, this is due to the recodification and consolidation of the Department's statute.

### Fiscal Information

#### 5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:

##### A) State budget:

There is no impact to the state budget as there are only minor changes and technical updates.

##### B) Local governments:

There is no impact on local governments as they neither fund nor provide benefits under the Medicaid program.

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

There is no impact on small businesses as there are only minor changes and technical updates.

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

There is no impact on non-small businesses as there are only minor changes and technical updates.

##### 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 to other persons or entities as there are only minor changes and technical updates.

##### F) Compliance costs for affected persons (How much will it cost an impacted entity to adhere to this rule or its changes?):

There are no compliance costs to a single person or entity as there are only minor changes and technical updates.

##### 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	FY2024	FY2025	FY2026
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>	<b>FY2024</b>	<b>FY2025</b>	<b>FY2026</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 comments on fiscal impact and approval of regulatory impact analysis:</b>			
The Executive Director of the Department of Health and Human Services, Tracy Gruber, has reviewed and approved this regulatory impact analysis.			

**Citation Information**

<b>6. Provide citations to the statutory authority for the rule. If there is also a federal requirement for the rule, provide a citation to that requirement:</b>		
Section 26B-1-213	Section 26B-3-108	

**Public Notice Information**

<b>8. 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. See Section 63G-3-302 and Rule R15-1 for more information.)</b>	
<b>A) Comments will be accepted until:</b>	08/31/2023
<b>9. This rule change MAY become effective on:</b>	09/07/2023
NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date.	

**Agency Authorization Information**

<b>Agency head or designee and title:</b>	Tracy S. Gruber, Executive Director	<b>Date:</b>	07/11/2023
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**R414. Health and Human Services, Health Care Financing, Coverage and Reimbursement Policy.****R414-505. Participation in the Nursing Facility Non-State Government-Owned Upper Payment Limit Program.****R414-505-1. ~~Introduction~~ Purpose and Authority.**

(1) This rule defines the participation requirements in the ~~[N]nursing~~ ~~[C]care~~ ~~[F]facility~~ ~~[N]non-[S]state~~ ~~[G]government-owned~~ ~~[U]upper~~ ~~[P]payment~~ ~~[L]limit~~ (NF NSGO UPL) program.

(2) This rule is authorized under Attachment 4.19-D of the ~~[Utah]~~ Medicaid State Plan, and by Sections 26B-1-~~[5]~~213 and ~~[26-18-3]~~26B-3-108.

**R414-505-2. Definitions.**

In addition to the following, the definitions in Section 26B-~~[18]3-~~~~[502]~~310 and Attachment 4.19-D of the Medicaid State Plan apply to this rule:

(1) "Non-state governmental entity (NSGE)" means a hospital authority, hospital district, healthcare district, special services district, county, or city.

(2) "Non-state government-owned (NSGO) nursing care facility" means a nursing care facility where an NSGE holds the license and is party to the facility's Medicaid provider contract.

(3) "Eligible nursing care facilities" means facilities that are NSGO nursing facilities, which comply with the requirements described in this rule.

(4) "Public funds" means funds derived from taxes, assessments, levies, investments, governmental operations, and revenue generated by a special services district and other public revenues within the sole and unrestricted control of an NSGE that holds the license and is party to the Medicaid contract of the eligible nursing care facility. Public funds do not include gifts, grants, trusts, or donations, the use of which is conditioned on supplying a benefit solely to the donor or grantor of the funds and may not be derived from an impermissible source, including recycled Medicaid payments, federal money precluded from use as the non-federal share, impermissible taxes, and non-bona fide provider-related donations.

(5) "Effective date of the change of ownership" means the issue date of the license for the new owner by the ~~[Utah]~~ Department of Health and Human Services.

**R414-505-3. ~~Nursing Care Facility Non State Government-Owned Upper Payment Limit~~ NF NSGO UPL Payment Program.**

The NF NSGO UPL supplemental payment program is governed by Attachment 4.19-D of the Medicaid State Plan.

**R414-505-4. Notice of Intent to Participate.**

(1) ~~[Required application.]~~ Before an NSGO nursing care facility may receive supplemental payments, the appropriate NSGE must certify certain facts, representations, and assurances regarding program requirements. The NSGE must complete the ~~[NF NSGO UPL [P]program [N]notice of [P]participation [F]form[-]]~~ prescribed by the ~~[Medicaid agency]~~ Department. The NSGE must email the required application to nf\_rates@utah.gov.

~~[-] (2) The required application must be mailed to the correct address, as follows:~~

## NOTICES OF PROPOSED RULES

~~Via United States Postal Service:~~  
~~Utah Department of Health~~  
~~DMHF, BCRP~~  
~~Attn: Reimbursement Unit~~  
~~P.O. Box 143102~~  
~~Salt Lake City, UT 84114 3102~~  
~~Via United Parcel Service, Federal Express, and similar:~~  
~~Utah Department of Health~~  
~~DMHF, BCRP~~  
~~Attn: Reimbursement Unit~~  
~~288 North 1460 West~~  
~~Salt Lake City, UT 84116 3231~~

(3)2 The [F]NSGO NF UPL [P]program [N]notice of [P]participation [F]form[F] must be complete and accurate or it will be returned. The Department does not consider [F]incomplete forms [shall not be considered] as providing notice of intent to participate.

### R414-505-5. Requirements to Participate in the NF NSGO UPL Program.

(1)(a) An NSGE must own [F]the nursing care facility[ must be owned by an NSGE].

(b) [Prior to]Before the Medicaid agency initiat[ing]es a contract, the nursing care facility owner shall provide appropriate legal evidence, as determined by the Medicaid agency, demonstrating an NSGE owns the nursing care facility[is owned by an NSGE].

(c) A nursing care facility participating in this supplemental payment program must notify the [Reimbursement Unit within the Bureau of Coverage and Reimbursement Policy]Office of Financial Services[;] at the email address noted [above]in Section R414-505-4, of changes in ownership that may affect the nursing care facility's continued eligibility within 14 calendar days after [such]the change.

(2) The [Utah]Medicaid provider enrollment process must be complete.

(3)(a) The NSGE must have an NF NSGO UPL contract in effect, signed by the [Utah]Department's [of Health's] authorized representative.

(b) The effective date for an NF NSGO UPL contract for a nursing care facility to participate in the NF NSGO UPL supplemental payments [shall]must be the latter of the following dates:

(i) [F]the effective date of the [E]change of [O]ownership[ (CHOW)];

(ii) [F]the [postmark]email date of the notice of intent to participate as noted in Section R414-505-4; or

(iii) [F]the effective date of the Medicaid provider enrollment.

(4) Once a contract is in effect, the Department shall make payments [will be made]in accordance with Attachment 4.19-D of the Medicaid State Plan and the NF NSGO UPL contract.

(5)(a) State funding for supplemental payments authorized in this rule is limited to and obtained through [F]intergovernmental [F]transfer (IGT) [A]agreements of public funds or other permissible source-of-seed funding from the NSGE that holds the license and is party to the Medicaid contract of the nursing care facility.

(b) The NSGE shall ensure that the funds provided to the Department for the non-federal share, via IGT, meet the requirements of 42 CFR 433[;] Subpart B.

### R414-505-6. ~~Intergovernmental Transfer (IGT)~~ Certification.

(1) With its IGT, using the IGT certification form prescribed by the [Medicaid agency]Department, 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]Department, the NSGE shall submit its annual IGT certification required in Section 26B-[48]3-[21]130 no later than 30 days following the end of the NSGE's fiscal year end date.

### KEY: Medicaid

Date of Last Change: 2023~~February 25, 2021~~

Notice of Continuation: June 10, 2021

Authorizing, and Implemented or Interpreted Law: 26B-1-5~~213; 26-18-3~~26B-3-108

### NOTICE OF PROPOSED RULE

TYPE OF FILING: Amendment

Rule or Section Number:	R432-201	Filing ID: 55504
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### Agency Information

<b>1. Department:</b>	Health and Human Services	
<b>Agency:</b>	Health Care Facility Licensing	
<b>Room number:</b>	1st Floor	
<b>Building:</b>	MASOB	
<b>Street address:</b>	195 N 1950 W	
<b>City, state and zip:</b>	Salt Lake City, UT 84116	
<b>Contact persons:</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Janice Weinman	385-321-5586	jweinman@utah.gov
Jonah Shaw	385-310-2389	jshaw@utah.gov

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

### General Information

#### 2. Rule or section catchline:

R432-201. Mental Retardation Facility: Supplement A to the Small Health Care Facility Rule

#### 3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?):

The purpose of this amendment is to modify and replace outdated language with the Utah Rulewriting Manual standards.

#### 4. Summary of the new rule or change (What does this filing do? If this is a repeal and reenact, explain the substantive differences between the repealed rule and the reenacted rule):

The revisions include more specific language consistent with the Utah Rulewriting Manual standards and current industry standards.

The substantive change is due to the removal of incorporations that the Division of Health Care Facility Licensing determined are better represented in agency policy as recommended standards for the plans review processes.

#### Fiscal Information

##### 5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:

###### A) State budget:

State government process was thoroughly reviewed. This change will not impact the current process for licensure and re-licensure surveys.

No change to the state budget is expected because this amendment modifies and replaces outdated language with the Utah Rulewriting Manual standards.

###### B) Local governments:

Local government city business licensing requirements were considered. This proposed rule amendment should not impact local governments' revenues or expenditures because this amendment modifies and replaces outdated language with the Utah Rulewriting Manual standards.

The Intellectual Disabilities Facility Standards are regulated by the Department of Health and Human Services and not local governments.

There will be no change in local business licensing or any other item(s) with which local government is involved.

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

After conducting a thorough analysis, it was determined that this rule amendment should not impact costs for small businesses because this amendment modifies and replaces outdated language with the Utah Rulewriting Manual standards.

###### 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 businesses because this amendment modifies and replaces outdated language with the Utah Rulewriting Manual standards.

###### 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 and replaces outdated language with the Utah Rulewriting Manual standards.

###### F) Compliance costs for affected persons (How much will it cost an impacted entity to adhere to this rule or its changes?):

After conducting a thorough analysis, it was determined that this rule amendment will not result in a fiscal impact to compliance costs for affected persons because this amendment modifies and replaces outdated language with the Utah Rulewriting Manual standards.

###### 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	FY2024	FY2025	FY2026
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>
Fiscal Benefits	FY2024	FY2025	FY2026
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 comments on fiscal impact and approval of regulatory impact analysis:**

The Executive Director of the Department of Health and Human Services, Tracy Gruber, has reviewed and approved this regulatory impact analysis.

**Citation Information****6. Provide citations to the statutory authority for the rule. If there is also a federal requirement for the rule, provide a citation to that requirement:**

Section 26B-2-202

**Public Notice Information**

**8. 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. See Section 63G-3-302 and Rule R15-1 for more information.)

**A) Comments will be accepted until:** 08/31/2023

**9. This rule change MAY become effective on:** 09/07/2023

NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date.

**Agency Authorization Information**

<b>Agency head or designee and title:</b>	Tracy S. Gruber, Executive Director	<b>Date:</b>	06/22/2023
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**R432. Health and Human Services, [Family Health and Preparedness,] Health Care Facility Licensing.**

**R432-201. [Mental Retardation] Intellectual Disabilities Facility: Supplement "A" to the Small Health Care Facility Rule.**

**R432-201-1. [Legal] Authority.**

[This rule is adopted pursuant to Section 26-21-13.5.] Section 26B-2-202 authorizes this rule.

**R432-201-2. Purpose.**

The purpose of this rule is to meet the legislative intent [pursuant to] set out in Section 26B-2-212[26-21-13.5].

**R432-201-3. Special Definitions.**

(1) [See] Rule R432-1[-3] additionally defines terms that apply to this rule.

[\_\_\_\_\_] (2) **Special Definitions.**

(2) "QIDP" means qualified intellectual disability professional as outlined in 42 CFR 483.430 (2021).

[\_\_\_\_\_] (a) "Significantly Subaverage General Intellectual Functioning" is operationally defined as a score of two or more standard deviations below the mean on a standardized general intelligence test.]

[\_\_\_\_\_] (b) "Developmental Period" means the period between conception and the 18th birthday.]

**[R432-201-4. Compliance.**

~~All facilities governed by these rules shall be in full compliance at the time of initial licensure.]~~

**R432-201-[5]4. Licensure.**

[\_\_\_\_\_] (1) See Categories of licensure R432-200-4(2).

[\_\_\_\_\_] (2) See R432-2.]

(1) The licensee shall comply with any applicable federal, state, and local laws, regulations, and codes pertaining to health, safety, and sanitation.

(2) The licensee shall comply with the following under Title R432:

(a) Rule R432-12, Small Health Care Facility Construction;

(b) Rule R432-2, General Licensing Provisions;

(c) Section 432-200-7, Levels of Care;

(d) Section R432-200-9 Smoking Policy;

(e) the following Sections of Rule R432-152:

(i) R432-152-9, Individual Program Plan;

(ii) R432-152-11, Human Rights Committee;

(iii) R432-152-12, Admissions, Transfers and Discharges;

(iv) R432-152-13, Client Behavior and Facility Practices;

(v) R432-152-14, Physician Services;

(vi) R432-152-15, Nursing Services;

(vii) R432-152-16, Dental Services;

(viii) R432-152-17, Pharmacy Services;

(ix) R432-152-18, Laboratory Services;

(x) R432-152-19, Environment;

(xi) R432-152-20, Emergency Plan and Procedures;

(xii) R432-152-24, Client Records; and

(xiii) R432-152-6, Facility Staffing; and

(f) the following sections of Rule R432-150:

(i) R432-150-20, Pets in Long Term Care Facilities;

(ii) R432-150-25, Housekeeping Services;

(iii) R432-150-26, Laundry Services;

(iv) R432-150-27, Maintenance Services; and

(v) R432-150-23, Food Services.

**[R432-201-6. Construction and Physical Environment.**

~~See R432-12, Small Health Care Facility Rules.]~~

**R432-201-[7]5. Governing Body and Management.**

[\_\_\_\_\_] (1) **Governing Body.**

~~The facility shall identify an individual or group to constitute the governing body of the facility.~~

[\_\_\_\_\_] (2) **Duties and Responsibilities.**

~~The governing body shall:]~~

(1) The licensee shall identify an individual or group to constitute the governing body of the facility responsible to:

(a) exercise general policy, budget, and operating direction over the facility;

(b) set the qualifications for the administrator of the facility; and

(c) appoint, in writing, the administrator of the facility, who is professionally licensed by the Utah Department of Commerce in a health care field.

[\_\_\_\_\_] (3) **Compliance with Federal, State, and Local Laws.**

~~The facility shall be in compliance with all applicable provisions of federal, state and local laws, regulations and codes pertaining to health, safety, and sanitation.]~~

[\_\_\_\_\_] (4) **Administrator.]**

~~Each facility shall appoint, in writing, an administrator professionally licensed by the Utah Department of Commerce in a health care field.~~

(~~a~~)2 The licensee shall post ~~A~~a copy of the administrator's license or credentials ~~shall be posted~~ alongside the facility's license in a place readily visible to the public.

(~~b~~)3 The administrator shall act as the administrator of no more than four small health care facilities, as defined in Rule R432-200, and no more than a total of 60 beds in any type of licensed health care facility.

(~~e~~)4 The administrator shall have ~~sufficient~~enough freedom from other responsibilities ~~and shall~~to be on the premises of the facility ~~a sufficient number of~~enough hours in each business day, ~~at least four hours per week for each every six clients~~, and as necessary to properly manage the facility and respond to requests by the ~~D~~department and the public.

(~~d~~)5(a) The administrator shall designate, in writing, the name and title of the person who shall act as administrator in ~~his~~their absence.

(~~i~~)b ~~This person~~The administrator's designee shall have ~~sufficient~~enough power, authority, and freedom to act in the best interests of client safety and well-being.

(~~i~~)c ~~It is not the intent of this paragraph to permit an unlicensed de facto administrator to supplant or replace the designated, licensed administrator.~~The administrator designee may not supplant the licensed administrator.

~~(5) Administrator Responsibilities.~~

(~~a~~)6 The licensee shall include the administrator's responsibilities ~~shall be included~~in a written job description on file in the facility and available for ~~D~~department review.

(~~b~~)7 The licensee shall ensure the job description ~~shall~~includes the responsibility to ~~insure~~ensure the following duties are fulfilled:

(~~i~~)a complete, submit, and file ~~all~~any records and reports required by the ~~D~~department;

(~~ii~~)b act as a liaison with the licensee, ~~qualified mental retardation professional, QMRP/QIDP,~~ and other supervisory staff of the facility;

(~~iii~~)c respond to recommendations made by the facility committees;

(~~iv~~)d ~~assure that~~ensure employees are oriented to their job functions and receive appropriate and regularly scheduled in-service training;

(~~v~~)e implement policies and procedures for the operation of the facility;

(~~vi~~)f hire and maintain the required number of licensed and non-licensed staff, as specified in this~~ese~~ rule[s], to meet the needs of clients;

(~~vii~~)g maintain facility staffing records for at least the preceding 12 months;

(~~viii~~)h secure and update contracts for required professional and other services not provided directly by the facility;

(~~ix~~)i verify ~~all~~any required licenses and permits of staff and consultants ~~at the time of when hired or on the effective date of contract; and~~

(~~x~~)j review ~~all~~any incident and accident reports and document action taken.

(8) The licensee shall ensure incident and accident reports:

(~~A~~)a ~~Incident and accident reports shall be~~are numbered and logged in a manner to account for ~~all~~each report[s];~~[-]~~

(~~B~~)b ~~Incident and accident reports shall~~have space for written comments by the administrator and, as appropriate, the attending physician and constituted committee;~~[-] and~~

(~~C~~)c ~~Original incident and accident reports shall be~~are kept on file in the facility and ~~shall be~~are available for review by the ~~D~~department.

#### **R432-201-~~8~~6. Staff and Personnel.**

~~(1) Staff Qualifications and Orientation.~~

(1) Subsection R432-150-10(2)(c) applies to an intellectual disabilities facility and the following additionally apply:

(a) ~~F~~the administrator, ~~QMRP/QIDP,~~ and department supervisors shall develop job descriptions for each position including job title, job summary, responsibilities, qualifications, required skills and licenses, and physical requirements~~[-]~~;

(b) the licensee shall document ~~P~~periodic employee performance evaluations;~~[-shall be documented.]~~

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

~~(2) Health Surveillance.~~

(a) The facility shall establish policies and procedures for the health screening of all facility personnel.

(b) See R432-150-10(4).~~[-]~~

(c) ~~AH~~any dietary and other staff who handle food shall obtain a ~~F~~food ~~H~~handler's ~~P~~permit from the local health department~~[-]~~;

~~(3) Qualified Mental Retardation Professional, QMRP.~~

(~~a~~)d the licensee shall ensure ~~E~~each client's active treatment program ~~shall be~~is integrated, coordinated, and monitored by a ~~qualified mental retardation professional.~~QIDP; and

(~~b~~)e ~~The qualified mental retardation professional~~staff shall meet the standards in ~~Section R432-152-6~~9(1)(b)(i) through ~~(ii).~~

~~(4) Professional Program Services.~~

~~See R432-152-9(2)(a) through (f).~~

~~(5) Direct Care Staffing.~~

~~See R432-152-9(3)(a) through (d).~~

~~(6) Residential Living Unit Staff.~~

~~See R432-152-9(4)(a) through (d).~~

~~(7) Staff Training Program.~~

~~See R432-152-9(5)(a) through (d).~~

(2) The licensee may utilize volunteers in the daily activities of the facility, but volunteers may not be included in the facility's staffing plan in place of facility employees.

#### **~~R432-201-9. Volunteers.~~**

~~Volunteers may be utilized in the daily activities of the facility but may not be included in the facility's staffing plan in lieu of facility employees. See R432-152-10.]~~

#### **R432-201-~~10~~7. Contracts and Agreements.**

~~(1) Contracts.~~

(1) Subsection R432-150-8(2)(g) applies to an intellectual disabilities facility and the licensee shall ensure the contract:

(a) If a service required under this subpart is not provided directly, the facility shall have a written agreement with an outside program, resource, or service to furnish the necessary service, including emergency and other health care.

(b) The agreement shall:~~[-]~~

## NOTICES OF PROPOSED RULES

(~~i~~)a) contains the responsibilities, functions, objectives, and other terms agreed to by both parties including emergency and other health care;

(~~ii~~)b) provides that the [facility]licensee is responsible for assuring that the outside services meet the standards for quality of services~~[contained in this subpart]~~

(c) acknowledges the licensee is responsible for client care in the process of transfer; and

(d) outlines contractor responsibility for client confidentiality.

(~~e~~)2) The [facility]licensee shall ~~[assure]~~ensure that outside services meet the needs of each client.

~~[(d) If living quarters are not provided in a facility owned by the ICF/MR, the ICF/MR remains directly responsible for the standards relating to physical environment that are specified in R432-200.6 and R432-152.22.]~~

(3) The licensee shall adhere to the standards relating to the physical environment requirements in Rules R432-12 and R432-152 regardless of whether or not the licensee owns the building.

~~[(2) Transfer Agreements.~~

~~(a) The licensee shall maintain, where appropriate, a written transfer agreement with one or more hospitals, or nearby health facilities to facilitate the transfer of clients and essential client information.~~

~~(b) The transfer agreement shall include provisions for:~~

~~(i) criteria for transfer;~~

~~(ii) appropriate methods of transfer;~~

~~(iii) transfer of information needed for proper care and treatment of the individual transferred;~~

~~(iv) security and accountability of personal property of the individual transferred;~~

~~(v) proper notification of the hospital and the responsible person before transfer;~~

~~(vi) the facility responsible for client care in the process of transfer;~~

~~(vii) client confidentiality.]~~

### **R432-201-[44]8. Client Rights.**

(1) The [facility]licensee shall~~[-ensure the rights of all clients.]~~

~~[(2) The facility shall:]~~

(a) ensure the rights of each client, as outlined in this section;

(~~a~~)b) inform each client, parent, if the client is a minor, or legal guardian, of the following:~~[-the client's rights and the rules of the facility;]~~

(i) client rights;

(ii) rules of the facility;

(iii) medical condition;

(iv) developmental status;

(v) behavioral status;

(vi) attendant risks of treatment; and

(vii) the right to refuse treatment;

~~[(b) inform each client, parent, if the client is a minor, or legal guardian, of the client's medical condition, developmental and behavioral status, attendant risks of treatment, and of the right to refuse treatment;]~~

(c) allow and encourage individual clients to exercise their rights as clients of the facility, and as citizens of the United States, including the right to file complaints and the right to due process, and give each client [shall be afforded]the opportunity to voice grievances and recommend changes in policies and procedures to

facility staff and outside representatives of personal choice, free from restraint, interference, coercion, discrimination, or reprisal;

(d) allow individual clients to manage their financial affairs and teach them to do so to the extent of their capabilities;

(e) ensure that clients are not subjected to physical, verbal, sexual, or psychological abuse, or punishment;

(f) ensure that clients are free from unnecessary drugs and physical restraints and are provided active treatment to reduce dependency on drugs and physical restraints;

(g) provide each client with the opportunity for personal privacy and ensure privacy during treatment and care of personal needs;

(h) ensure the clients are not compelled to participate in publicity events, fund raising activities, movies or anything that would exploit the client;

(i) ensure that clients are not compelled to perform services for the facility and ensure that clients who do work for the facility are compensated for their efforts at prevailing wages commensurate with their abilities;

(j) ensure clients the opportunity to communicate, associate and meet privately with individuals of their choice, including legal counsel and clergy, and to send and receive unopened mail;

(k) ensure that clients have access to telephones with privacy for incoming and outgoing local and long-[distance] calls except as contraindicated by factors identified within their individual program plans;

(l) ensure clients the opportunity to participate in social and community group activities and the opportunity to exercise religious beliefs and to participate in religious worship services without being coerced or forced into engaging in any religious activity;

(m) ensure that clients have the right to [retain]keep and use appropriate personal possessions and clothing, and ensure that each client is dressed in [his or her]their own clothing each day; and

(n) permit a married couple both of whom reside in the facility to reside together as a couple.

~~[(3) Client Finances.]~~

(~~a~~)2) The [facility]licensee shall establish and maintain a system that ensures:

(~~i~~)a) ~~[assures a full and]~~complete accounting of clients' personal funds entrusted to the facility on behalf of clients;

(~~ii~~)b) ~~[precludes any]~~no commingling of client funds with facility funds or with the funds of any person other than another client[-];

(~~b~~)c) ~~[T]he client's financial record [shall be]is~~ available on request to the client, parents, if the client is a minor, or legal guardian[-];

(~~e~~)d) ~~[A]ny money[ies] entrusted to the facility on behalf of the clients [shall be]is kept in the facility or [shall be]insured and deposited within five days of receipt [of such funds]in an interest-bearing account in a local bank or savings and loan association authorized to do business in Utah[-the deposits of which shall be insured-];~~

(~~e~~)e) ~~[W]hen the amount of a client's money entrusted to the facility exceeds \$150, [all]any money over[in excess of] \$150 [shall be]is deposited in an interest-bearing account[-as specified in R432-201-11(3) above-];~~

(~~e~~)f) ~~[A] person, firm, partnership, association, or corporation, [which]that is licensed to operate more than one health facility [shall]maintains a separate account for each[-such] facility~~



and ~~[shall not]~~ does not commingle client funds from one facility with another[-];

(f)g) ~~[U]~~ upon discharge of a client, [all]any money and valuables of [that]the client [which]that have been entrusted to the licensee [shall be]are surrendered to the client in exchange for a signed receipt; ~~Money and valuables kept within the facility shall be surrendered upon demand and those kept in an interest bearing account shall be made available within a reasonable time.~~

(h) the licensee shall surrender, upon demand, any money and valuables kept within the facility and shall make available any money kept in an interest-bearing account within a reasonable time;

(g)j) ~~[W]~~ within 30 days following the death of a client, except in a case under investigation by the medical examiner[-case], [all]any money, and valuables of [that]the client [which]that have been entrusted to the licensee [shall be]are surrendered to the person responsible for the client or to the executor or the administrator of the estate in exchange for a signed receipt[-]; and ~~When a client dies without a representative or known heirs, immediate written notice thereof shall be given by the facility to the State Medical Examiner and the registrar of the local probate court and a copy of said notice shall be filed with the Department.~~

(j) when a client dies without a representative or known heirs, the licensee shall provide immediate written notice to the state medical examiner and the registrar of the local probate court and file a copy of the notice with the department.

~~----- (4) Communication with Clients, Parents, and Guardians.]~~

(3) The [facility]licensee shall:

(a) promote participation of parent, if the client is a minor, and legal guardian in the process of providing active treatment to a client unless their participation is unobtainable or inappropriate;

(b) answer communications from a client's family and friends promptly and appropriately;

(c) promote visits by individuals with a relationship to a client, such as family, close friends, legal guardian, and advocate, at any reasonable hour, without [prior]earlier notice, consistent with the right of a client's and other clients' privacy, unless the interdisciplinary team determines that the visit would not be appropriate for that client;

(d) promote visits by parents or guardians to any area of the facility that provides direct client care service to a client, consistent with right of that client's and other clients' privacy;

(e) promote frequent and informal leaves from the facility for visits, trips, or vacations; and

(f) notify promptly a client's parent or guardian of any significant incident, or change in a client's condition including, ~~but not limited to,~~ serious illness, accident, death, abuse, or unauthorized absence.

~~----- (5) Staff Treatment of Clients.]~~

(a)4) The [facility]licensee shall develop and implement written policies and procedures that: ~~[prohibit mistreatment, neglect or abuse of a client.]~~

(a) prohibit mistreatment, neglect, or abuse of a client;

(i)b) ~~[Staff of the facility shall not use]~~ prohibit the use of physical, verbal, sexual, or psychological abuse, or punishment[-];

(ii)c) ~~[Staff shall not]~~ prohibit punishing a client by withholding food or hydration that contribute to a nutritionally adequate diet[-];

(b)d) ~~[The facility shall]~~ prohibit the employment of individuals with a conviction or ~~[prior]earlier~~ employment history of child, client abuse, spouse abuse, neglect, or mistreatment[-];

(e)e) ~~[The facility shall]~~ ensure that [all]each allegation[s] of mistreatment, neglect, or abuse, or injuries of unknown source, are reported immediately to the administrator and to other officials in accordance with Section 26B-6-202~~[62A-3-302]~~ through established procedures[-];

(d)f) ~~[The facility shall have]~~ ensure there is evidence that [all]any alleged violations are thoroughly investigated and shall prevent further potential abuse while the investigation is in progress[-]; and

(e)g) ensure ~~[F]~~the results of [all]any investigation[s] ~~[shall be]are~~ reported to the administrator or designated representative and to other officials within five working days of the incident and, if the alleged violation is verified, take appropriate corrective action.~~[-shall be taken-]~~

#### **R432-201-12. Client Treatment Services.**

~~----- See R432-152-13.~~

#### **R432-201-13. Admissions, Transfers, and Discharge.**

~~----- (1) A client who is admitted by the facility shall be in need of and receive active treatment services.~~

~~----- (2) See R432-152-14, Admissions, Transfer and Discharge.~~

#### **R432-201-14. Behavior Management and Restraint Policy.**

~~----- (1) See R432-152-15, Client Behavior and Facility Practice.~~

~~----- (2) See R432-152-13, Human Rights Committee.~~

#### **R432-201-15. Physician Services.**

~~----- See R432-152-16.~~

#### **R432-201-16. Nursing Services.**

~~----- See R432-152-17.~~

#### **R432-201-17. Dental Services.**

~~----- See R432-152-18.~~

#### **R432-201-18. Pharmacy Services.**

~~----- See R432-152-19.~~

#### **R432-201-19. Laboratory Services.**

~~----- See R432-152-20.~~

#### **R432-201-20. Environment.**

~~----- See R432-152-21.~~

#### **R432-201-21. Emergency Plan and Procedures.**

~~----- See R432-152-22.~~

#### **R432-201-22. Smoking Policies.**

~~----- Smoking policies shall comply with R432-200-8.~~

#### **R432-201-23. Pets in Long-Term Care Facilities.**

~~----- Each facility shall develop a written policy regarding pets in accordance with R432-150-21.~~

#### **R432-201-24. Housekeeping Services.**

~~----- See R432-150-26.~~

## NOTICES OF PROPOSED RULES

### ~~R432-201-25. Laundry Services.~~

~~See R432-150-27.~~

### ~~R432-201-26. Maintenance Services.~~

~~See R432-150-28.~~

### ~~R432-201-27. Food Services.~~

~~See R432-150-24.~~

### ~~R432-201-28. Record System.~~

~~See R432-152-29.]~~

### R432-201-[29]2. Penalties.

[Any person who violates any provision of this rule may be subject to the penalties enumerated in 26-21-11 and R432-3-6 and be punished for violation of a class A misdemeanor as provided in 26-21-16.]The department may impose a civil money penalty in accordance with Section 26B-1-224 if there has been a failure to comply with rules under this chapter.

**KEY:** health care facilities

**Date of Last Change:** 2023~~[March 3, 1995]~~

**Notice of Continuation:** January 24, 2022

**Authorizing, and Implemented or Interpreted Law:** ~~[26-21-5; 26-21-13.5]~~26B-2-202

#### NOTICE OF PROPOSED RULE

**TYPE OF FILING:** Repeal

<b>Rule or Section Number:</b>	<b>R708-49</b>	<b>Filing ID:</b> <b>55526</b>
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#### Agency Information

<b>1. Department:</b>	Public Safety	
<b>Agency:</b>	Driver License	
<b>Room number:</b>	Suite 2600	
<b>Street address:</b>	4315 S 2700 W, 2nd Floor	
<b>City, state and zip:</b>	Taylorsville, UT 84129	
<b>Mailing address:</b>	PO Box 144501	
<b>City, state and zip:</b>	Salt Lake City, UT 84114-4501	
<b>Contact persons:</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Kim Gibb	801-556-8198	kgibb@utah.gov
Tara Zamora	801-964-4483	tarazamora@utah.gov
Britani Flores	801-884-8313	bflores@utah.gov
<b>Please address questions regarding information on this notice to the persons listed above.</b>		

#### General Information

##### 2. Rule or section catchline:

R708-49. Temporary Identification Card

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

Upon conducting a five-year review of this rule, it was determined the statute cited does not grant the Division of Driver License (Division) rulemaking authority. The purpose of this filing is to repeal the existing rule.

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

This rule is being repealed because the statute cited in the existing rule does not give the Division authority for this rule. After a review, no other statutes granting authority for this rule could be found.

In addition, this rule is not necessary because:

- 1) Subsection R708-49-4(1) references language found in Subsection 53-3-805(10) which grants the Division the authority to issue a temporary identification card while an individual obtains the necessary documents stated in Subsection 53-3-804(2);
- 2) Subsection R708-49-4(1)(a) references language found in Section 53-3-105 regarding an application fee for an identification card;
- 3) Subsection R708-49-4(1)(b) references language found in Subsection 53-3-804(2) regarding lawful presence;
- 4) Subsection R708-49-4(1)(c) references a Division process that is no longer required. The individual's photograph is taken at the time of application and is not required to be on file beforehand; and
- 5) Subsections R708-49-4(2), R708-49-4(3), and R708-49-4(4) are Division policies that are not required by administrative rule or statute.

This rule is repealed in its entirety.

#### Fiscal Information

##### 5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:

###### A) State budget:

There is no anticipated cost or savings to the state budget as a result of the repeal of this rule because the processes outlined in this rule are codified in other sections of statute and are existing policies of the Division that are not changing with the repeal of this rule.

###### B) Local governments:

There is no anticipated cost or savings to local governments as a result of the repeal of this rule because the processes outlined in this rule are codified in other sections of statute and are existing policies of the Division that are not changing with the repeal of this rule.

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

There is no anticipated cost or savings to small businesses as a result of the repeal of this rule because the processes outlined in this rule are codified in other sections of statute and are existing policies of the Division that are not changing with the repeal of this rule.

**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 as a result of the repeal of this rule because the processes outlined in this rule are codified in other sections of statute and are existing policies of the Division that are not changing with the repeal of 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**):

There is no anticipated cost or savings to persons other than small business, non-small business, state, or local governments entities as a result of the repeal of this rule because the processes outlined in this rule are codified in other sections of statute and are existing policies of the Division that are not changing with the repeal of this rule.

**F) Compliance costs for affected persons** (How much will it cost an impacted entity to adhere to this rule or its changes?):

There are no anticipated compliance costs for affected persons as a result of the repeal of this rule because the processes outlined in this rule are codified in other sections of statute and are existing policies of the division that are not changing with the repeal of this rule.

**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>FY2024</b>	<b>FY2025</b>	<b>FY2026</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>	<b>FY2024</b>	<b>FY2025</b>	<b>FY2026</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 comments on fiscal impact and approval of regulatory impact analysis:**

The Commissioner of the Department of Public Safety, Jess L Anderson, has reviewed and approved this regulatory impact analysis.

**Citation Information****6. Provide citations to the statutory authority for the rule. If there is also a federal requirement for the rule, provide a citation to that requirement:**

Subsection 53-3-104(1)(b)	Section 53-3-805	
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**Public Notice Information****8. 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. See Section 63G-3-302 and Rule R15-1 for more information.)

<b>A) Comments will be accepted until:</b>	08/31/2023
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**9. This rule change MAY become effective on:** 09/07/2023

NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date.

**Agency Authorization Information**

<b>Agency head or designee and title:</b>	Christopher Caras, Division Director	<b>Date:</b>	07/05/2023
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**R708. Public Safety, Driver License.****~~R708-49. Temporary Identification Card.~~****~~R708-49-1. Purpose.~~**

~~The purpose of the rule is to set forth the provisions for the issuance of a temporary regular identification card.~~

## NOTICES OF PROPOSED RULES

### **~~R708-49-2. Authority.~~**

~~This rule is authorized by Subsection 53-3-104(1)(b).~~

### **~~R708-49-3. Definitions.~~**

~~(1) "Temporary Regular Identification card" means a temporary identification card issued by the Driver License Division to a qualified U.S. Citizen, Legal Permanent Resident Alien or U. S. National who has not provided all the required documents to obtain a completed identification card.~~

### **~~R708-49-4. Provisions.~~**

~~(1) An applicant for an identification card as defined in Section 53-3-102(17) who is unable to provide all required documentary evidence under Subsection 53-3-804(2)(a), 53-3-804(2)(b), 53-3-804(2)(c), 53-3-804(2)(d) and 53-3-804(2)(i)(i) at the time of application may be issued a temporary identification card if the applicant:~~

~~(a) pays the required application fee;~~

~~(b) is a U.S. Citizen, Legal Permanent Resident Alien or U.S. National; and~~

~~(c) has on file with the division a previous license or identification record that includes a digitized photo.~~

~~(2) The temporary identification card shall be a paper document and shall contain security features as determined by the division.~~

~~(3) The temporary identification card shall bear the applicant's digitized photo image and signature.~~

~~(4) The temporary identification card shall expire six months from the date of issue.~~

**~~KEY: temporary identification card~~**

**~~Date of Last Change: June 30, 2013~~**

**~~Notice of Continuation: June 13, 2018~~**

**~~Authorizing, and Implemented or Interpreted Law: 53-3-805]~~**

End of the Notices of 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		
Rule or Section Number:	R501-3	Filing ID: 55525
Effective Date:	07/03/2023	

### Agency Information

<b>1. Department:</b>	Health and Human Services	
<b>Agency:</b>	Human Services Program Licensing	
<b>Building:</b>	MASOB	
<b>Street address:</b>	195 N 1950 W	
<b>City, state and zip:</b>	Salt Lake City, UT 84116	
<b>Contact persons:</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Janice Weinman	385-321-5586	jweinman@utah.gov
Jonah Shaw	385-310-2389	jshaw@utah.gov
<b>Please address questions regarding information on this notice to the persons listed above.</b>		

### General Information

<b>2. Rule or section catchline:</b>
R501-3. Inspection and Emergency Enforcement
<b>3. Purpose of the new rule or reason for the change:</b>
This rule establishes the standard for emergency agency actions taken by the Department of Health and Human Services (Department) following a serious injury or death in a human services program.
<b>4. Summary of the new rule or change:</b>
This new rule is for the Department to outline a balanced process for the office to initiate immediate protections for clients while preserving the human services program's rights.
<b>5A) The agency finds that regular rulemaking would:</b>
<input checked="" 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 type="checkbox"/> place the agency in violation of federal or state law.

**B) Specific reasons and justifications for this finding:**

This rule establishes the standard for an emergency agency action taken by the office following a serious injury or death in a human services program. The Department is proceeding with an emergency rule filing to ensure the provisions of this rule are in place for the protection of Department clients.

**Fiscal Information****6. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:****A) State budget:**

The Office of Human Services Program Licensing (Office) already issues and monitors conditional licenses under notices of agency actions, the addition of an emergency agency action allows staff to take these measures with more immediacy for the protection of clients.

It is not anticipated that there will be any cost benefit or loss to state budget as a result of this rule filing.

**B) Local governments:**

Human services programs are regulated by the Department and not local governments. There will be no change in local business licensing or any other items with which local governments are involved.

There are no fiscal impact to local governments resulting from the changes in this rule content.

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

Fiscal impact to small businesses is immeasurable, as this rule requires a significant critical incident to occur before it can be initiated.

A chronically noncompliant human services program could be subject to license sanctions or civil money penalties of up to \$10,000.00 (as authorized by Section 26B-2-113) and a compliant human services program may appeal the action and have it reversed with no civil money penalties or license sanctions.

**D) Persons other than 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**):

Fiscal impact to other persons (for example foster parents) is immeasurable, as this rule requires a significant critical incident to occur before it can be initiated.

It is not the Office's practice to issue civil money penalties to foster parents and their cost could amount to revocation of license as a most stringent penalty.

**E) Compliance costs for affected persons** (How much will it cost an impacted entity to adhere to this rule or its changes?):

It is impossible to determine what the fiscal impact on affected persons might be due to the variables contributing to each specific incident.

**F) Comments by the department head on the fiscal impact this rule may have on businesses** (Include the name and title of the department head):

Fiscal impact to businesses is immeasurable, as this rule requires a significant critical incident to occur before it can be initiated.

A chronically noncompliant human services program could be subject to license sanctions or civil money penalties up to \$10,000.00 (as authorized by Section 26B-2-113) and a compliant human services program may appeal the action and have it reversed with no civil money penalties or license sanctions. Tracy S. Gruber, Executive Director

**Citation Information****7. Provide citations to the statutory authority for the rule. If there is also a federal requirement for the rule, provide a citation to that requirement:**

Section 26B-2-104

**Agency Authorization Information**

<b>Agency head or designee and title:</b>	Tracy S. Gruber, Executive Director	<b>Date:</b>	07/03/2023
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**R501. Health and Human Services, Human Services Program Licensing.****R501-3. Inspection and Emergency Enforcement.****R501-3-1. Authority and Purpose.**

(1) Section 26B-2-104 authorizes this rule.

(2) This rule establishes the standard for an emergency agency action taken by the office following a serious injury or death in a human services program.

**R501-3-2. Scope.**

Each human services program is subject to this rule.

**R501-3-3. Definitions.**

The terms used in Title R501 are defined in Section 26B-2-101 and Section R501-1-3. In addition, the following terms are defined:

(1) "Notice of Emergency Agency Action (NEAA)" means the notice issued by the office which places a program license on immediate conditional status.

(2) "Serious Injury" means significant disfigurement or loss or impairment of function of a bodily member, organ, or mental faculty.



**R501-3-4. Notice of Emergency Agency Actions.**

(1) A human services program that experiences a serious injury or death shall report the critical incident to the office in accordance with Subsection R501-1-11(2).

(2) The office shall make the determination of whether or not to issue an NEAA with consideration of:

- (a) any known facts of the event;
- (b) the human services program's adherence to licensing rules leading up to and during the incident; and
- (c) the immediate health and safety of the remaining clients.

(3) The known facts of the event are deemed proof of conduct adverse to the standards required to provide services and promote public trust in accordance with Section 26B-2-112.

(4)(a) If the office determines that an NEAA is necessary for the protection of clients, it may place emergency conditions on the license to include restricting new admissions and increased monitoring of program operations.

(b) An NEAA shall expire 30 days after the date of issuance.

(c) The office may dismiss the NEAA at any time before the 30-day expiration.

(d) Issuance of an NEAA does not prevent the office from issuing a subsequent notice of agency action or any other sanction.

(5) The human services program may appeal an NEAA by filing a written request for an administrative hearing with the office within 5 business days of receipt of the NEAA.

(6) NEAA conditions are immediately in effect and the human services program shall adhere to any listed conditions unless reversed by a hearing with the department or under written authorization from the office.

**R501-3-5. Compliance.**

A human services program found in noncompliance with any part of this rule may be subject to a civil money penalty or other sanctions as authorized by Section 26B-2-104 and as outlined in Section R501-1-12.

**KEY: licensing, human services**

**Date of Last Change: July 3, 2023**

**Authorizing, and Implemented or Interpreted Law: 26B-2-104**

**NOTICE OF EMERGENCY (120-DAY) RULE**

<b>Rule or Section Number:</b>	<b>R714-562</b>	<b>Filing ID: 55529</b>
<b>Effective Date:</b>	<b>07/12/2023</b>	

**Agency Information**

<b>1. Department:</b>	Public Safety
<b>Agency:</b>	Highway Patrol
<b>Building:</b>	Calvin Rampton Complex
<b>Street address:</b>	4501 S 2700 W
<b>City, state and zip:</b>	Salt Lake City UT 84119-5994
<b>Mailing address:</b>	PO Box 141100
<b>City, state and zip:</b>	Salt Lake City UT 84114-1100

**Contact persons:**

<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Kim Gibb	801-556-8198	kgibb@utah.gov

**Please address questions regarding information on this notice to the persons listed above.**

**General Information****2. Rule or section catchline:**

R714-562. Early Intervention System Grant Program

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

This rule is authorized as a result of the passage of S.B. 124 during the 2023 General Session under Sections 53-14-202 and 53-14-203.

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

This rule creates a program to assist law enforcement agencies through monetary grants using one time funding appropriated by the Legislature during the 2023 General Session.

This rule establishes the Early Intervention System Grant Funding Committee to assist the Department of Public Safety (Department) in awarding funds to law enforcement agencies, criteria for law enforcement agencies to apply for grant funding, criteria for awarding grant funding to law enforcement agencies, and requirements to ensure accountability for funding provided to law enforcement agencies.

**5A) The agency finds that regular rulemaking would:**

- ☐ cause an imminent peril to the public health, safety, or welfare;
- ☐ cause an imminent budget reduction because of budget restraints or federal requirements; or
- ☒ place the agency in violation of federal or state law.

**B) Specific reasons and justifications for this finding:**

This funding was made available on 07/01/2023. The Department needs to enact rules in order to begin allowing law enforcement agencies to apply for and be awarded grant funding to purchase early intervention systems.

**Fiscal Information****6. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:****A) State budget:**

The Utah Legislature appropriated \$3,000,000 to provide grant funding for law enforcement agencies for the purchase of early intervention systems as outlined in Section 53-14-203.

The Department does not anticipate a cost or savings to the state as a result of this rule because it is strictly explaining how the appropriated funds will be distributed.

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

The Department anticipates a cost savings from \$15,700 to \$31,700 to local governments as a result of the funds appropriated by the Legislature.

Local law enforcement agencies will have the ability to apply for funding from the \$3,000,000 appropriation in order to purchase an early intervention system.

Local law enforcement agencies will submit an application for approval of grant funding awards, and once approved, will be awarded funding based on the number of officers employed by the agency.

The Department does not anticipate a cost or savings to local governments as a result of this rule because it is strictly explaining how the appropriated funds will be distributed.

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

The Department is not aware of any small businesses that would satisfy the minimum standards for an early intervention system, but the Department is aware of one non-small business that currently has a system available that will meet the minimum standards established by this rule, as authorized under Section 53-14-202, for a law enforcement agency to comply with statutory requirements and receive grant funding as outlined under Section 53-14-203.

There may be other businesses that are able to provide this service, as would be identified through an RFP. Under the grant program created in Section 53-14-203, a business that is able to provide a system that meets minimum standards established in the administrative rule will have a potential to sell early intervention systems to law enforcement agencies in the amount of up to \$3,000,000 in grant funding appropriated by the Legislature.

The Department does not anticipate a cost or savings to small businesses as a result of this rule because it is strictly explaining how the appropriated funds will be distributed.

#### **D) Persons other than 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 are no compliance costs for persons other than small businesses, state, or local government entities because this rule only identifies the process for a law enforcement entity to apply for grant funding appropriated by the Legislature for the purchase of an early intervention system.

#### **E) Compliance costs for affected persons** (How much will it cost an impacted entity to adhere to this rule or its changes?):

There are no compliance costs for affected persons because this rule only identifies the process for a law enforcement entity to apply for grant funding appropriated by the Legislature for the purchase of an early intervention system.

#### **F) Comments by the department head on the fiscal impact this rule may have on businesses** (Include the name and title of the department head):

The Commissioner of the Department of Public Safety, Jess L. Anderson, has reviewed and approved this fiscal analysis.

#### **Citation Information**

##### **7. Provide citations to the statutory authority for the rule. If there is also a federal requirement for the rule, provide a citation to that requirement:**

Section 53-14-202	Section 53-14-203	
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#### **Agency Authorization Information**

<b>Agency head or designee and title:</b>	Michael Rapich, Colonel Utah Highway Patrol	<b>Date:</b>	07/12/2023
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#### **R714. Public Safety, Highway Patrol.**

##### **R714-562. Early Intervention System Grant Program.**

##### **R714-562-1. Purpose.**

The purpose of this rule is to create a program to assist law enforcement agencies through monetary grants to establish early intervention systems.

##### **R714-562-2. Authority.**

This rule is authorized by Sections 53-14-202 and 53-14-203.

##### **R714-562-3. Definitions.**

(1) Terms used in this rule are found in Section 53-14-201.

(2) In addition:

(a) "commissioner" means the commissioner of the Department of Public Safety;

(b) "committee" means the Early Intervention System Grant Program Committee established under this rule;

(c) "department" means the Department of Public Safety; and



(d) "law enforcement agency" means the same as defined in Section 53-1-102.

**R714-562-4. Early Intervention System Grant Program Committee.**

This rule establishes the Early Intervention System Grant Program Committee, which shall be responsible for assisting the department in awarding funds to law enforcement agencies to buy an early intervention system in accordance with Section 17-22-34.

**R714-562-5. Committee Membership.**

(1) The committee shall consist of three members made up of one representative from each of the following groups or organizations:

- (a) Utah Highway Patrol Colonel or designee;
- (b) Utah Sheriffs Association; and
- (c) Utah Chiefs of Police Association.

(2) Members of the committee shall:

- (a) be approved by the commissioner;
- (b) be appointed for four year terms; and
- (c) cease to be members of the committee immediately upon the termination of their membership in the group or organization they represent.

(3) If a vacancy occurs during the four year term of a committee member, a new member shall be appointed from the group or organization to complete the term of that member.

(4) The committee shall select a chair and vice-chair from among its members.

(5) Two members shall constitute a quorum for committee action.

(6) The department's special counsel shall assist the committee as needed.

**R714-562-6. Committee Meetings.**

The committee shall meet at least quarterly, until all grant funding appropriated by the legislature has been spent, to review and approve applications from law enforcement agencies.

**R714-562-7. Applications.**

(1) Applications for the funding of early intervention systems shall:

(a) be made on department forms, or other forms if they contain the information included on department forms;

(b) include criteria required under Section 53-14-203;

(c) meet minimum standards as required by the department under Subsection R714-562-11;

(d) be submitted before October 31, 2024; and

(e) ensure the early intervention system be in use before January 1, 2025.

**R714-562-8. Eligibility Criteria and Awards.**

(1) The committee shall review timely applications from law enforcement agencies to determine:

(a) the agency does not currently have:

(i) an early intervention system in place; or

(ii) an early intervention system in place that meets the requirements under Sections 53-14-202 and 53-14-203; and

(b) the system the agency seeks to establish meets the minimum standards under Subsection R714-562-11.

(2) The committee shall approve funding awards to law enforcement agencies that have submitted completed applications to establish an early intervention system:

(a) that meet the requirements of this rule; and

(b) in amounts established under Subsection R714-562-9.

(3) The department shall notify each law enforcement agency that applied for grant funding of:

(a) the approval or denial of the application for funding; and

(b) the amount of funding that will be made available to the law enforcement agency.

**R714-562-9. Method and Formula for Determining a Grant Amount.**

The committee shall award grant funding to law enforcement agencies based on the criteria included in the application in an amount not to exceed:

(1) for an agency that employs 49 officers or less, \$15,700;

(2) for an agency that employs between 50 and 99 officers, \$18,700;

(3) for an agency that employs between 100 and 149 officers, \$20,700;

(4) for an agency that employs between 150 and 249 officers, \$23,700;

(5) for an agency that employs between 250 and 349 officers, \$27,700; and

(6) for an agency that employs 350 or more officers, \$31,700.

**R714-562-10. Grant Recipient Reporting Requirements.**

(1) Law enforcement agencies that receive funding shall:

(a) use the awarded resources only in the manner set forth in Section 53-14-203;

(b) use the awarded resources only to initially establish an early intervention system that meets the requirements of this rule;

(c) report to the department when the early intervention system was implemented and the amount of grant funds spent;

(d) maintain records for five years sufficient to show how the funding is used; and

(e) cooperate with the committee if and when the committee determines it is necessary to audit agency records, and evaluate use of the funding.

(2) if the law enforcement agency does not spend the funds for purposes specified in Section 53-14-203, the law enforcement agency shall return any grant funds back to the department.

**R714-562-11. Early Intervention System Minimum Standards.**

The minimum standards that an early intervention system is required to meet in order for a law enforcement agency to comply with Subsection 53-14-202(1) include:

(1) the ability to record the following in relation to each law enforcement officer employed by the agency:

(a) citizen inquiries, complaints, commendations, or other concerns or requests for information;

(b) investigations or reviews of officer conduct, complaints, use of force, or other significant incidents, commendations; and

(c) other related information as determined by the agency that may include training, corrective or disciplinary actions, investigation findings or review findings;

(2) an alert process, function, or system to bring attention to the agency regarding officer patterns, frequency, or significant incidents that should result in a formal review; and

NOTICES OF 120-DAY (EMERGENCY) RULES

(3) the ability to maintain information considered part of an officers internal personnel file, and to be shared only pursuant to 53-14-103.

**Authorizing, and Implemented or Interpreted Law: 53-14-202, 53-14-203**

**KEY: early intervention system, early intervention grant program**

**Date of Last Change: July 12, 2023**

**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 [adminrules.utah.gov](http://adminrules.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

Rule Number:	R277-552	Filing ID: 55248
Effective Date:	07/13/2023	

### Agency Information

1. Department:	Education	
Agency:	Administration	
Building:	Board of Education	
Street address:	250 E 500 S	
City, state and zip:	Salt Lake City, UT 84111	
Mailing address:	PO Box 144200	
City, state and zip:	Salt Lake City, UT 84114-4200	
Contact persons:		
Name:	Phone:	Email:
Angie Stallings	801-538-7830	angie.stallings@schools.utah.gov
Please address questions regarding information on this notice to the persons listed above.		

### General Information

2. Rule catchline:
R277-552. Charter School Timelines and Approval Processes
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 authorized pursuant to the Utah Constitution, Article X, Section 3, which vests general control and supervision over public education in the Board; Subsection 53E-3-401(4), which allows the Board to execute rules to carry out its duties and responsibilities under the Utah Constitution and state law; Subsection 53G-6-504(5), which requires the Board to make rules regarding a charter school expansion or satellite campus; Sections 53G-5-304 through 53G-5-306, which require the Board to make a rule providing a timeline for the opening of a charter school; Section 53F-2-702, which directs the Board to distribute funds for charter school students directly to the charter school; the Charter School Expansion Act of 1998, 20 U.S.C. Sec. 8063, which directs the Board to submit specific information before a charter school's receipt of federal funds; and Subsection 53G-5-205(5), which requires the Board to make rules establishing minimum standards that an authorizer is required to apply in authorizing and monitoring charter schools.

### 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 public comments 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:

This rule is necessary because it establishes procedures for timelines and approval processes for new charter schools; and provides criteria and standards for consideration of high performing charter schools to expand and request new schools that are satellite schools. Therefore, this rule should be continued.

**Agency Authorization Information**

<b>Agency head or designee and title:</b>	Angie Stallings, Deputy Superintendent of Policy	<b>Date:</b>	07/13/2023
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**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

<b>Rule Number:</b>	<b>R317-15</b>	<b>Filing ID:</b>	<b>50782</b>
<b>Effective Date:</b>	<b>07/10/2023</b>		

**Agency Information**

<b>1. Department:</b>	Environmental Quality		
<b>Agency:</b>	Water Quality		
<b>Room number:</b>	DEQ, 3rd Floor		
<b>Building:</b>	Multi Agency State Office Building (MASOB)		
<b>Street address:</b>	195 N 1950 W		
<b>City, state and zip:</b>	Salt Lake City, UT 84116		
<b>Mailing address:</b>	PO Box 144870		
<b>City, state and zip:</b>	Salt Lake City, UT 84114-4870		
<b>Contact persons:</b>			
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>	
Jeanne Riley	801-536-4369	jriley@utah.gov	
Linsey Shafer	385-405-4158	lrshafer@utah.gov	
<b>Please address questions regarding information on this notice to the persons listed above.</b>			

**General Information**

<b>2. Rule catchline:</b>
R317-15. Water Quality Certification
<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 establishes procedures for applying for and processing State Water Quality Certification pursuant to Section 401 of the Federal Water Pollution Prevention and Control Act, 33 U.S.C. Sec. 1341, and consistent with the Utah Water Quality Act, Title 19, Chapter 5.
<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 written comments have been received during and since the last five-year review.

**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 Section 401 Water Quality Certification Process rule provides the state with an important tool to help protect water quality. It allows the state to collaborate with federal agencies to ensure that federally permitted or licensed activities will be conducted in a manner to comply with discharge and water quality requirements in order to protect the physical, chemical, and biological integrity of the state's waters. Therefore, this rule should be continued.

**Agency Authorization Information**

<b>Agency head or designee and title:</b>	John K Mackey, PE, Director	<b>Date:</b>	07/10/2023
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**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

<b>Rule Number:</b>	<b>R317-101</b>	<b>Filing ID:</b>	<b>52327</b>
<b>Effective Date:</b>	<b>07/10/2023</b>		

**Agency Information**

<b>1. Department:</b>	Environmental Quality		
<b>Agency:</b>	Water Quality		
<b>Room number:</b>	DEQ 3rd Floor		
<b>Building:</b>	Multi Agency State Office Building (MASOB)		
<b>Street address:</b>	195 N 1950 W		
<b>City, state and zip:</b>	Salt Lake City, UT 84116		
<b>Mailing address:</b>	PO Box 144870		
<b>City, state and zip:</b>	Salt Lake City, UT 84114-4870		
<b>Contact persons:</b>			
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>	
Judy Etherington	801-536-4344	jetherington@utah.gov	
Harry Campbell	385-501-9583	hcampbell@utah.gov	
<b>Please address questions regarding information on this notice to the persons listed above.</b>			

**General Information**

<b>2. Rule catchline:</b>
R317-101. Utah Wastewater Project Assistance Program

**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 supports the federal Clean Water Act and the Utah Water Quality Act by providing funding for projects that protect water quality. The laws connected with the State Revolving Fund Program, which is the basis for this rule, comes from the Clean Water Act under Sections 11-8-2 and 73-10c-4.

**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 have been received during and since the last five-year review, although Section R317-101-3 was recently amended.

**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 provides benefits to communities by providing information and guidelines for financial tools enabling them to build wastewater and other utilities to improve health and safety. Therefore, this rule should be continued.

**Agency Authorization Information**

<b>Agency head or designee and title:</b>	John K Mackey, PE, Director	<b>Date:</b>	07/10/2023
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**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

<b>Rule Number:</b>	<b>R384-324</b>	<b>Filing ID:</b>	<b>53049</b>
<b>Effective Date:</b>	<b>07/07/2023</b>		

**Agency Information**

<b>1. Department:</b>	Health and Human Services	
<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 and zip:</b>	Salt Lake City, UT 84116	
<b>Mailing address:</b>	PO Box 142106	
<b>City, state and zip:</b>	Salt Lake City, UT 84114-2106	
<b>Contact persons:</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Braden Ainsworth	801-538-6187	tobaccorulescomments@utah.gov

McKenna Christensen	801-538-6260	tobaccorulescomments@utah.gov
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**Please address questions regarding information on this notice to the persons listed above.**

**General Information****2. Rule catchline:**

R384-324. Tobacco Product, Electronic Cigarette Product, and Nicotine Product Retailer Permit Process

**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 26B-7-5 recodified from Section 26-1-5, authorizes this rule. This section outlines the regulation of tobacco retailers and requires the Department of Health and Human Services (Department) and local health departments to enforce the provisions of this section. This rule relates to the enforcement of Section 26B-7-5.

According to Section 26B-7-515, "The department and local health departments shall enforce Sections 26B-7-506 through 26B-7-521 under the procedures of Title 63G, Chapter 4, Administrative Procedures Act".

**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 supporting or opposing Rule R384-324 in the last five years.

**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 outlines the tobacco product, electronic cigarette product, and nicotine product retailer permit process. This rule is integral in the retailer permitting process and providing enforcement mechanisms in the event of noncompliance. Therefore, this rule should be continued.

**Agency Authorization Information**

<b>Agency head or designee and title:</b>	Tracy S Gruber, Executive Director	<b>Date:</b>	07/07/2023
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**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

<b>Rule Number:</b>	<b>R392-103</b>	<b>Filing ID:</b>	<b>52876</b>
<b>Effective Date:</b>	<b>07/07/2023</b>		

**Agency Information**

<b>1. Department:</b>	Health and Human Services	
<b>Agency:</b>	Population Health, Environmental Health	
<b>Room number:</b>	Second Floor	
<b>Building:</b>	Cannon Health Building	
<b>Street address:</b>	288 N 1460 W	
<b>City, state and zip:</b>	Salt Lake City, UT 84116	
<b>Mailing address:</b>	PO Box 142102	
<b>City, state and zip:</b>	Salt Lake City, UT 84114-2102	
<b>Contact persons:</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Karl Hartman	801-538-6191	khartman@utah.gov
Please address questions regarding information on this notice to the persons listed above.		

**General Information**

<b>2. Rule catchline:</b>
R392-103. Food Handler Training and Certificate
<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 authorized by Sections 26B-7-402 and 26B-1-202. Specifically, Subsection 26B-7-412(8) orders the Department of Health and Human Services to establish and adopt this rule.
<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 written comments were received.
<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>
As stated in Box 3 above, this rule is required by statute. Proper application of the required training principles will empower food handlers to prevent and safeguard against foodborne illnesses. Testing of food handlers confirms that the food handler gained an understanding of correct food protection principles. A food handler permit that is recognized statewide provides a tool for local health officers to verify that food handlers have received state approved training and testing. Therefore, this rule should be continued.

**Agency Authorization Information**

<b>Agency head or designee and title:</b>	Tracy S Gruber, Executive Director	<b>Date:</b>	07/07/2023
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**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

<b>Rule Number:</b>	<b>R590-186</b>	<b>Filing ID:</b>	<b>54406</b>
<b>Effective Date:</b>	<b>07/07/2023</b>		

**Agency Information**

<b>1. Department:</b>	Insurance	
<b>Agency:</b>	Administration	
<b>Room number:</b>	Suite 2300	
<b>Building:</b>	Taylorsville State Office Building	
<b>Street address:</b>	4315 S 2700 W	
<b>City, state and zip:</b>	Taylorsville, UT 84129	
<b>Mailing address:</b>	PO Box 146901	
<b>City, state and zip:</b>	Salt Lake City, UT 84114-6901	
<b>Contact persons:</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Steve Gooch	801-957-9322	sgooch@utah.gov
Please address questions regarding information on this notice to the persons listed above.		

**General Information**

<b>2. Rule catchline:</b>
R590-186. Bail Bond Business
<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>
Section 31A-35-104 requires the Insurance Commissioner to adopt specific licensure and certification guidelines and standards of conduct for the bail bond business.
Section 31A-35-301 authorizes the Insurance Commissioner to adopt rules to administer Title 31A, Chapter 35, the Bail Bond Act.
<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>
The Department of Insurance has received no written comments regarding this rule during the past five years.

**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 establishes specific licensure and certification guidelines and standards of conduct for the business of bail bond surety insurance.

This rule also specifies certain conduct that is considered to be unprofessional and in violation of the Insurance Code. This is an important rule in training and regulating bail licensees in their conduct and licensure. Therefore, this rule should be continued.

**Agency Authorization Information**

<b>Agency head or designee and title:</b>	Steve Gooch, Public Information Officer	<b>Date:</b>	07/07/2023
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**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

<b>Rule Number:</b>	<b>R592-10</b>	<b>Filing ID:</b>	<b>53843</b>
<b>Effective Date:</b>	<b>07/07/2023</b>		

**Agency Information**

<b>1. Department:</b>	Insurance	
<b>Agency:</b>	Title and Escrow Commission	
<b>Room number:</b>	Suite 2300	
<b>Building:</b>	Taylorsville State Office Building	
<b>Street address:</b>	4315 S 2700 W	
<b>City, state and zip:</b>	Taylorsville, UT 84129	
<b>Mailing address:</b>	PO Box 146901	
<b>City, state and zip:</b>	Salt Lake City, UT 84114-6901	
<b>Contact persons:</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Steve Gooch	801-957-9322	sgooch@utah.gov

Please address questions regarding information on this notice to the persons listed above.

**General Information**

<b>2. Rule catchline:</b>
R592-10. Assessment for the Title Licensee Enforcement Restricted Account
<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>

Subsection 31A-2-404(2)(d) requires the Title and Escrow Commission to determine, by rule, the assessment required by Section 31A-23a-415.

Subsection 31A-23a-415(2)(d) was amended by H.B. 410 (passed in the 2023 General Session) to remove a requirement to establish, by rule, the costs and expenses to be deposited into the Title Licensee Enforcement Restricted Account, and to instead require the Title and Escrow Commission to approve the prior year's costs and expenses during the first quarter of the fiscal year.

The rule will be amended at a later date to reflect this change.

**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 of Insurance (Department) has received no written comments regarding this rule during the past five years.

**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 necessary to determine the costs and expenses incurred by the Department as it regulates the title insurance industry; these costs and expenses are covered by an assessment to the industry.

This rule sets a method of calculation that is important for transparency purposes, as well as for fairness, consistency, and accuracy. The Title and Escrow Commission voted 4 to 0 to continue this rule at its 06/12/2023 meeting. Therefore, this rule should be continued.

**Agency Authorization Information**

<b>Agency head or designee and title:</b>	Steve Gooch, Public Information Officer	<b>Date:</b>	07/07/2023
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**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

<b>Rule Number:</b>	<b>R651-411</b>	<b>Filing ID:</b>	<b>51645</b>
<b>Effective Date:</b>	<b>07/07/2023</b>		

**Agency Information**

<b>1. Department:</b>	Natural Resources
<b>Agency:</b>	State Parks
<b>Street address:</b>	1594 W North Temple, Suite 116
<b>City, state and zip:</b>	Salt Lake City, UT 84116



<b>Mailing address:</b>	PO Box 146001	
<b>City, state and zip:</b>	Salt Lake City, UT 84114-6001	
<b>Contact persons:</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Melanie Shepherd	801-538-7418	melaniemshepherd@utah.gov
<b>Please address questions regarding information on this notice to the persons listed above.</b>		

**General Information**

<b>2. Rule catchline:</b>
R651-411. OHV Use in State Parks
<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>
Subsection 79-4-304(2)(a) provides the parks board with rulemaking authority to (i) governing the use of the state park system; (ii) to protect state parks and their natural and cultural resources from misuse or damage, including watersheds, plants, wildlife, and park amenities; and (iii) to provide for public safety and preserve the peace within state parks.
(b) To accomplish the purposes stated in Subsection (2)(a), the board may enact rules that: (i) close or partially close state parks; or (ii) establish use or access restrictions within state parks. This rule provides protection of the state parks and natural resources from misuse or damage, as well as public safety. This rule provides information on the use of off-highway vehicles (OHVs) in the State Parks.
<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>
The Division of State Parks (Division) has not received any written comments on this rule since the last five-year review.
<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>
This rule furthers the Division's statutory obligation to provide for resource protection and public safety within state parks.
This rule is needed to provide visitors the required acceptable behavior within the state parks which help to keep the parks orderly, safe, and sanitary.
The Division has found that damage to facilities, damage to natural resources including watersheds and wildlife, and injuries to the public occur when this rule is not followed. Therefore, this rule should be continued.

**Agency Authorization Information**

<b>Agency head or designee and title:</b>	Jeff Rasmussen, Director	<b>Date:</b>	07/06/2023
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**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

<b>Rule Number:</b>	<b>R651-700</b>	<b>Filing ID:</b>	<b>52584</b>
<b>Effective Date:</b>	<b>07/10/2023</b>		

**Agency Information**

<b>1. Department:</b>	Natural Resources		
<b>Agency:</b>	State Parks		
<b>Street address:</b>	1594 W North Temple, Suite 116		
<b>City, state and zip:</b>	Salt Lake City, UT 84116		
<b>Mailing address:</b>	PO Box 146001		
<b>City, state and zip:</b>	Salt Lake City, UT 84114-6001		
<b>Contact persons:</b>			
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>	
Melanie Shepherd	801-538-7418	melaniemshepherd@utah.gov	
<b>Please address questions regarding information on this notice to the persons listed above.</b>			

**General Information**

<b>2. Rule catchline:</b>
R651-700. Administrative Procedures for Real Property Management
<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 establishes administrative procedures for real property under the management and/or ownership of the state of Utah, Division of Parks and Recreation (State Parks) real property, as set forth in Title 79, Chapter 4.
Subsection 79-4-304(2)(a) provides the parks board with rulemaking authority to (i) govern the use of the state park system; (ii) protect state parks and their natural and cultural resources from misuse or damage, including watersheds, plants, wildlife, and park amenities; and (iii) provide for public safety and preserve the peace within state parks.
(b) To accomplish the purposes stated in Subsection (2)(a), the board may enact rules that: (i) close or partially close state parks; or (ii) establish use or access restrictions within state parks.

This rule provides for governing of the state park system and protecting state parks and their natural and cultural resources.

**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 Division of State Parks (Division) has not received any written comments on this rule since the last five-year review.

**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 furthers the Division's statutory obligation to provide for resource protection and public safety within state parks. Therefore, this rule should be continued.

**Agency Authorization Information**

<b>Agency head or designee and title:</b>	Jeff Rasmussen, Director	<b>Date:</b>	07/06/2023
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**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

<b>Rule Number:</b>	<b>R657-19</b>	<b>Filing ID:</b>	<b>55189</b>
<b>Effective Date:</b>	<b>07/05/2023</b>		

**Agency Information**

<b>1. Department:</b>	Natural Resources		
<b>Agency:</b>	Wildlife Resources		
<b>Room number:</b>	Suite 2110		
<b>Building:</b>	Department of Natural Resources		
<b>Street address:</b>	1594 W North Temple		
<b>City, state and zip:</b>	Salt Lake City, UT 84116		
<b>Mailing address:</b>	PO Box 146301		
<b>City, state and zip:</b>	Salt Lake City, UT 84114-6301		
<b>Contact persons:</b>			
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>	
Staci Coons	801-450-3093	stacicoons@utah.gov	
<b>Please address questions regarding information on this notice to the persons listed above.</b>			

**General Information**

<b>2. Rule catchline:</b>
R657-19. Taking Nongame Mammals

**3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:**

Under Section 23-14-18, the Wildlife Board is authorized and required to regulate and prescribe the means by which wildlife may be taken.

**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 supporting or opposing Rule R657-19 were received since 2018, when this rule was last reviewed.

**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 Division of Wildlife Resources has carefully reviewed the biological data and purposes for which the Wildlife Board allows the taking of species listed in this rule and has determined that such species may be taken without harming the resource, while allowing recreational opportunities and depredation control on private lands. Therefore, this rule should be continued.

**Agency Authorization Information**

<b>Agency head or designee and title:</b>	J Shirley, Division Director	<b>Date:</b>	07/05/2023
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**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

<b>Rule Number:</b>	<b>R657-57</b>	<b>Filing ID:</b>	<b>52673</b>
<b>Effective Date:</b>	<b>07/05/2023</b>		

**Agency Information**

<b>1. Department:</b>	Natural Resources		
<b>Agency:</b>	Wildlife Resources		
<b>Room number:</b>	Suite 2110		
<b>Building:</b>	Department of Natural Resources		
<b>Street address:</b>	1594 W North Temple		
<b>City, state and zip:</b>	Salt Lake City, UT 84116		
<b>Mailing address:</b>	PO Box 146301		
<b>City, state and zip:</b>	Salt Lake City, UT 84114-6301		
<b>Contact persons:</b>			
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>	
Staci Coons	801-450-3093	stacicoons@utah.gov	

## FIVE-YEAR NOTICES OF REVIEW AND STATEMENTS OF CONTINUATION

Please address questions regarding information on this notice to the persons listed above.

## General Information

## 2. Rule catchline:

R657-57. Division Variance 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:

Under Sections 23-14-18 and 23-14-19, the Wildlife Board is authorized and required to provide authority, standards, and procedures for granting remedial relief to persons precluded from obtaining or using a wildlife document because of an event or condition beyond their control.

## 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 supporting or opposing Rule R657-57 were received since 2018, when this rule was last reviewed.

## 5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:

Rule R657-57 provides the authority, standards, and procedures for granting remedial relief to persons precluded from obtaining or using a wildlife document because of an event or condition beyond their control.

This rule is necessary for continued success with the remedial relief to those impacted by an event or condition beyond their control. Therefore, this rule should be continued.

## Agency Authorization Information

Agency head or designee and title:	J Shirley, Division Director	Date:	07/05/2023
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## FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

Rule Number:	R657-59	Filing ID: 55298
Effective Date:	07/05/2023	

## Agency Information

1. Department:	Natural Resources
Agency:	Wildlife Resources
Room number:	Suite 2110

<b>Building:</b>	Department of Natural Resources	
<b>Street address:</b>	1594 W North Temple	
<b>City, state and zip:</b>	Salt Lake City, UT 84116	
<b>Mailing address:</b>	PO Box 146301	
<b>City, state and zip:</b>	Salt Lake City, UT 84114-6301	
<b>Contact persons:</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 persons listed above.

## General Information

## 2. Rule catchline:

R657-59. Private Fish Ponds, Short Term Fishing Events, Private Fish Stocking, and Institutional Aquaculture

## 3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:

Under Sections 23-15-9 and 23-15-10, the Wildlife Board is authorized and required to provide the standards and procedures for private fish ponds.

## 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 supporting or opposing Rule R657-59 were received since 2018, when this rule was last reviewed.

## 5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:

Rule R657-59 provides the standards and procedures for private fish ponds.

This rule is necessary for continued success with the control of aquaculture facilities and products in the state. Therefore, this rule should be continued.

## Agency Authorization Information

Agency head or designee and title:	J Shirley, Division Director	Date:	07/05/2023
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION		
<b>Rule Number:</b>	<b>R657-60</b>	<b>Filing ID: 53475</b>
<b>Effective Date:</b>	<b>07/05/2023</b>	

**Agency Information**

<b>1. Department:</b>	Natural Resources	
<b>Agency:</b>	Wildlife Resources	
<b>Room number:</b>	Suite 2110	
<b>Building:</b>	Department of Natural Resources	
<b>Street address:</b>	1594 W North Temple	
<b>City, state and zip:</b>	Salt Lake City, UT 84116	
<b>Mailing address:</b>	PO Box 146301	
<b>City, state and zip:</b>	Salt Lake City, UT 84114-6301	
<b>Contact persons:</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Staci Coons	801-450-3093	stacicoons@utah.gov
<b>Please address questions regarding information on this notice to the persons listed above.</b>		

**General Information**

<b>2. Rule catchline:</b>
R657-60 . Aquatic Invasive Species Interdiction
<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 promulgated pursuant to authority granted to the Wildlife Board in Sections 23-27-401, 23-14-18, and 23-14-19.
<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 written comments supporting or opposing Rule R657-60 were received since 2018, when this rule was last reviewed.
<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>
Rule R657-60 defines the procedures and regulations designed to prevent and control the spread of aquatic invasive species within the state of Utah.
This rule is necessary for continued success with the control of aquatic invasive species. Therefore, this rule should be continued.

**Agency Authorization Information**

<b>Agency head or designee and title:</b>	J Shirley, Division Director	<b>Date:</b>	07/05/2023
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**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

<b>Rule Number:</b>	<b>R657-65</b>	<b>Filing ID: 51781</b>
<b>Effective Date:</b>	<b>07/05/2023</b>	

**Agency Information**

<b>1. Department:</b>	Natural Resources	
<b>Agency:</b>	Wildlife Resources	
<b>Room number:</b>	Suite 2110	
<b>Building:</b>	Department of Natural Resources	
<b>Street address:</b>	1594 W North Temple	
<b>City, state and zip:</b>	Salt Lake City, UT 84116	
<b>Mailing address:</b>	PO Box 146301	
<b>City, state and zip:</b>	Salt Lake City, UT 84114-6301	
<b>Contact persons:</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Staci Coons	801-450-3093	stacicoons@utah.gov
<b>Please address questions regarding information on this notice to the persons listed above.</b>		

**General Information**

<b>2. Rule catchline:</b>
R657-65. Urban Deer Control
<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>
Under Sections 23-14-18 and 23-14-19, the Wildlife Board is authorized and required to regulate and prescribe the means by which wildlife may be taken.
<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 written comments supporting or opposing Rule R657-65 were received since 2018, when this rule was last reviewed.
<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>

This purpose of this rule is to allow the Division of Wildlife Resources and participating cities flexibility with removing urban deer with lethal or non-lethal methods. Therefore, this rule should be continued.

**Agency Authorization Information**

<b>Agency head or designee and title:</b>	J Shirley, Division Director	<b>Date:</b>	07/05/2023
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**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

<b>Rule Number:</b>	<b>R746-345</b>	<b>Filing ID:</b>	<b>51968</b>
<b>Effective Date:</b>	<b>07/11/2023</b>		

**Agency Information**

<b>1. Department:</b>	Public Service Commission		
<b>Agency:</b>	Administration		
<b>Building:</b>	Heber M Wells Building		
<b>Street address:</b>	160 E 300 S, 4th Floor		
<b>City, state and zip:</b>	Salt Lake City, UT 84111		
<b>Mailing address:</b>	PO Box 4558		
<b>City, state and zip:</b>	Salt Lake City, UT 84114-4558		
<b>Contact persons:</b>			
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>	
Mike Hammer	801-530-6729	michaelhammer@utah.gov	

Please address questions regarding information on this notice to the persons listed above.

**General Information**

<b>2. Rule catchline:</b>
R746-345. Pole Attachments
<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>
Title 54 recognizes public convenience and necessity may sometimes require one utility to allow another utility to utilize its poles or other infrastructure and that the two utilities may fail to agree upon terms of such use, see Section 54-4-13. Therefore, the Public Service Commission (PSC) is statutorily authorized to direct such use and to prescribe reasonable terms and conditions of joint use. The same section also enumerates certain rights and responsibilities that cable television companies maintain who have entered pole attachment agreements with public utilities as regard easements and other rights-

of-way and the PSC's jurisdiction to enforce certain of those rights.

This rule establishes a transparent, non-discriminatory regulatory framework for public utilities, cable companies, and other service providers authorized under Title 54 or the federal Pole Attachment Act to obtain fair contract terms to share in the use of public utilities' poles.

This rule also provides a dispute resolution process that allows for escalation to a hearing before the PSC where necessary.

**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 PSC has received no written comments from any interested person supporting or opposing this rule since the last five-year review.

**5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:**

Cable companies and other service providers frequently require exercising their rights under Section 54-4-13 and the federal Pole Attachment Act to hang wires or other infrastructure from existing utility poles that belong to different public utilities.

This rule provides an essential framework that facilitates efficient exercise of those rights and does not saddle public utilities or the entities requiring use of their poles with unnecessary negotiation and litigation costs. Therefore, this rule should be continued.

**Agency Authorization Information**

<b>Agency head or designee and title:</b>	Thad LeVar, PSC Chair	<b>Date:</b>	07/11/2023
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**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

<b>Rule Number:</b>	<b>R746-404</b>	<b>Filing ID:</b>	<b>51982</b>
<b>Effective Date:</b>	<b>07/11/2023</b>		

**Agency Information**

<b>1. Department:</b>	Public Service Commission		
<b>Agency:</b>	Administration		
<b>Building:</b>	Heber M Wells Building		
<b>Street address:</b>	160 E 300 S, 4th Floor		
<b>City, state and zip:</b>	Salt Lake City, UT 84111		



<b>Mailing address:</b>	PO Box 4558	
<b>City, state and zip:</b>	Salt Lake City, UT 84114-4558	
<b>Contact persons:</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Mike Hammer	801-530-6729	michaelhammer@utah.gov
<b>Please address questions regarding information on this notice to the persons listed above.</b>		

**General Information**

<b>2. Rule catchline:</b>
R746-404. Regulation of Promotional Programs of Electric and Gas Public Utilities
<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>
<p>The Public Service Commission (PSC) is vested with jurisdiction to supervise the business of public utilities and to regulate them, see Section 54-4-1.</p> <p>Whenever the PSC determines the practices, equipment, or services of a public utility are unjust, unreasonable, improper, inadequate, or insufficient, the PSC is statutorily charged with remediating the inadequacy by order or rule. <i>Id.</i> at Section 54-4-7.</p> <p>This rule facilitates the PSC's regulation of promotional programs utilities offer to ensure utilities may implement such programs without undue interference while providing a mechanism that allows the PSC, the Division of Public Utilities, and other stakeholders to have an opportunity to review the program before it takes effect, ensuring the program does not adversely affect the public interest or violate applicable law.</p> <p>This rule also includes standards to ensure no promotional program discriminates among customers or provides preferential treatment to any customer or class of customers.</p>
<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>
The PSC has received no written comments from any interested person supporting or opposing this rule since the last five-year review.
<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>
This rule is necessary because it provides a mechanism for utilities to implement promotional programs that does not unduly interfere with such programs while ensuring any such program is consistent with the law and public

interest. This rule accomplishes this by providing the promotional program shall take effect after 30 days elapse from the time the utility files its application, which allows unobjectionable programs to be swiftly implemented while preserving the opportunity for objection and a hearing in instances where a program may be adverse to the public interest or inconsistent with governing law. Therefore, this rule should be continued.

**Agency Authorization Information**

<b>Agency head or designee and title:</b>	Thad LeVar, PSC Chair	<b>Date:</b>	07/11/2023
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**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

<b>Rule Number:</b>	<b>R746-406</b>	<b>Filing ID:</b>	<b>51974</b>
<b>Effective Date:</b>	<b>07/11/2023</b>		

**Agency Information**

<b>1. Department:</b>	Public Service Commission		
<b>Agency:</b>	Administration		
<b>Building:</b>	Heber M Wells Building		
<b>Street address:</b>	160 E 300 S, 4th Floor		
<b>City, state and zip:</b>	Salt Lake City, UT 84111		
<b>Mailing address:</b>	PO Box 4558		
<b>City, state and zip:</b>	Salt Lake City, UT 84114-4558		
<b>Contact persons:</b>			
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>	
Mike Hammer	801-530-6729	michaelhammer@utah.gov	
<b>Please address questions regarding information on this notice to the persons listed above.</b>			

**General Information**

<b>2. Rule catchline:</b>
R746-406. Advertising by Electric and Gas Utilities
<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>
<p>The Public Service Commission (PSC) is vested with jurisdiction to supervise the business of public utilities and to regulate them, see Section 54-4-1.</p> <p>Whenever the PSC determines the practices, equipment, or services of a public utility are unjust, unreasonable, improper, inadequate, or insufficient, the PSC is statutorily</p>

charged with remediating the inadequacy by order or rule. *Id.* at Section 54-4-7.

Most major public utilities are regulated monopolies and their customers have no alternative service provider. Therefore, Title 54 created the PSC to ensure the practices of public utilities are just and reasonable and their rates reasonably reflect cost of service with a reasonable rate of return. This rule ensures ratepayers who have no alternative service provider are not compelled to pay for political, promotional, or institutional advertising unless the PSC makes a specific finding the spending is in the public interest.

Additionally, this rule specifically exempts advertising concerning (i) efficient energy consumption; (ii) service interruptions; (iii) safety measures or emergency conditions; (iv) employment opportunities with the utility; (v) explanations of rate schedules or public hearings regarding rate schedules; and (v) energy assistance programs.

This rule also exempts any advertising otherwise required by law.

**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 PSC has received no written comments from any interested person supporting or opposing this rule since the last five-year review.

**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 necessary because it protects ratepayers from being compelled to pay for political or promotional advertising with which they may disagree or has no bearing on the quality or reliability of their service.

This rule is flexible insofar as it specifically excludes enumerated categories of advertising that are categorically in the public's and ratepayers' interests and allows utilities to obtain rate recovery for any advertising expense provided the PSC determines it is in the public interest before the expense is incurred.

This rule simply ensures that no such expenses are embedded in rates absent a finding the expenses are in the public interest. Therefore, this rule should be continued.

**Agency Authorization Information**

<b>Agency head or designee and title:</b>	Thad LeVar, PSC Chair	<b>Date:</b>	07/11/2023
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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		
Rule Number:	R495-879	Filing ID: 54253
New Deadline Date:	11/14/2023	

### Agency Information

<b>1. Department:</b>	Health and Human Services	
<b>Agency:</b>	Administration (Human Services)	
<b>Building:</b>	TSOB	
<b>Street address:</b>	4315 S 2700 W, 1st Floor	
<b>City, state and zip:</b>	Taylorsville, UT 84129	
<b>Mailing address:</b>	PO BOX 45033	
<b>City, state and zip:</b>	Salt Lake City, UT 84145-0033	
<b>Contact persons:</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Casey Cole	801-741-7523	cacole@utah.gov
Jonah Shaw	385-310-2389	jshaw@utah.gov

Please address questions regarding information on this notice to the persons listed above.

### General Information

2. Rule catchline:
R495-879. Parental Support for Children in Care
3. Reason for requesting the extension:
Following the consolidation and recodification of the Department of Health and Human Services (Department) statute, this rule will be repealed and simultaneously proposed under Title R527. This is in an effort to consolidate Administrative Rule Titles.
This five-year review extension will allow the Department the time necessary to propose a repeal and a proposed version of Rule R495-879, Parental Support for Children in Care, under Title R527.

### Agency Authorization Information

Agency head or designee and title:	David Litvack, Deputy Director	Date:	07/03/2023
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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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### Agriculture and Food

#### Plant Industry

No. 55393 (Repeal) R68-24: Industrial Hemp License for Growers

Published: 06/01/2023

Effective: 07/11/2023

No. 55411 (Amendment) R68-26: Cannabinoid Product Registration and Labeling

Published: 06/01/2023

Effective: 07/11/2023

No. 55394 (Repeal) R68-32: Sale and Transfer of Industrial Hemp Waste Material to Medical Cannabis Cultivators

Published: 06/01/2023

Effective: 07/11/2023

No. 55413 (Amendment) R68-33: Industrial Hemp Retailer Permit

Published: 06/01/2023

Effective: 07/11/2023

### Education

#### Administration

No. 55416 (Amendment) R277-320: Grow Your Own Teacher and School Counselor Pipeline Program

Published: 06/01/2023

Effective: 07/11/2023

No. 55417 (Amendment) R277-400: School Facility Emergency and Safety

Published: 06/01/2023

Effective: 07/11/2023

No. 55418 (Repeal) R277-403: School Safety Pilot Program

Published: 06/01/2023

Effective: 07/11/2023

No. 55419 (Amendment) R277-407: School Fees

Published: 06/01/2023

Effective: 07/11/2023

No. 55420 (Amendment) R277-479: Funding for Charter School Students With Disabilities on an IEP

Published: 06/01/2023

Effective: 07/11/2023

No. 55422 (Amendment) R277-484: Data Standards

Published: 06/01/2023

Effective: 07/11/2023

No. 55423 (Amendment) R277-489: Kindergarten Programs and Assessment

Published: 06/01/2023

Effective: 07/11/2023

No. 55424 (Amendment) R277-622: School-based Mental Health Qualifying Grant Program

Published: 06/01/2023

Effective: 07/11/2023

No. 55425 (Amendment) R277-625: Mental Health Screeners

Published: 06/01/2023

Effective: 07/11/2023

No. 55426 (Amendment) R277-733: Adult Education Programs

Published: 06/01/2023

Effective: 07/11/2023

No. 55427 (Repeal) R277-930: English Language Learner Software

Published: 06/01/2023

Effective: 07/11/2023

## NOTICES OF RULE EFFECTIVE DATES

### Environmental Quality

#### Air Quality

No. 55176 (New Rule) R307-315: NOx Emission Controls for Natural Gas-Fired Boilers 2.0-5.0 MMBtu

Published: 01/15/2023

Effective: 07/10/2023

No. 55176 (Change in Proposed Rule) R307-315: NOx Emission Controls for Natural Gas-Fired Boilers 2.0-5.0 MMBtu

Published: 06/01/2023

Effective: 07/10/2023

No. 55177 (New Rule) R307-316: NOx Emission Controls for Natural Gas-Fired Boilers Greater Than 5.0 MMBtu

Published: 01/15/2023

Effective: 07/10/2023

No. 55177 (Change in Proposed Rule) R307-316: NOx Emission Controls for Natural Gas-Fired Boilers Greater Than 5.0 MMBtu

Published: 06/01/2023

Effective: 07/10/2023

### Governor

#### Economic Opportunity

No. 55412 (Amendment) R357-22: Rural Employment Expansion Program

Published: 06/01/2023

Effective: 07/18/2023

### Health and Human Services

#### Population Health, Environmental Health

No. 55428 (Amendment) R392-102: Food Truck Sanitation

Published: 06/01/2023

Effective: 07/17/2023

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

No. 55386 (Amendment) R414-14: Home Health Services

Published: 05/15/2023

Effective: 07/26/2023

No. 55357 (Amendment) R414-32: Hospital Record-keeping Policy

Published: 05/15/2023

Effective: 07/26/2023

No. 55381 (Amendment) R414-504: Nursing Facility Payments

Published: 05/15/2023

Effective: 07/01/2023

No. 55319 (Amendment) R414-517: Inpatient Hospital Provider Assessments

Published: 05/01/2023

Effective: 07/11/2023

Family Health and Preparedness, Emergency Medical Services

No. 55385 (Amendment) R426-8: Emergency Medical Services Ground Ambulance Rates and Charges

Published: 05/15/2023

Effective: 06/30/2023

#### Health Care Facility Licensing

No. 55348 (Amendment) R432-1: General Health Care Facility Rules

Published: 05/15/2023

Effective: 07/06/2023

No. 55309 (Amendment) R432-2: General Licensing Provisions

Published: 05/15/2023

Effective: 07/26/2023

No. 55382 (Amendment) R432-8: Specialty Hospital - Chemical Dependency/Substance Abuse Construction

Published: 05/15/2023

Effective: 07/06/2023

No. 55347 (Amendment) R432-11: Orthopedic Hospital Construction

Published: 05/15/2023

Effective: 07/26/2023

No. 55350 (Amendment) R432-100: General Hospital Standards

Published: 05/15/2023

Effective: 07/06/2023

No. 55349 (New Rule) R432-108: Rural Emergency Hospital

Published: 05/15/2023

Effective: 07/06/2023

No. 55351 (Amendment) R432-700: Home Health Agency Rule

Published: 05/15/2023

Effective: 07/06/2023

#### Administration (Human Services)

No. 55318 (Repeal) R495-881: Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule Implementation

Published: 05/01/2023

Effective: 07/07/2023

#### Human Services Program Licensing

No. 55431 (Repeal and Reenact) R501-13: Adult Day Care

Published: 06/01/2023

Effective: 07/19/2023

### Housing Corporation

#### Administration

No. 55430 (Amendment) R460-3: Programs of UHC

Published: 06/01/2023

Effective: 07/10/2023

Insurance

Administration

No. 55451 (Amendment) R590-222: Life Settlements  
Published: 06/15/2023  
Effective: 07/25/2023

No. 55452 (Amendment) R590-249: Secondary Medical  
Condition Exclusion  
Published: 06/15/2023  
Effective: 07/25/2023

No. 55453 (Repeal and Reenact) R590-274: Submission  
and Required Disclosures of Public Adjuster Contracts  
Published: 06/15/2023  
Effective: 07/25/2023

Natural Resources

Water Resources

No. 55429 (Amendment) R653-11: Water Conservation  
Requirements and Incentives  
Published: 06/01/2023  
Effective: 07/11/2023

Wildlife Resources

No. 55414 (Amendment) R657-5: Taking Big Game  
Published: 06/01/2023  
Effective: 07/11/2023

No. 55410 (Amendment) R657-37: Cooperative Wildlife  
Management Units for Big Game or Turkey  
Published: 06/01/2023  
Effective: 07/11/2023

Workforce Services

Employment Development

No. 55373 (Amendment) R986-700: Child Care Assistance  
Published: 05/15/2023  
Effective: 07/03/2023

**End of the Notices of Rule Effective Dates Section**

