

# 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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# EXECUTIVE DOCUMENTS

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

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

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## PROCLAMATION

**WHEREAS**, since the close of the 2023 General Session of the 65th Legislature of the state of Utah, certain matters have arisen which require immediate legislative attention; and

**WHEREAS**, Article VII, Section 6 of the Constitution of the State of Utah provides that the governor may, by proclamation, convene the Senate into Extraordinary Session; and

**NOW, THEREFORE**, I, Spencer J. Cox, Governor of the State of Utah, by virtue of the authority vested in me by the Constitution and Laws of the state of Utah, do by this Proclamation call the Senate only of the 65th Legislature of the state of Utah into the Third Extraordinary Session at the Utah State Capitol in Salt Lake City, Utah, on the 13th day of September 2023, at 4:30 P.M., for the following purpose:

For the Senate to consent to appointments made by the Governor to positions within state government of the state of Utah since the close of the 2023 General Session of the Legislature of the State of Utah.

**IN TESTIMONY WHEREOF**, I have hereunto set my hand and caused to be affixed the Great Seal of the state of Utah. Done at the Utah State Capitol in Salt Lake City, Utah, this 12th day of September 2023.

(State Seal)

**Spencer J. Cox**  
Governor

ATTEST:

**Deidre M. Henderson**  
Lieutenant Governor

2023-03E

**End of the Executive Documents Section**





## NOTICES OF PROPOSED RULES

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A state agency may file a **PROPOSED RULE** when it determines the need for a substantive change to an existing rule. With a **NOTICE OF PROPOSED RULE**, an agency may create a new rule, amend an existing rule, repeal an existing rule, or repeal an existing rule and reenact a new rule. Filings received between August 16, 2023, 12:00 a.m., and September 01, 2023, 11:59 p.m. are included in this, the September 15, 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 October 16, 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 January 15, 2024, 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:	R68-9	Filing ID: 55707

#### Agency Information

<b>1. Department:</b>	Agriculture and Food	
<b>Agency:</b>	Plant Industry	
<b>Building:</b>	TSOB, South Bldg, Floor 2	
<b>Street address:</b>	4315 S 2700 W	
<b>City, state, and zip:</b>	Taylorsville, UT 84129-2128	
<b>Mailing address:</b>	PO Box 146500	
<b>City, state, and zip:</b>	Salt Lake City, UT 84114-6500	
<b>Contact persons:</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Amber Brown	385-245-5222	ambermbrown@utah.gov
Robert Hougaard	801-982-2305	rhougaard@utah.gov
Kelly Pehrson	385-977-2147	kwpehrson@utah.gov
Please address questions regarding information on this notice to the persons listed above.		

#### General Information

<b>2. Rule or section catchline:</b>
R68-9. Utah Noxious Weed Act
<b>3. Purpose of the new rule or reason for the change:</b>
During the 2023 General Session, S.B. 43 passed which updated requirements for publishing the state's general notice of Utah Noxious Weeds.
<b>4. Summary of the new rule or change:</b>
The edits in this rule combine sections to reduce redundancy and align with the Rulewriting Manual for Utah. Per S.B. 43 (2023), public notice requirements for the Weed Control Board are changed and classified as a class A notice.
The updates in this rule reflect the class A notice changes and reference Section 63G-30-102 for county-specific requirements for the general public notice.

#### Fiscal Information

<b>5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:</b>
--

<b>A) State budget:</b>																
Pursuant to S.B. 43 (2023), the county Weed Control Board is responsible for posting the Utah Noxious Weed list specific for each county, not the state, so the state budget is not impacted.																
<b>B) Local governments:</b>																
Per S.B. 43 (2023), the general notice is required to be posted by the county weed control board and is now classified as a Class A Notice.																
Any fiscal impact was accounted for in the fiscal note of S.B. 43 (2023).																
<b>C) Small businesses</b> ("small business" means a business employing 1-49 persons):																
A small business is not involved with posting or publishing a public notice; there would not be any impact with this change.																
<b>D) Non-small businesses</b> ("non-small business" means a business employing 50 or more persons):																
A non-small business is not involved with posting or publishing a public notice; there would not be any impact with this change.																
<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> ):																
This change would not impact other persons because they are not involved with posting or publishing a public notice.																
<b>F) Compliance costs for affected persons</b> (How much will it cost an impacted entity to adhere to this rule or its changes?):																
Estimating the costs for an organization to post or publish its public notice on its website is challenging because a current employee's responsibilities can absorb it.																
<b>G) Regulatory Impact Summary Table</b> (This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts will be included in the narratives above.)																
<b>Regulatory Impact Table</b>																
<table> <tr> <th>Fiscal Cost</th><th>FY2024</th><th>FY2025</th><th>FY2026</th></tr> <tr> <td>State Government</td><td>\$0</td><td>\$0</td><td>\$0</td></tr> <tr> <td>Local Governments</td><td>\$0</td><td>\$0</td><td>\$0</td></tr> <tr> <td>Small Businesses</td><td>\$0</td><td>\$0</td><td>\$0</td></tr> </table>	Fiscal Cost	FY2024	FY2025	FY2026	State Government	\$0	\$0	\$0	Local Governments	\$0	\$0	\$0	Small Businesses	\$0	\$0	\$0
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 Commissioner of the Department of Agriculture and Food, Craig Butters, 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>		
Subsection 4-2-103(1)(i)	Subsection 4-17-115(3)	Section 4-17-103

**Public Notice Information**

<b>8. The public may submit written or oral comments to the agency identified in box 1.</b> (The public may also request a hearing by submitting a written request to the agency. See Section 63G-3-302 and Rule R15-1 for more information.)	
<b>A) Comments will be accepted until:</b>	10/16/2023
<b>9. This rule change MAY become effective on:</b>	10/23/2023
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>	Craig Butters, Commissioner	<b>Date:</b>	08/30/2023
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**R68. Agriculture and Food, Plant Industry.****R68-9. Utah Noxious Weed Act.****R68-9-1. Purpose and Authority.**

(1) Promulgated under authority of Subsections 4-2-103(1)(i), 4-17-115(3), and Section 4-17-103.

(2) This rule establishes the designations for noxious weeds, the designations for noxious weed disseminators, and the prescribed treatment for articles.

**R68-9-2. Definitions.**

(1) "Commission" means the legislative body in each county of the state.

(1) [2] "Commissioner" means the Commissioner of the Utah Department of Agriculture and Food or the commissioner's designee.

(2) [3] "Department" means the Utah Department of Agriculture and Food.

(3) [4] "EDRR" means early detection and rapid response.

**R68-9-3. Designation and Publication of State Noxious Weeds.**

(1) Noxious ~~[W]weeds [Classes]are designated and published into five classes.~~

(a) [2] Noxious and invasive weeds listed in Table 1 are Class 1A: ~~[4]EDRR Watch List. They are declared [Watch List]to be: [7]~~

(i) [a] ~~[Declared noxious and invasive weeds]~~not native to Utah; ~~[7]~~

(ii) [b] ~~[Declared noxious and invasive weeds]~~not known to exist in the state;

(c) ~~[that pose]~~a serious threat to the state; and

(d) ~~[should be considered as]~~a very high priority if identified in the state.

(b) [3] Noxious and invasive weeds listed in Table 2 are Class 1B: ~~[4]EDRR[7]. They are declared to be:~~

(i) [a] ~~[Declared noxious and invasive weeds]~~not native to Utah; ~~[7]~~

(ii) [b] ~~[Declared noxious and invasive weeds that are]~~known to exist in the state in very limited populations;

(c) ~~[and pose]~~a serious threat to the state; ~~[7]~~; and ~~[should be considered as]~~a very high priority.

(e) [4] Noxious and invasive weeds listed in Table 3 are Class 2: ~~[4]Control[7]. They are declared to be:~~

(i) [a] ~~[Declared noxious and invasive weeds]~~not native to Utah; ~~[7]~~

(b) ~~[that pose]~~a threat to the state; and

(c) ~~[should be considered]~~a high priority for control.

(i) [i] Weeds listed in the control list are known to exist in varying populations throughout the state.

(ii) [i] The concentration of these weeds is at a level where control or eradication may be possible.

(d) [5] Noxious and invasive weeds listed in Table 4 are Class 3: ~~[4]Containment[7]. They are declared to be:~~

(i)a) ~~[Declared noxious and invasive weeds]~~not native to Utah; and

(b) ~~[that are]~~widely spread.

(i)i) Weeds listed in the containment noxious weeds list are known to exist in various populations throughout the state.

(ii)i) Weed control efforts may be directed at reducing or eliminating new or expanding weed populations.

(i)ii) A County Weed Control Board may determine known and established weed populations~~[, as determined by the County Weed Board, may be managed by]~~ and manage them according to any approved weed control methodology.

(iv) Class 3 weeds ~~[pose a threat to]~~threaten the agricultural industry and agricultural products.

(e)6) Noxious and invasive weeds listed in Table 4 are Class 4: ~~[Prohibited for sale or propagation]~~. They are declared to be:

(i)a) ~~[Declared noxious and invasive weeds]~~not native to Utah~~;~~ and

(b) ~~[that pose]~~a threat to the state through ~~[the]~~retail sale or propagation in the nursery and greenhouse industry.

(i)i) The department designates annual, biennial, or perennial plants that have the potential or are known to be detrimental to human or animal health, the environment, public roads, crops, or other property as ~~[Prohibited noxious weeds, are annual, biennial, or perennial plants that the department designates as having the potential or are known to be detrimental to human or animal health, the environment, public roads, crops, or other property.]~~

(ii) Prohibited and restricted noxious weed seeds are listed in Section R68-8-2.

(2)7) Tables 1, 2, 3, 4, and 5 list the weeds officially designated and published as noxious weeds for Utah. Each county ~~in Utah~~may have different priorities regarding specific state designated noxious weeds and ~~are~~~~[is therefore]~~ able to reprioritize these weeds for their own needs.

TABLE 1 Class 1A (EDRR Watch List)	
Weed Name	Binomial Name
Common crupina	Crupina vulgaris
Small bugloss	Anchusa arvensis
Mediterranean sage	Salvia aethiopis
Spring millet	Milium vernale
Syrian bean caper	Zygophyllum fabago
Plumeless thistle	Carduus acanthoides

TABLE 2 Class 1B (EDRR)	
Weed Name	Binomial Name
African rue	Peganum harmala
Camelthorn	Alhagi maurorum
Garlic mustard	Alliaria petiolate
Purple starthistle	Centaurea calcitrapa
Goat's rue	Galega officinalis
African mustard	Brassica tournefortii
Giant reed	Arundo donax
Japanese knotweed	Polygonum cuspidatum
Blueweed (Vipers bugloss)	Echium vulgare
Elongated mustard	Brassica elongate
Common St. Johnswort	Hypericum perforatum
Oxeye daisy	Leucanthemum vulgare
Cutleaf vipergrass	Scorzonera laciniata

Ventenata (North African grass)	Ventenata dubia
Malta starthistle	Centaurea melitensis

TABLE 3 Class 2 (Control)	
Weed Name	Binomial Name
Leafy spurge	Euphorbia esula
Medusahead	Taeniatherum caput-medusae
Rush skeletonweed	Chondrilla juncea
Spotted knapweed	Centaurea stoebe
Purple loosestrife	Lythrum salicaria
Squarrose knapweed	Centaurea virgata
Dyers woad	Isatis tinctoria
Yellow starthistle	Centaurea solstitialis
Yellow toadflax	Linaria vulgaris
Diffuse knapweed	Centaurea diffusa
Black henbane	Hyoscyamus niger
Dalmation toadflax	Linaria dalmatica

TABLE 4 Class 3 (Containment)	
Weed Name	Binomial Name
Russian knapweed	Acroptilon repens
Houndstounge	Cynoglossum officianale
Perennial pepperweed (Tall whitetop)	Lepidium latifolium
Phragmites (Common reed)	Phragmites australis ssp.
Tamarisk (Saltcedar)	Tamarix ramosissima
Hoary cress (globe-podded)	Lepidium draba (Cardaria draba)
Hoary cress (heart-podded)	Lepidium chalepense (Cardaria chalepensis)
Hoary cress (lens-podded)	Lepidium appelianum (Cardaria pubescens)
Canada thistle	Cirsium arvense
Poison hemlock	Conium maculatum
Musk thistle	Carduus nutans
Quackgrass	Elymus repens
Jointed goatgrass	Aegilops cylindrica
Bermudagrass*	Cynodon dactylon
Perennial Sorghum spp. Including:	
Johnson grass	Sorghum halepense
Columbus grass	Sorghum almum
Scotch thistle (Cotton thistle)	Onopordum acanthium
Field bindweed (Wild Morning-glory)	Convolvulus spp.
Puncturevine (Goathead)	Tribulus terrestris

\* Bermudagrass (*Cynodon dactylon*) shall not be a noxious weed in Washington County and shall not be subject to Title 4, Chapter 17, the Utah Noxious Weed Act within the boundaries of that county. It shall be a noxious weed throughout any other areas of the state and shall be subject to ~~the laws of the~~ state laws.

TABLE 5 Class 4 (Prohibited)	
Weed Name	Binomial Name
Cogongrass (Japanese blood grass)	<i>Imperata cylindrica</i>
Myrtle spurge	<i>Euphorbia myrsinites</i>
Dames Rocket	<i>Hesperis matronalis</i>
Scotch broom	<i>Cytisus scoparius</i>
Russian olive	<i>Elaeagnus angustifolia</i>

**R68-9-4. Designations and Publication of Articles Capable of Disseminating Noxious Weeds.**

~~(1) The following articles are designated and published as capable of disseminating noxious weeds:~~

- ~~(a) machinery and equipment, particularly combines and hay balers;~~
- ~~(b) farm trucks and common carriers;~~
- ~~(c) seed;~~
- ~~(d) screenings sold for livestock feed;~~
- ~~(e) livestock feed material;~~
- ~~(f) hay, straw, or other material of similar nature;~~
- ~~(g) manure;~~
- ~~(h) soil, sod, and nursery stock;~~
- ~~(i) noxious weeds distributed or sold for any purpose; and~~
- ~~(j) livestock.~~

**R68-9-5[4]. Designations, Publications, and Prescribed Treatment for Articles Capable of Disseminating Noxious Weeds.**

~~(1) [The]The following articles are designated and published as capable of disseminating noxious weeds. [following treatments shall be]Any person using these articles in a manner that puts the articles at risk of contamination with noxious weeds shall treat them with the minimum treatment required to prevent the dissemination of noxious weed seeds or parts of noxious weed plants that could cause new growth[by contaminated articles].~~

~~(a) Machinery and Equipment.~~

~~(i) A[ny] person, company, or corporation [shall]may not:~~

~~(A) bring any harvesting or threshing machinery, portable feed grinders, portable seed cleaners, or other farm vehicles or machinery into the state without cleaning the equipment to ensure it is free from any noxious weed seed [and]or plant parts; or~~

~~(B) move any harvesting or threshing machinery, portable feed grinders, or portable seed cleaners from any farm infested with any noxious weed without [first]cleaning the equipment to ensure it is free from any noxious weed seed and plant parts.~~

~~(ii) Threshing machinery that is contaminated with noxious weeds shall be cleaned [f]immediately [after completing]following the threshing of grain or seed[that is contaminated with noxious weeds, the machine shall be cleaned] by:~~

~~(A) removing any loose material from the top and side of the machine by sweeping with a blower;~~

~~(B) opening the lower end of the elevator, return and measuring device, and removing infested material from shakers, sieves, and other places of lodgement;~~

~~(C) running the machine empty for at least five minutes, alternately increasing and retarding the speed; and~~

~~(D) following the manufacturer's detailed suggestions for cleaning the machine.~~

~~(b) Farm Trucks and Common Carriers.~~

~~(i) [Any]A person, company, or corporation [shall]may not transport seed, screenings, or feed of any kind containing noxious weed seed over or along a[ny] highway in this state or on any railroad [operating in this state]unless the seed, screenings, or feed containing noxious weed seed is carried or transported in vehicles or containers that will prevent the leaking or scattering of the seed, screenings, or feed containing noxious weed seed.~~

~~(ii) [Each]A common carrier shall thoroughly clean [and destroy any noxious weed seeds or plant parts in]cars, trucks, vehicles, or other receptacles [used by them] after each load [shall have]has been delivered to a consignee and destroy any noxious weed seeds or plant parts before [again]placing the car, truck, vehicle, or receptacle into service.~~

~~(c) Seed.~~

~~(i) A[ny] person, firm, or corporation [shall]may not sell, offer[;] or expose for sale, or distribute [in Utah]any agricultural, vegetable, flower, or tree and shrub seeds for seeding purposes that contains any seeds of those weeds declared noxious by the department.~~

~~(ii) [The]A department agricultural inspector shall remove [from sale]any lots of seeds offered for sale that are found to contain noxious weed seeds.~~

~~(A) The seed may be recleaned under the supervision of the inspector, and[;] if found to be free from noxious weed seeds, [the seed may be]released for sale or distribution; otherwise, the seed shall be:~~

~~(I) returned to the point of origin;~~

~~(II) shipped to another state where the weed shall be returned to the point of origin;~~

~~(III) shipped to another state where the weed seed is not noxious; or~~

~~(IV) destroyed or processed in a manner as to destroy the viability of the weed seeds.~~

~~(d) Screenings Sold for Livestock Feed.~~

~~(i) A person that uses screenings in commercial feed or sells them to an ultimate consumer shall ensure that, [A]any screenings or by-products of cleaning grains or other seeds containing noxious weed seeds[when used in commercial feed or sold to the ultimate consumer, shall be] are ground fine enough or otherwise treated to destroy the weed seeds so that the finished product contains at most six whole noxious weed seeds per pound.~~

~~(ii) [Each]The operator of a mill and plant that cleans or processes any grains or other seeds shall [be required to]grind or otherwise treat any screenings containing noxious weed seeds to destroy the weed seeds to the extent that the [stated]tolerance in this rule is not exceeded before allowing the grains or other seeds to be removed from the mill or plant.~~

~~(A) Screenings may be moved to another plant for grinding and treatment[;], provided that each container or shipment is labeled with the words "screenings for processing - not for seeding or feeding" and with the name and address of the consignor and the consignee.~~

(e) Livestock Feed Material.

(i) A ~~any~~ person, company, or corporation shall not sell or offer for sale, barter, or give away to the ultimate consumer any livestock feed material, including whole grains, that contain more than six whole noxious weed seeds per pound.

(A) Whole feed grain that exceeds this tolerance of noxious weed seeds may be sold to commercial processors or commercial feed mixers if the manner of processing will reduce the number of whole noxious weed seeds to no more than six per pound.

(f) Hay, Straw, or ~~Other~~ ~~Material~~ of ~~Similar~~ ~~Nature~~.

(i) A ~~any~~ person, company, or corporation ~~shall~~ may not:

(A) sell or offer for sale, barter, or give away any hay, straw, or other material of similar nature~~;~~ that is contaminated with mature noxious weed seeds or parts of noxious weed plants that could cause new growth; or

(B) alter, change, or falsify ~~in any way~~ ~~the~~ information contained on a phytosanitary certificate.

(~~g~~) ~~ii~~ Manure produced from grain, hay, or other forage infested with noxious weeds ~~shall~~ may ~~not be applied or~~ only be dumped ~~anywhere other than~~ on the premises of the owner of the manure.

(~~h~~) ~~g~~ Soil, Sod, and Nursery Stock.

(i) ~~A person, company, or corporation may not remove~~ ~~No~~ soil, sod, or nursery stock that contains or is contaminated with noxious weed seeds~~;~~ or parts of the plant that could cause new growth~~, shall be removed~~ from the premises where it is located until ~~it is~~ cleaned of weed seed or plant parts.

(ii) Contaminated soil may be used for restrictive non-planting purposes with permission and under ~~the~~ direction of the County Weed Supervisor or a ~~department~~ representative ~~of the department~~.

~~— (i) Noxious Weeds Distributed or Sold for Any Purpose.~~

~~— (i) Any person, company, or corporation shall not sell, barter, or give away any noxious weed plants or seeds for any purpose.~~

(~~j~~) ~~h~~ Livestock.

(i) ~~A person, company, or corporation may not allow~~ ~~No~~ livestock ~~that has been fed with~~ ~~to which~~ grain, hay, or other forage containing noxious weed seeds ~~has been fed shall be permitted~~ to range or graze upon fields other than those upon which they have been so fed for ~~a period of~~ 72 hours following the feeding. During this period, the ~~x~~ livestock shall be fed materials ~~that are~~ not contaminated with noxious weed seeds.

~~(2) Any person, company, or corporation shall not sell, barter, or give away any noxious weed plants or seeds for any purpose.~~

#### **R68-9-~~6~~5. Reports from Counties.**

~~(1)~~ ~~The~~ ~~Board of County Commissioners~~ ~~commission~~ of each county, with the aid of their County Weed Control Board and their County Weed Supervisor, shall submit an "Annual Progress Report of County Noxious Weed Control Program" to the commissioner by January 15 of each year, covering the activities of the previous calendar year. ~~A prescribed form for this report shall be supplied by the department.~~ ~~The department shall provide a form for this report.~~

#### **R68-9-~~7~~6. Notices.**

~~(1) General and individual notices pertaining to the control and prevention of noxious and invasive weeds shall be substantially of the types prescribed in this rule, namely:~~

~~(a) General Notice to Control Noxious Weeds;~~

~~(b) Individual Notice to Control Noxious Weeds; and~~

~~(c) Notification of Noxious Weed Lien Assessment.~~

~~(d) General Notice To Control Noxious Weeds.]~~

~~([1]) On or before May 1 of each year, each County Weed Control Board shall publish a [A-]general [public-]notice of the noxious weeds in the county [shall be posted by the County Weed Board in at least three public places within the county-] on the Utah Public Notice Website, [and be published in one or more newspapers of general circulation throughout the county,] Notice shall meet the applicable requirements listed in Section 63G-30-102. Notice may also be published [on or before May 1 of each year and] at any other times ~~determined by~~ the County Weed Control Board ~~determines~~.~~

~~([A]a) The [public-]general notice shall [state]require that [each-]property owners [shall-]control and prevent the spread of noxious weeds on [any-]land in their possession, or under their control, and shall [serve as a warning-]warn that if they fail to comply [with this notice, enforced-]weed control measures may be imposed at the direction of county authorities.~~

~~([B]b) The general notice shall also include a list of weeds declared noxious for Utah [and for that county, if any].~~

~~— (e) Individual Notice to Control Noxious Weeds.]~~

~~([1]2) Following publication of a general notice, if a County Weed Control Board determines that definite weed control measures are required to control noxious weeds on a particular property, they [Country Weed Board shall cause]may serve notice on an [individual notice to be served upon the-]owner or the person in possession of the property. The notice will give~~[-giving]~~ specific instructions concerning when and how the noxious weeds are to be controlled within a named period.~~

~~— (A) The individual notice shall also inform the property owner or operator of legal action that may be taken against him if they fail to comply with the notice-]~~

~~(3) An owner or person in possession of property who fails to take action to control or prevent the spread of noxious weeds as specified in the notice is maintaining a public nuisance.~~

~~— (f) Notification of Noxious Weed Lien Assessment-]~~

~~([1]4) [If it is considered advisable,]If a commission declares a property a public nuisance and provides reasonable notifications, the [Board of County Commissioners]commission may [cause noxious weeds to be controlled]take action to control or prevent the spread of noxious weeds on a particular property. [and a]Any expenses incurred by the county shall be paid by the owner of record or the person in possession of the property.~~

~~([A]a) A notice shall be provided to the person in possession of the property, showing an itemized cost statement of the labor and materials [necessarily-]used in the [work of the-]control measures consistent with Section 4-17-110, including demand for payment within 90 days.~~

~~([1]b) This notice shall [also-]state that the expense constitutes a lien against the property and [shall]may be added to the general property taxes [unless payment is made to]collectible by the [C]county [F]treasurer ~~within 90 days~~ if payment is not made on time.~~

**KEY: noxious weeds, weed classifications, weed control**

**Date of Last Change: ~~June 21, 2022~~2023**

**Notice of Continuation: April 25, 2023**

**Authorizing, and Implemented or Interpreted Law: 4-2-103(1)(i); 4-17-115(3); 4-17-103; 63G-30-102**

NOTICE OF PROPOSED RULE		
TYPE OF FILING: Amendment		
Rule or Section Number:	R68-28	Filing ID: 55669

**Agency Information**

<b>1. Department:</b>	Agriculture and Food	
<b>Agency:</b>	Plant Industry	
<b>Building:</b>	TSOB, South Bldg, Floor 2	
<b>Street address:</b>	4315 S 2700 W	
<b>City, state and zip:</b>	Taylorsville, UT 84129-2128	
<b>Mailing address:</b>	PO Box 146500	
<b>City, state and zip:</b>	Salt Lake City, 84114-6500	
<b>Contact persons:</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Amber Brown	385-245-5222	ambermbrown@utah.gov
Cody James	385-515-1485	codyjames@utah.gov
Kelly Pehrson	385-977-2147	kwpehrson@utah.gov
<b>Please address questions regarding information on this notice to the persons listed above.</b>		

**General Information**

2. Rule or section catchline:
R68-28. Cannabis Processing
3. Purpose of the new rule or reason for the change:
The Department of Agriculture and Food (Department) needs to make changes to clarify the labeling requirements for the cannabis fact panel.
4. Summary of the new rule or change:
In Section R68-28-2, a definition is added for "advertised cannabinoid."
In addition, clarifying language has been added to Section R68-28-14 that requires that for products intended to be ingested, the amount of total THC and any advertised cannabinoids be included on the cannabis fact panel, listed in milligrams per serving.

**Fiscal Information**

5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:
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A) State budget:
There is no anticipated cost or savings to the state budget. These changes clarify labeling requirements and will not increase costs to the Department for enforcement or bring in additional funds to the state.
B) Local governments:
This rule change will not have an impact on local governments because they do not administer or participate in the industrial hemp program.
C) Small businesses ("small business" means a business employing 1-49 persons):
This rule change will not have an impact on small businesses. Labeling requirements have been clarified but the cost to label products should remain the same.
The Department provides flexibility in rolling out new labeling requirements to minimize the fiscal impact on businesses.
D) Non-small businesses ("non-small business" means a business employing 50 or more persons):
This rule change will not have an impact on non-small businesses. Labeling requirements have been clarified but the cost to label products should remain the same.
The Department provides flexibility in rolling out new labeling requirements to minimize the fiscal impact on businesses.
E) Persons other than small businesses, non-small businesses, state, or local government entities ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an <b>agency</b> ):
This rule change will not have an impact on other persons businesses. Labeling requirements have been clarified but the cost to label products should remain the same.
The Department provides flexibility in rolling out new labeling requirements to minimize the fiscal impact.
F) Compliance costs for affected persons (How much will it cost an impacted entity to adhere to this rule or its changes?):
Compliance costs will not change because the Department is just clarifying labeling requirements.
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>
<b>H) Department head comments on fiscal impact and approval of regulatory impact analysis:</b>			
The Commissioner of the Department of Agriculture and Food, Craig W Butters, 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>		
Subsection 4-41a-701(3)	Subsection 4-2-103(1)(i)	

#### 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>	10/16/2023

<b>9. This rule change MAY become effective on:</b>	10/23/2023
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>	Craig W Butters, Commissioner	<b>Date:</b>	08/18/2023
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#### R68. Agriculture and Food, Plant Industry.

##### R68-28. Cannabis Processing.

##### R68-28-1. Authority and Purpose.

~~[(1)]~~ Pursuant to Subsections 4-41a-103(5), 4-41a-302(3)(b)(ii), 4-41a-404(3), 4-41a-405(2)(b)(iv), 4-41a-701(3), 4-41a-801(1), and 4-2-103(1)(i), this rule establishes the application process, qualifications, and requirements to obtain and maintain a cannabis processing license.

##### R68-28-2. Definitions.

~~[(1)]~~ "Advertised Cannabinoid" means a cannabinoid listed on the product face.

~~[(1)]~~~~2~~ "Appealing to children" means:

(a) has a likeness bearing resemblance to a cartoon character or fictional character; or

(b) appears to imitate a food or other product that is typically marketed toward or is appealing to children.

~~[(2)]~~~~3~~ "Applicant" means any person or business entity who applies for a cannabis processing facility license.

~~[(3)]~~~~4~~(a) "Artificially derived cannabinoid" means a chemical substance that is created by a chemical reaction that changes the molecular structure of any chemical substance derived from the cannabis plant.

(b) "Artificially derived cannabinoid" does not include:

(i) a naturally occurring chemical substance that is separated from the cannabis plant by a chemical or mechanical extraction process; or

(ii) a cannabinoid that is produced by decarboxylation from a naturally occurring cannabinoid acid without the use of a chemical catalyst.

~~[(4)]~~~~5~~ "Batch" means a quantity of:

(a) cannabis extract produced on a particular date and time, following clean up until the next clean up during which lots of cannabis are used;

(b) cannabis product produced on a particular date and time, following clean up until the next clean up during which cannabis extract is used; or

(c) cannabis flower packaged on a particular date and time, following clean up until the next clean up during which lots of cannabis are being used.

~~[(5)]~~~~6~~ "Brand name" means a type of product manufactured by a particular company under a particular name. "Brand name" does not mean strains or flavors.

~~[(6)]~~~~7~~ "Board" means the Cannabis Production Establishment Licensing Advisory Board, created in Section 4-41a-201.1.

~~[(7)]~~~~8~~ "Cannabinoid isolate" means the same as the term is defined in Subsection R68-29-2(11).



(~~8~~)(9)(a) "Cannabis" means any part of a marijuana plant.

(b) "Cannabis" does not mean, for the purposes of this rule, industrial hemp.

(~~9~~)(10) "Cannabis concentrate" means the product of any chemical or physical process applied to cannabis biomass that concentrates or isolates the cannabinoids contained in the biomass.

(1(~~0~~)(1) "Cannabis cultivation byproduct" means any portion of a cannabis plant that is not intended to be sold as a cannabis plant product.

(1(~~4~~)(2) "Cannabis cultivation facility" means a person that:

(a) possesses cannabis;

(b) grows or intends to grow cannabis; and

(c) sells or intends to sell cannabis to a cannabis cultivation facility or to a cannabis processing facility.

(1(~~2~~)(3) "Cannabis derivative product" means a product made using cannabis concentrate.

(1(~~3~~)(4) "Cannabis fact panel" means a part of the label that contains the information described in Subsections R68-28-13(6) and R68-28-13(7).

(1(~~4~~)(5) "Cannabis plant product" means any portion of a cannabis plant intended to be sold by a medical cannabis pharmacy in a form that is recognizable as a portion of a cannabis plant.

(1(~~5~~)(6) "Cannabis processing facility" means a person that:

(a) acquires or intends to acquire cannabis from a cannabis production establishment;

(b) possesses cannabis with the intent to manufacture a cannabis product;

(c) manufactures or intends to manufacture a cannabis product from unprocessed cannabis or a cannabis concentrate; and

(d) sells or intends to sell a cannabis product to a medical cannabis pharmacy.

(1(~~6~~)(7) "Cannabis processing facility agent" means an individual who holds a valid cannabis production establishment agent registration card with a cannabis processing facility designation.

(1(~~7~~)(8) "Cannabis production establishment agent registration card" means a registration card that the department issues that:

(a) authorizes an individual to act as a cannabis production establishment agent; and

(b) designates the type of cannabis production establishment for which an individual may act as an agent.

(1(~~8~~)(9) "COA" means Certificate of Analysis from an independent cannabis testing laboratory.

(~~19~~)(20) "Complaint" means any negative feedback received from a medical cannabis patient or medical cannabis or industrial hemp licensee.

(2(~~0~~)(1) "Department" means the Utah Department of Agriculture and Food.

(2(~~4~~)(2) "Directions for use" means recommended routes of administration for a medical cannabis treatment and suggested usage guidelines, and may include:

(a) THC percentage;

(b) strain names;

(c) strain dominance; or

(d) dietary restrictions.

(2(~~2~~)(3) "Label" means a written, printed, or graphic display on the immediate container of a product.

(2(~~3~~)(4) "Labeling" means a label and other written, printed, or graphic display:

(a) on the product or the product's container or wrapper; or

(b) accompanying the product.

(2(~~4~~)(5) "Logo" means symbols, stylized text, or both that represent a company through a visual image that can be easily understood and recognized.

(2(~~5~~)(6) "Lot" means the quantity of:

(a) flower produced on a particular date and time, following clean up until the next clean up during which the same materials are used; or

(b) trim, leaves, or other plant matter from cannabis plants produced on a particular date and time, following clean up until the next clean up.

(2(~~6~~)(7) "Product face" means the part of a label that is on the outer packaging and most likely to be displayed, presented, or shown under customary conditions of display for retail sale.

(2(~~7~~)(8) "Total THC" means the sum of the determined amounts of delta-9-THC and delta-9-THCA, according to the formula: Total THC = delta-9-THC + (delta-9-THCA x 0.877).

### **R68-28-3. Cannabis Processing Facility License.**

(1) A cannabis processing facility license allows the licensee to receive cannabis from a cannabis production facility.

(2) A Tier 1 cannabis processing facility license allows the licensee to:

(a) create cannabis concentrate;

(b) create cannabis derivative product; and

(c) package and label final product.

(3) A Tier 2 cannabis processing facility license allows the licensee to package and label cannabis and cannabis final product.

(4) A complete application shall include the required fee, statements, forms, diagrams, operation plans, copy of current Utah manufactured food establishment registration, and other applicable documents required in the application packet to be accepted and processed by the department.

(5) Before approving an application, the department may contact the applicant and request additional supporting documentation or information.

(6) Before issuing a license, the department shall inspect the proposed premises to determine if the applicant complies with state laws and rules.

(7) Each cannabis processing facility license shall expire one calendar year from the date of licensure.

(8) An application for renewals shall be submitted to the department 30 days before expiration.

(9) If the renewal application is not submitted 30 days before the expiration date, the licensee may not continue to operate.

(10) A cannabis production establishment license is not transferable or assignable. If the ownership of a cannabis production establishment changes by 50% or more, the requirements of Subsection 4-41a-201(15) shall be followed.

### **R68-28-4. Cannabis Processing Facility Requirements.**

(1) A cannabis processing facility operating plan shall contain a blueprint of the facility containing the following information:

(a) the square footage of the areas where cannabis is to be extracted;

(b) the square footage of the areas where cannabis or cannabis products are to be packaged and labeled;

(c) the square footage of the areas where cannabis products are manufactured;

(d) the square footage and location of storerooms for cannabis awaiting extraction;

(e) the square footage and location of storerooms for cannabis awaiting further manufacturing;

(f) the area where finished cannabis and cannabis products are stored;

(g) the location of toilet facilities and hand washing facilities;

(h) the location of a break room and location of personal belonging lockers;

(i) the location of the areas to be used for loading and unloading of cannabis and cannabis products; and

(j) the total square footage of the overall cannabis processing facility.

(2) A cannabis processing facility shall have written emergency procedures to be followed in case of:

(a) fire;

(b) chemical spill; or

(c) other emergency at the facility.

(3) A cannabis processing facility shall have a written plan to handle potential recall and destruction of cannabis due to contamination.

(4) A cannabis processing facility shall use a standardized scale that is registered with the department when cannabis is:

(a) packaged for sale by weight;

(b) bought and sold by weight; or

(c) weighed for entry into the inventory control system.

(5) A cannabis processing facility shall compartmentalize each area in the facility based on function and shall limit access between compartments.

(6) A cannabis processing facility shall limit access to the compartments to the appropriate agents.

(7) A cannabis processing facility creating cannabis derivative product shall develop standard operating procedures.

(8) Pursuant to Subsection 4-41a-403(4)(b), a cannabis processing facility may use signage on the property that includes a logo, as long as the logo does not include:

(a) unprofessional terms, slang, phrasing, or verbiage associated with the recreational use of cannabis;

(b) any image bearing resemblance to a cartoon character or fictional character whose target audience is children or minors;

(c) content, symbol, or imagery that the cannabis processing facility knows or should know appeals to children;

(d) imagery featuring a person using the product in any way;

(e) any recreationally oriented subject; or

(f) any statement, design, or representation, picture, or illustration that is obscene or indecent.

(9) A cannabis processing facility shall keep records of any complaints received and make those records available to the department upon request.

(10) A cannabis processing facility shall keep records verifying that each time they receive a batch of vaporizer cartridges a sample is tested for heavy metals by an independent cannabis testing laboratory pursuant to Section 4-41a-603 or have a certificate of conformance from the manufacturer.

#### **R68-28-5. Separation of Cannabis and Hemp Processed in a Single Facility.**

(1) Any facility that has both an industrial hemp processing license and a license for medical cannabis processing shall ensure physical separation of medical cannabis and industrial hemp in their facility.

(2) Processing of industrial hemp material and cannabis material shall not occur on the same equipment on the same day, unless cleaned between runs.

(3) Processing equipment may be considered neutral territory for hemp and cannabis if:

(a) only one material is present in neutral territory at a time;

(b) packaging tables in neutral territory are only used for the material being processed that day; and

(c) if packaging tables are used for another material they shall be moved to the respective side of the facility.

(4) If the facility uses the same machinery to process both industrial hemp and medical cannabis:

(a) the machinery shall be cleaned in between hemp and cannabis days;

(b) cleaning logs shall be kept and monitored by the department upon inspection of the facility; and

(c) cleaning logs shall include the machines used, the date cleaned, and the name of the employee that conducted the cleaning.

(5) Packaging of medical cannabis and industrial hemp may occur:

(a) in a neutral zone; or

(b) in a designated side of the facility.

(6) Freezer separation.

(a) Each licensee that processes both medical cannabis and industrial hemp shall have a separate freezer or a physical separation within the same freezer for each material.

(b) Cannabis and hemp material shall be clearly labeled pursuant to the requirements of this rule and Rule R68-25 and shall be in sealed containers.

(7) Storage separation.

(a) Industrial hemp and medical cannabis shall be stored in separate secure locations.

(b) Storage shall include storage for:

(i) final product;

(ii) raw material; and

(iii) processed material.

(8) Upon request, the licensee shall inform the department of how separation of materials is implemented, including the facility's separation procedures for raw material, extract, and final products.

#### **R68-28-6. Cannabis Extraction Requirements.**

(1) A cannabis processing facility shall ensure hydrocarbons n-butane, isobutane, propane, or heptane are of at least 99% purity.

(2) A cannabis processing facility shall use a professional grade extraction system designed to recover the solvents, work in an environment with proper ventilation, and control each source of ignition where a flammable atmosphere is or may be present.

(3) A cannabis processing facility using carbon dioxide (CO<sub>2</sub>) gas extraction system shall use a professional grade closed loop CO<sub>2</sub> gas extraction system where each vessel is rated to a minimum of six hundred pounds per square inch and CO<sub>2</sub> shall be at least 99% purity.

(4) Closed loop hydrocarbon, alcohol, or CO<sub>2</sub> extraction systems shall be commercially manufactured and bear a permanently affixed and visible serial number.

(5) A cannabis processing facility using a closed loop system shall, upon request, provide the department with certification from a licensed engineer stating the system is:

(a) safe for its intended use;

(b) commercially manufactured; and  
 (c) built to conform to recognized and generally accepted good engineering practices, such as:

- (i) the American Society of Mechanical Engineers (ASME);
- (ii) American National Standards Institute (ANSI);
- (iii) Underwriters Laboratories; or
- (iv) The American Society for Testing and Materials.

(6) The certification document shall contain the signature and stamp of the certifying professional engineer and the serial number of the extraction unit being certified.

(7) A cannabis processing facility may use an alternative extraction method with prior approval from the department.

(8) A cannabis processing facility shall use food grade ingredients to create cannabis derivative product.

(9) A cannabis processing facility may use heat, screens, presses, steam distillation, ice water, and other mechanical methods which do not use solvents or gasses.

(10) A cannabis processing facility shall ensure each solvent, with the exception of CO<sub>2</sub>, is extracted in a manner to recapture the solvent and ensure that it is not vented into the atmosphere.

(11) A cannabis processing facility agent using solvents or gasses in a closed loop system shall be fully trained in the use of the system and have direct access to applicable material safety data sheets.

(12) Parts per million for one gram of finished extract cannot exceed residual solvent or gas levels provided in Rule R68-29.

#### **R68-28-7. Cannabinoid Isolate.**

(1) A licensed Tier 1 cannabis processing facility may use cannabinoid isolate from a licensed industrial hemp processing facility.

(2) A Tier 1 cannabis processing facility may not receive more than 120 kilograms of cannabinoid isolate in a single license year.

(3) Any transfer of cannabinoid isolate shall be accompanied by a full panel COA.

(4) The cannabis processing facility shall maintain record of each transfer of cannabinoid isolate that is available for review by the department, including:

- (a) the source of the cannabinoid isolate and verification that it was derived from certified industrial hemp;
- (b) the intended use of the cannabinoid isolate; and
- (c) the disposition of the cannabinoid isolate.

(5) Upon receipt of cannabinoid isolate, a cannabinoid processing facility shall submit a sample of the isolate to a licensed independent cannabis testing laboratory for cannabinoid and adulterant testing, pursuant to the requirements of Rule R68-29.

#### **R68-28-8. Security Requirements.**

(1) At a minimum, each cannabis processing facility shall have a security alarm system on each perimeter entry point and perimeter window.

(2) At a minimum, a licensed cannabis processing facility shall have a complete video surveillance system:

- (a) with minimum camera resolution of 1280 x 720 pixels or pixel equivalent for analog; and
- (b) that retains footage for at least 45 days.

(3) Each camera shall be fixed and placement shall allow for the clear and certain identification of any person and activities in controlled areas.

(4) Controlled areas included:

- (a) any entrances and exits, or ingress and egress vantage points;
- (b) any areas where cannabis or cannabis products are stored;
- (c) any areas where cannabis or cannabis products are extracted;
- (d) any areas where cannabis or cannabis products are manufactured, packaged, or labeled; and
- (e) any areas where cannabis waste is being moved, processed, stored, or destroyed.

(5) Each camera shall record continuously.

(6) For locally stored footage, the surveillance system storage device shall be secured in the facility in a lockbox, cabinet, closet, or secured in another manner to protect from employee tampering or theft.

(7) For footage stored on a remote server, access shall be restricted to protect from employee tampering.

(8) Any gate or entry point must have lighting sufficient to record activity occurring in low light conditions.

(9) Each visitor to a cannabis processing facility shall be required to display an identification badge issued by the facility while on the premises.

(10) At any time, visitors shall be escorted by a cannabis processing facility agent.

(11) A cannabis processing facility shall keep and maintain a visitors log showing:

- (a) the full name of each visitor entering the facility;
- (b) badge number issued;
- (c) the time of arrival;
- (d) the time of departure; and
- (e) the purpose of the visit.

(12) The cannabis processing facility shall keep the visitors log for a minimum of one year.

(13) The cannabis processing facility shall make the visitor log available to the department upon request.

#### **R68-28-9. Inventory Control.**

(1) Each batch or lot of cannabis, cannabis derivative product, cannabis product, test sample, or cannabis waste shall be entered into the inventory control system. Recorded information shall include:

- (a) unique identification number;
- (b) package ID;
- (c) name of product;
- (d) facility name and license number; and
- (e) date created.

(2) Each batch or lot of cannabis, cannabis derivative product, cannabis product, sample, or cannabis waste shall be traceable to the lot.

(3) Unique identification numbers may not be reused.

(4) Each batch, lot, or sample of cannabis shall have a unique identification number that is displayed on a physical tag.

(5) The tag shall be legible and placed in a position that can be clearly read.

(6) The following shall be reconciled in the inventory control system at the close of each business each day:

(a) date and time material containing cannabis are being transported to a cannabis production establishment or medical cannabis pharmacy;

- (b) each sample used for testing and the test results;
- (c) a complete inventory of material containing cannabis;
- (d) cannabis product by unit count;
- (e) weight per unit of product;
- (f) weight and disposal of cannabis waste materials;
- (g) the identity of who disposed of the cannabis waste and the location of the waste receptacles; and

(h) theft or loss or suspected theft or loss of material containing cannabis.

(7) A receiving cannabis processing facility shall document in the inventory control system any material containing cannabis received, and any difference between the quantity specified in the transport manifest and the quantity received.

(8) A cannabis processing facility shall immediately upon receipt of THC extract from a licensed industrial hemp processor enter the following information into the inventory control system:

- (a) the amount of THC extract received;
- (b) the name, address, and licensing number of the industrial hemp processor;
- (c) the weight per unit of product received; and
- (d) the assigned unique identification number.

#### **R68-28-10. Cannabis Processing Facility Agents.**

(1) A prospective cannabis processing facility agent shall apply to the department for a cannabis processing facility agent registration card on a form provided by the department.

(2) An application is not considered complete until the background check has been completed, the registration fee has been paid, and the prospective agent has submitted the required training certificate.

(3) The cannabis processing facility agent registration card shall contain:

- (a) the full name of the agent;
- (b) identifying information; and
- (c) a photograph of the agent.

(4) A cannabis processing facility is responsible to ensure that each agent has received any task specific training as outlined in the operating plan submitted to the department.

(5) A cannabis processing facility agent shall have a properly displayed identification badge which has been issued by the department at all times while on the facility premises or while engaged in the transportation of cannabis.

(6) Each cannabis processing facility agent shall have their state issued identification card in their possession to certify the information on their badge is correct.

(7) Each cannabis processing facility shall maintain a list of each employee that holds a cannabis processing facility agent registration card and provide the list to the department upon request.

#### **R68-28-11. Minimum Storage and Handling Requirements.**

(1) A cannabis processing facility shall store cannabis, cannabis concentrate, or cannabis product in a location separated by a physical barrier from outdated, damaged, deteriorated, misbranded, or adulterated product or product whose containers or packaging have been opened or breached.

(2) Cannabis, cannabis concentrate, and cannabis product shall be stored at least six inches off the ground.

(3) Storage areas shall:

(a) be maintained in a clean and orderly condition; and  
(b) be free from infestation by insects, rodents, birds, or vermin.

(4) A cannabis processing facility shall:

(a) track and label each cannabis plant product and cannabis concentrate;

(b) ensure each unfinished product is stored in a secure location; and

(c) immediately after completion of the process or at the end of the scheduled business day return to a secure location.

(5) Cannabis shall be stored away from other chemicals, lubricants, pesticides, or other potential contaminants.

(6) If a manufacturing process cannot be completed at the end of a working day, the processor shall securely lock the processing area or tanks, vessels, bins, or bulk containers containing cannabis inside an area or room that affords adequate security.

#### **R68-28-12. Product Appearance and Flavor.**

(1) A cannabis processing facility may not produce a cannabis product that is designed to mimic a candy product.

(2) A cannabis processing facility may not shape a cannabis product in any way to appeal to children.

#### **R68-28-13. Processing of Cannabis and Cannabis Product.**

(1) A cannabis processing facility shall process, manufacture, package, and label cannabis and cannabis product in accordance with 21 CFR 111, "Current Good Manufacturing, Packaging, Labeling, or Holding Operation for Dietary Supplements."

(2) Cannabis and cannabis product shall be packaged in child-resistant packaging in accordance with 16 CFR 1700.

(3) A cannabis processing facility shall package cannabis or cannabis product in accordance with this rule and Section 4-41a-602 before transportation to a medical cannabis pharmacy.

(4) Any container or packaging containing cannabis or cannabis product shall protect the product from contamination and shall not impart any toxic or deleterious substance to the cannabis or cannabis product.

(5) Cannabis cultivation byproduct shall either be:

(a) chemically or physically processed to produce a cannabis concentrate for incorporation into cannabis derivative product; or

(b) destroyed according to Section 4-41a-405.

(6) Cannabis concentrate and product produced by cannabis processing facilities shall be tested pursuant to Rule R68-29.

(7) If a cannabis product contains artificially derived cannabinoids they shall be isolated to a purity of greater than 95%, as required by Subsection 4-41a-603(3).

(8) A cannabis product may vary in the cannabis product's labeled cannabinoid profile by up to 10% of the indicated amount of a given cannabinoid, by weight.

#### **R68-28-14. Labeling and Packaging of Cannabis and Cannabis Product.**

(1) Cannabis product labeling shall contain the following information:

(a) the medicinal dosage form identified on the product face along with the words "THC or Cannabis Infused":

(i) "gummies" may be used instead of "gelatinous cube";

(ii) "tincture" may be used instead of "sublingual preparation" or "liquid suspension"; and

(iii) a descriptive product name is allowed if the text is smaller than the dosage form and is not appealing to children;

(b) the name and license number of the cannabis processing facility;

(c) directions for consumers to contact the department with product complaints by going to [medicalcannabis.utah.gov/production](http://medicalcannabis.utah.gov/production);

(d) for products containing THC, a warning symbol provided by the department; and

(e) the amount of total THC contained in the package, in milligrams.

(2) Before January 1, 2024, cannabis product labeling shall contain the following warning: "WARNING: Cannabis has intoxicating effects and may be addictive. Do not operate a vehicle or machinery under its influence. KEEP OUT OF REACH OF CHILDREN. This product is for medical use only. Use only as directed by a recommending medical provider."

(3) Starting on January 1, 2024, cannabis product labeling shall contain the following warning: "WARNING: Cannabis has intoxicating effects, may be addictive, and may increase risk of mental illness. Do not operate a vehicle or machinery under its influence. KEEP OUT OF REACH OF CHILDREN. This product is for medical use only. Use only as directed by a recommending medical provider."

(4) Starting on May 3, 2023, raw cannabis or a cannabis product sold in a vaporizer cartridge shall include a warning label that states:

(a) "WARNING: Vaping of cannabis-derived products has been associated with lung injury."; and

(b) "WARNING: Inhalation of cannabis smoke has been associated with lung injury."

(5) A cannabis processing facility may include a QR code on the cannabis product labeling that links to a COA from a licensed independent cannabis testing laboratory. The QR code may not link to any other information.

(6) Any information appearing on the cannabis product labeling shall be:

(a) displayed in any legible font, that is not a script or decorative font, provided that the lowercase letter "o" is at least one-sixteenth inch in height;

(b) displayed in a color that contrasts conspicuously with its background; and

(c) displayed in English, although a licensee may also choose to display required information in additional languages.

(7) A cannabis processing facility shall place a cannabis fact panel on a cannabis product before the sale of the cannabis product to a medical cannabis pharmacy.

(8) The cannabis fact panel shall be printed in black and white.

(9) The cannabis fact panel shall be securely affixed to the package.

(10) The cannabis fact panel for cannabis plant product shall include the following information, from top to bottom, in the order as listed:

(a) the name of the cannabis cultivation facility;

(b) the lot number;

(c) the date of harvest;

(d) the date of final testing;

(e) the batch number;

(f) the date on which the product was packaged;

(g) the quantity of any cannabinoid listed as present on the COA that is greater than 1% of total cannabinoids;

(h) the expiration date; and

(i) the net weight displayed in grams.

(11) THC potency levels for cannabis flower shall be listed as total THC in milligrams per gram.

(12) The cannabis fact panel for cannabis derivative product shall include the following information, from top to bottom, in the order listed:

(a) the batch number;

(b) the date of the final testing;

(c) the date on which the product was packaged;

(d) for products intended to be ingested, the amount of total THC and any advertised cannabinoid in milligrams per serving;

([d]e) the quantity of any cannabinoid listed as present on the COA that is greater than 1% of total cannabinoids;

([e]f) the expiration date;

([f]g) the total amount of THC measured in milligrams per gram;

([g]h) a list of each ingredient and each major food allergen as identified in 21 U.S.C. 343;

([h]i) the identity of any artificially derived cannabinoid present in the product;

([i]j) the net weight of the product displayed in grams or milliliters and number of pieces, if applicable; and

([j]k) a disclosure of the type of extraction process used and any solvent, gas, or other chemical used in the extraction process.

(13) The label of a cannabis derivative product may include a flavor name if it is not candy-like or a name the facility knows or should know appeals to children.

(14) The label of a cannabis product that contains an artificially derived cannabinoid shall clearly display the following text: "This product contains artificially derived cannabinoids."

(15) Any terpene listed on a cannabis product package shall be verified as present by a licensed independent cannabis testing laboratory and have its quantity listed on the fact panel.

(16) A cannabis processing facility may include a logo and product brand name on the cannabis product face that is exempt from the requirements of Subsection R68-28-13(3) and that:

(a) does not exceed 20% of the product face;

(b) does not obscure the information required on the label; and

(c) does not include:

(i) unprofessional terms, slang, phrasing, or verbiage associated with the recreational use of cannabis;

(ii) any image bearing resemblance to a cartoon character or fictional character whose target audience is children or minors;

(iii) content, symbol, or imagery that the cannabis processing facility knows or should know appeals to children;

(iv) imagery featuring a person using the product in any way;

(v) any recreationally oriented subject; or

(vi) any statement, design, or representation, picture, or illustration that is obscene or indecent.

(17) No other information, illustration, or depiction with the exception of directions for use shall appear on the labeling.

(18) Shapes on cannabis product packaging or labeling shall not resemble the product or real-world items.

(19) After January 1, 2023, cannabis product packaging, logos, and brand names shall be pre-approved by the department.

#### **R68-28-15. Transportation.**

(1) A printed transport manifest shall accompany each transport of cannabis.

- (2) The manifest shall contain the following information:
  - (a) the cannabis production establishment address and license number of the departure location;
  - (b) physical address and license number of the receiving location;
  - (c) strain name, quantities by weight, and unique identification numbers of each cannabis material to be transported;
  - (d) date and time of departure;
  - (e) estimated date and time of arrival; and
  - (f) name and signature of each agent accompanying the cannabis.
- (3) The transport manifest may not be voided or changed after departing from the original cannabis production establishment.
- (4) A copy of the transport manifest shall be given to the receiving cannabis production establishment or medical cannabis pharmacy.
- (5) The receiving cannabis processing facility, independent laboratory, or medical cannabis pharmacy shall ensure that the cannabis material received is as described in the transport manifest and shall:
  - (a) record the amounts received for each strain into the inventory control system; and
  - (b) document any differences between the quantity specified in the transport manifest and the quantities received in the inventory control system.
- (6) During transportation, cannabis shall be:
  - (a) shielded from the public view;
  - (b) secured; and
  - (c) temperature controlled if perishable.
- (7) A cannabis production facility shall contact the department within 24 hours if a vehicle transporting cannabis is involved in an accident that involves product loss.
- (8) Only the registered agents of the cannabis processing facility may occupy a transporting vehicle.

#### **R68-28-16. Recall Protocol.**

- (1) The department may initiate a recall of cannabis or cannabis products if:
  - (a) evidence exists that pesticides not approved by the department are present on or in the cannabis or cannabis product;
  - (b) evidence exists that residual solvents are present on or in cannabis or cannabis product;
  - (c) evidence exists that harmful contaminants are present on or in cannabis or cannabis product; or
  - (d) the department believes or has reason to believe the cannabis or cannabis product is unfit for human consumption.
- (2) The recall plan of a cannabis processing facility shall include, at a minimum:
  - (a) a designation of at least one member of the staff who serves as the recall coordinator;
  - (b) procedures for identifying and isolating product to prevent or minimize distribution to patients;
  - (c) procedures to retrieve and destroy product; and
  - (d) a communications plan to notify those affected by the recall.
- (3) The cannabis processing facility shall track the total amount of affected cannabis or cannabis product and the amount of affected cannabis or cannabis product returned to the facility as part of the recall.
- (4) The cannabis processing facility shall coordinate the destruction of the cannabis or cannabis product with the department

and allow the department to oversee the destruction of the affected product.

- (5) The department has authority to monitor the progress of the recall until the department declares an end to the recall.

- (6) A cannabis production facility shall notify the department before initiating a voluntary recall.

#### **R68-28-17. Cannabis Waste Disposal.**

- (1) Solid and liquid wastes generated during cannabis processing shall be stored, managed, and disposed of in accordance with applicable state law.

- (2) Wastewater generated during the cannabis production and processing shall be disposed of in compliance with applicable state law.

- (3) Cannabis waste generated from the cannabis plant, trim, and leaves is not considered hazardous waste unless it has been treated or contaminated with a solvent or pesticide.

- (4) Cannabis waste shall be made unusable before leaving the cannabis processing facility.

- (5) Cannabis waste, that is not designated as hazardous, shall be made unusable by grinding and incorporating the cannabis waste with other ground materials so the resulting mixture is at least 50% non-cannabis waste by volume or other methods approved by the department before implementation.

- (6) Materials used to grind and incorporate with cannabis fall into two categories:

- (a) compostable; or
- (b) non-compostable.

- (7) Compostable waste is cannabis waste to be disposed of as compost or in another organic waste method mixed with:

- (a) food waste;
- (b) yard waste; or
- (c) vegetable-based grease or oils.

- (8) Non-compostable waste is cannabis waste to be disposed of in a landfill or another disposal method, such as incineration, mixed with:

- (a) paper waste;
- (b) cardboard waste;
- (c) plastic waste; or
- (d) soil.

- (9) Cannabis waste includes:

- (a) cannabis plant waste, including roots, stalks, leaves, and stems;
- (b) excess cannabis or cannabis products from any quality assurance testing;
- (c) cannabis or cannabis products that fail to meet testing requirements; and
- (d) cannabis or cannabis products subject to a recall.

#### **R68-28-18. Change in Operation Plans.**

- (1) A cannabis processing facility shall submit a notice, on a form provided by the department, before making any changes to the facility's operating plan, including:

- (a) ownership or financial backing of the facility;
- (b) the facility's name;
- (c) a change in location;
- (d) any modification, remodeling, expansion, reduction or physical, non-cosmetic alteration of a facility;
- (e) change to the number of production lines; or
- (f) any information requested by the department that shall allow the department to determine if requirements will be met.

(2) A cannabis processing facility may not implement changes to the initial approved operation plan without board approval.

(3) The board shall approve of requested changes unless approval would lead to a violation of the applicable laws and rules of the state.

(4) The department shall specify the reason for the denial of approval for a change to the operation plan.

(5) Before the board's review of a cannabis production establishment license under Subsection 4-41a-201.1(7)(e), the cannabis production establishment shall provide the board with:

(a) blueprints that show that there will be physical separation between medical cannabis and industrial hemp produced in their facility, including demonstrating storage and packaging areas on separate sides of the same room; and

(b) any information requested by the board that shall allow the board to determine if the requirements of Section R68-28-5 will be met before the medical cannabis production establishment processes industrial hemp or industrial hemp products.

#### **R68-28-19. Renewals.**

(1) A cannabis processing facility shall submit a notice of intent to renew and the licensing fee to the department within 30 days of license expiration.

(2) If the licensing fee and intent to renew are not submitted within 30 days of license expiration, the licensee may not continue to operate.

(3) The board may take into consideration significant violations issued in determining license renewals.

#### **R68-28-20. Violation Categories.**

(1) Public Safety Violations: \$3,000- \$5,000 per violation. This category is for violations which present a direct threat to public health or safety including:

(a) cannabis sold to an unlicensed source;  
 (b) cannabis purchased from an unlicensed source;  
 (c) refusal to allow inspection;  
 (d) failure to comply with testing requirements;  
 (e) a test result for high pesticide residue in the cannabis produced or cannabis product;  
 (f) a test result for high residual solvents, heavy metal, microbials, molds, or other harmful contaminants;  
 (g) failure to maintain required cleanliness and sanitation standards;

(h) unauthorized personnel on the premises;  
 (i) permitting criminal conduct on the premises;  
 (j) possessing, manufacturing, or distributing cannabis products that the person knows or should know appeal to children;  
 (k) failure to follow an approved recall protocol; or  
 (l) engaging in or permitting a violation of the Title 4, Chapter 41a, Cannabis Production Establishments, which amounts to a public safety violation as described in this subsection.

(2) Regulatory Violations: \$1,000-\$5,000 per violation. This category is for violations involving this rule and other applicable state rules including:

(a) failure to maintain alarm and security systems;  
 (b) failure to keep and maintain records for at least two years;  
 (c) failure to maintain traceability;  
 (d) failure to follow transportation requirements;  
 (e) failure to follow the waste and disposal requirements;

(f) failure to maintain separation between cannabis and hemp;

(g) failure to follow labeling and packaging requirements;  
 (h) failure to meet extraction requirements;

(i) distributing a final cannabis product with an actual weight that is lower than the net weight listed on the cannabis fact panel;

(j) engaging in or permitting a violation of Title 4, Chapter 41a, Cannabis Production Establishments or this rule which amounts to a regulatory violation as described in this subsection; or

(k) failure to maintain standardized scales.

(3) Licensing Violations: \$500- \$5,000 per violation. This category is for violations involving licensing requirements including:

(a) an unauthorized change to the operating plan;

(b) failure to notify the department of changes to the operating plan;

(c) failure to notify the department of changes to financial or voting interests of greater than 2%;

(d) failure to follow the operating plan as approved by the department;

(e) engaging in or permitting a violation of this rule or Title 4, Chapter 41a, Cannabis Production Establishments which amounts to a licensing violation as described in this subsection; or

(f) failure to respond to violations.

(4) The department shall calculate penalties based on the level of violation and the adverse effect or potential adverse effect at the time of the incidents giving rise to the violation.

(5) The department may enhance or reduce the penalty based on the seriousness of the violation.

#### **KEY: cannabis processing, cannabis production establishment**

**Date of Last Change:** ~~June 22, 2023~~ 2023

**Authorizing, and Implemented or Interpreted Law:** 4-41a-103(5); 4-41a-404(3); 4-41a-701(3); 4-41a-302(3)(b)(ii); 4-2-103(1)(i); 4-41a-405(2)(b)(iv); 4-41a-801(1)

#### **NOTICE OF PROPOSED RULE**

**TYPE OF FILING:** Repeal and Reenact

<b>Rule or Section Number:</b>	<b>R380-300</b>	<b>Filing ID:</b> <b>55664</b>
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#### **Agency Information**

<b>1. Department:</b>	Health and Human Services	
<b>Agency:</b>	Administration (Health)	
<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

Daphne Lynch	385-239-5317	dlynch@ytah.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>
R380-300. Employee Background Checks
<b>3. Purpose of the new rule or reason for the change:</b>
This rule is replacing the repealed Human Services Rule R495-885 for Human Services employees and updates the current Rule R380-300 version that is currently in effect for all Department of Health and Human Services (DHHS) employee background clearances.
<b>4. Summary of the new rule or change:</b>
This repeal and reenact updates citations, titles, and language to address employee clearances due to departmental consolidation.
Significant amounts of content are removed, as the Division of Administration (Health) determined they are better managed in departmental policy than in administrative rules and adds Department of Corrections employees who will be subject to this rule effective 07/01/2023.

## 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 are no changes to state budget as a result of this rule change because the fiscal arrangements set forth in the 2022 General Session will remain unchanged with this filing.
<b>B) Local governments:</b>
Local government city business licensing requirements were considered.
This proposed rule change will not impact local governments' revenues or expenditures because this change applies only to DHHS employee clearances.
<b>C) Small businesses</b> ("small business" means a business employing 1-49 persons):
This proposed rule change will not impact small businesses' revenues or expenditures because this change applies only to DHHS employee background checks.

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

This proposed rule change will not impact non-small businesses' revenues or expenditures because this change applies only to DHHS employee clearances.

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

This proposed rule change will not impact any other entity's revenues or expenditures because this change applies only to DHHS employee clearances.

**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 costs to affected persons, as the Department does not charge employee applicants any background check fees.

**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>
<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-1-211 <input type="text"/>

**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>	10/16/2023

<b>9. This rule change MAY become effective on:</b>	10/23/2023
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>	08/15/2023
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**R380. Health and Human Services, Administration.****[R380-300. Employee Background Screening.****R380-300-1. Authority.**

~~This rule is adopted pursuant to Title 26 Chapter 1 Section 17-1.~~

**R380-300-2. Purpose.**

~~(1) The purpose of this rule is to set forth the standards for the Department employee and volunteer background screening in accordance with Section 26-1-17.1.~~

**R380-300-3. Definitions.**

~~Terms used in this rule are defined in Title 26, Chapter 1. In addition:~~

- ~~(1) "Current Employee" means all staff, contracted employees, and volunteers who:~~
- ~~(a) have access to protected health information or personal identifying information;~~
  - ~~(b) have direct contact with patients, children, or vulnerable adults as defined in Section 62A-2-120;~~

- ~~(c) work in areas of privacy and data security;~~
- ~~(d) handle financial information, including receipt of funds, reviewing invoices, making payments, and other types of financial information; or~~
- ~~(e) perform audit functions, whether internal or external, on behalf of the department.~~
- ~~(2) "Employee" means a current employee of the Department~~
- ~~(3) "New Employee" means job applicants who have been offered a position or reassignment with the department who:~~
- ~~(a) have access to protected health information or personal identifying information;~~
- ~~(b) have direct contact with patients, children, or vulnerable adults as defined in Section 62A-2-120;~~
- ~~(c) work in areas of privacy and data security;~~
- ~~(d) handle financial information, including receipt of funds, reviewing invoices, making payments, and other types of financial information; or~~
- ~~(e) perform audit functions, whether internal or external, on behalf of the department.~~
- ~~(4) "Office of Background Processing" means the background processing section within the department.~~

**~~R380-300-4. Background Screening Process – Current Employee.~~**

- ~~(1) The Department may conduct a background screening on current employees based on division's background screening guidelines determined by risk associated with the employees' work responsibilities.~~
- ~~(2) Current employees who require screening must:~~
  - ~~(a) sign a criminal background screening authorization form;~~
  - ~~(b) provide personal demographics required; and~~
  - ~~(c) submit live scan fingerprints.~~
- ~~(3) Current employees may continue to work during the department's implementation of the background screening process.~~
- ~~(4) If the Office of Background Processing determines that a current employee is not eligible for continued employment, based on criminal record information obtained through the initial or ongoing background screening process, the Office of Background Processing shall send a notice of action to the employee and the employee's division director which shall include the action, the reconsideration process, and a statement that the information is confidential.~~
- ~~(5) The department may allow a current employee to continue to work with conditions, during the reconsideration process as defined in each division's background screening guidelines if the employee can demonstrate the work arrangement does not pose a threat to the department and the safety and health of Utah citizens.~~
- ~~(6) The department is responsible for the payment of all fees required and any fees required to be submitted to the Federal Bureau of Investigation by the bureau.~~

**R380-300-5. Background Screening Process – New Employees.**

- ~~(1) Background screening is part of the department's hiring process and any offer of employment is conditional upon the results of the background screening.~~
- ~~(2) An employee who is reassigned to the department will be informed in writing that their offer of employment with the department is conditional upon on the results of the background screening.~~

~~(3) The Office of Background Processing shall determine if the new employee is eligible for employment prior to the new employee:~~

~~(a) having access to protected health information or personal identifying information;~~

~~(b) having direct contact with patients, children, or vulnerable adults as defined in Section 62A-2-120;~~

~~(c) working in areas of privacy and data security;~~

~~(d) handling financial information, including receipt of funds, reviewing invoices, making payments, and other types of financial information; or~~

~~(e) performing audit functions, whether internal or external, on behalf of the department.~~

~~(4) All new employees who have been offered employment with the department shall:~~

~~(a) sign a criminal background screening authorization form;~~

~~(b) provide personal demographics; and~~

~~(c) submit live scan fingerprints.~~

~~(5) If the Office of Background Processing determines that a new employee is not eligible for employment, based on information obtained through the background screening process, the Office of Background Processing shall send a notice of action to the employee, Human Resources and the employee's division director which shall include the action and a statement that the information is confidential.~~

~~(6) The department is responsible for the payment of all fees required and any fees required to be submitted to the Federal Bureau of Investigation by the bureau.~~

#### **R380-300-6. Sources for Background Review.**

~~(1) In accordance with Section 26-1-17.1, the department may review relevant information obtained from the following sources:~~

~~(a) Department of Public Safety arrest, conviction, and disposition records described in Title 53, Chapter 10, Criminal Investigations and Technical Services Act, including information in state, regional, and national records files; and~~

~~(b) federal criminal background databases available to the state.~~

~~(2) The department shall classify a crime committed in another state according to the closest matching crime under Utah law, regardless of how the crime is classified in the state where the crime was committed.~~

~~(3) If the Office of Background Processing determines an employee is not eligible for continued employment based upon the criminal background screening and the employee disagrees with the information provided by the Criminal Investigations and Technical Services Division or court record, the employee may challenge the information obtained from the background screening process through the appropriate agency.~~

~~(4) Ongoing monitoring of records referred to in 6(1) will immediately be discontinued upon separation of employment.~~

#### **R380-300-7. Current Employee Exclusions.**

~~(1) Convictions or Pending Charges.~~

~~(a) If an employee has been convicted, has pleaded no contest, or is subject to a plea in abeyance or diversion agreement, for deniable offenses outlined within each division's background screening guidelines, the employee may be terminated.~~

~~(b) If an employee has a warrant for arrest or an arrest for any of the identified deniable offenses, the department may terminate employment based on:~~

~~(i) the type of offense;~~

~~(ii) the severity of offense; and~~

~~(iii) potential risk to the department.~~

~~(2) Review of Relevant Information.~~

~~(a) Results of background screening, may be reviewed to determine under what circumstance, if any, the current employee may continue to be employed. The following factors may be considered:~~

~~(i) types and number;~~

~~(ii) passage of time;~~

~~(iii) surrounding circumstances;~~

~~(vi) intervening circumstances; and~~

~~(v) steps taken to correct or improve.~~

~~(3) The Office of Background Processing may deny clearance based on the relevant information identified in subsection 6(1).]~~

#### **R380-300. Employee Background Checks.**

##### **R380-300-1. Authority.**

~~This rule is authorized by Section 26B-1-211.~~

##### **R380-300-2. Purpose.**

~~(1) This rule clarifies the standards for background checks for department staff, contracted employees, and volunteers.~~

~~(2) This rule does not apply to the Office of Recovery Services or the Utah State Developmental Center employees.~~

##### **R380-300-3. Definitions.**

~~The definitions in Section 26B-1-211 apply. In addition:~~

~~(1) "Department" means the Department of Health and Human Services.~~

~~(2) "Direct Supervision" means that an employee is under the uninterrupted visual and auditory surveillance of another employee who has an eligible determination issued by the office.~~

~~(3) "Eligible" means having a determination made by the office that permits an employee to have a base clearance, a clearance to have direct access, or a clearance to handle financial information.~~

~~(4) "Employee" means any employee, selected job applicant, contracted employee and volunteer of the department who may:~~

~~(a) have access to protected health information or personal identifying information;~~

~~(b) have direct access to patients, children, or vulnerable adults as defined in Section 26B-2-101;~~

~~(c) work in areas of privacy and data security;~~

~~(d) handle financial information, including receipt of funds, reviewing invoices, making payments, and other types of financial information; or~~

~~(e) perform audit functions, whether internal or external, on behalf of the department.~~

~~(5) "Live Scan" means fingerprints copied electronically and transmitted to the Department of Public Safety for enrollment in the FBI Rap Back System that is defined in Section 53-10-108.~~

~~(6) "Non-criminal" means any record or event within:~~

~~(a) the department's Management Information System created in Section 80-2-1001;~~

~~(b) the department's Licensing Information System created in Section 80-2-1002; or~~

~~(c) the statewide database of the Division of Aging and Adult Services created by Section 26B-6-210.~~

~~(7) "Office" means the Office of Background Processing within the department.~~

**R380-300-4. Employee Background Checks Before Departmental Merges.**

(1) Each eligible employee of the Utah Department of Health or the Utah Department of Human Services hired before July 1, 2022 who was subject to a background check in either the Department of Health or the Department of Human Services, may not be subject to a new background check solely based on the merge.

(2) Each eligible employee of the Utah Department of Corrections hired before July 1, 2023 who was subject to a background check in the Department of Corrections, may not be subject to a new background check solely based on the merge.

(3) An eligible background check conducted or retained for a newly hired or current employee before the merge date remains eligible.

(4) An employee shall complete a new background check under this rule if:

(a) the employee has any new arrests, charges, convictions or non-criminal events that occur on or after the merge dates outlined in Subsections R380-300-4(1) and (2); or

(b) the employee transfers to a new position within the department.

(5) Each department employee hired on or after the dates outlined in Subsections R380-300-4(1) and (2) is subject to a background check as outlined in this rule.

**R380-300-5. General Background Check Procedure.**

(1) The office shall conduct a background check on each employee based on the department's background check policy regarding the risk associated with each employee's work responsibilities.

(2) For a background check under Subsection (1), the employee shall:

(a) complete a criminal background check authorization;

(b) provide any requested personal identifying information;

(c) complete live scan fingerprints; and

(d) provide proof of identity.

(3) The department may permit an individual to work under direct supervision during the processing of the background check application in accordance with department policy.

**R380-300-6. Sources for Background Review.**

(1) In accordance with Section 26B-1-211, the office may review and continually monitor relevant information obtained from the following sources:

(a) Department of Public Safety arrest, conviction, and disposition records described in Title 53, Chapter 10, Criminal Investigations and Technical Services Act, including information in state, regional, and national records;

(b) federal criminal background databases available to the office;

(c) the department's Management Information System created in Section 80-2-1001;

(d) the department's Licensing Information System created in Section 80-2-1002;

(e) the statewide database of the Division of Aging and Adult Services created in Section 26B-6-210; and

(f) juvenile court records under Section 80-3-404.

(2) The office shall classify a crime committed in another state according to the closest matching crime under Utah law, regardless of how the other state classifies the crime.

**R380-300-11. Responsibilities.**

The office shall immediately terminate ongoing monitoring of records referred to in Subsection R380-300-6(1) at the time of the employee's separation of employment with the department.

**KEY: employees, background [screenings]checks**

**Date of Last Change: [October 22, 2018]2023**

**Authorizing, and Implemented or Interpreted Law: [26-1-17-1]26B-1-211**

**NOTICE OF PROPOSED RULE**

**TYPE OF FILING:** Amendment

<b>Rule or Section Number:</b>	<b>R381-40</b>	<b>Filing ID:</b> <b>55690</b>
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**Agency Information**

<b>1. Department:</b>	Health and Human Services
<b>Agency:</b>	Child Care Center Licensing
<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

**Contact persons:**

<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
Simon Bolivar	801-803-4618	sbolivar@utah.gov

**Please address questions regarding information on this notice to the persons listed above.**

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

R381-40. Commercial Preschool Programs

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

The purpose of this amendment is to update language, clarify processes, and update citations following the consolidation and recodification of the Department of Health and Human Services' (DHHS) statute in 2023 General Session.

Additionally, this amendment incorporates changes based on the input and approval of the Child Care Licensing Committee.

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

The amendment adds clarifying language compliant with the Rulewriting Manual for Utah.

Additionally, this aligns terminology and processes with current enforcement standards.

It also updates citations following the recodification and consolidation of the DHHS's statute.

Substantive changes include new language to comply with S.B. 123 retitling Childcare Licensing Committee to Childcare Provider Licensing Committee (Committee).

#### 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 Rulewriting Manual for Utah standards.

Substantive changes add clarification with no fiscal impact to enforcement or state government.

###### B) Local governments:

The Committee does not expect any costs or savings to the local governments caused by the proposed rule amendments because they are mostly changes that will facilitate and clarify the current process.

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

The Committee does not expect any costs or savings caused by the proposed rule amendments because they are mostly changes that will facilitate and clarify the current process.

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

The Committee does not expect any costs or savings to non-small businesses caused by the proposed rule amendments because they are mostly changes that will facilitate and clarify the current process.

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

The Committee does not expect any costs or savings to other persons caused by the proposed rule amendments because they are mostly changes that will facilitate and clarify the current process.

###### 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 costs generated by the proposed rule changes because they are mostly changes that will facilitate and clarify the current process.

**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-2-402

**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:** 10/16/2023

**9. This rule change MAY become effective on:** 10/23/2023

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>	08/09/2023
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**R381. Health and Human Services, Child Care Center Licensing, ~~Committee.~~****R381-40. Commercial Preschool Programs.****R381-40-1. ~~Legal~~ Authority and Purpose.**

(1) ~~[This rule is enacted and enforced in accordance with Title 26, Chapter 39, Utah Child Care Licensing Act.]~~ Section 26B-2-402 authorizes this rule.

(2) This rule establishes the foundational standards necessary to protect the health and safety of children in commercial preschool programs and defines the general procedures and requirements to get and maintain a license to provide this type of child care.

**R381-40-2. Definitions.**

(1) "Applicant" means a person or business who has applied for a new or a renewal of a license from ~~[Child Care Licensing]~~ the department.

(2) "Background Finding" means information in a background check that ~~[Child Care Licensing]~~ the department uses to determine if a covered individual is or is not eligible to be involved with child care.

(3) "Barrier" means an enclosing structure ~~[such as]~~ including a fence, wall, bars, railing, or solid panel to prevent accidental or deliberate movement through or access to something.

(4) "Body Fluid" means blood, urine, feces, vomit, mucus, or saliva.

(5) "Business Days and Hours" means the days of the week and times the facility is open for business.

(6) "Caregiver" means a covered individual who protects the health and safety of children. A covered individual is a caregiver when they:

- (a) count in the caregiver-to-child ratio;

(b) meet the physical or emotional needs of the children, including diapering, toileting, feeding, or protecting them from harm; or

(c) supervise children.

(7) "Capacity" means the maximum number of children the provider is allowed to care for at any given time.

(8) "Caregiver-to-Child Ratio" means the number of caregivers responsible for a specific number of children.

(9) "CCL" means the Child Care Licensing Program under the Office of Licensing that is delegated with the responsibility to enforce the ~~[Utah Child Care Licensing Act.]~~ rules under Titles R381 and R430.

(10) "Child Care" means continuous care and supervision of ~~[five]~~ one or more qualifying children that is:

(a) in place of care ordinarily provided by a parent in the parent's home;

(b) for less than 24 hours a day; and

(c) for direct or indirect compensation.

~~[(11) "Child Care Center Licensing Committee" means the Child Care Center Licensing Committee created in the Utah Child Care Licensing Act.]~~

(1)[2]1 "Child Care Program" means a person or business that offers child care.

(12) "Child Care Provider Licensing Committee" means the Child Care Provider Licensing Committee created in Section 26B-1-414.

(13) "Choking Hazard" means an object or a removable part on an object with a diameter of less than 1-1/4 inches and a length of less than 2-1/4 inches that could be caught in a child's throat blocking their airway and making it difficult or impossible to breathe.

(14) "Conditional Status" means that the provider is at risk of losing their child care license because compliance with any laws or administrative rules ~~[part of Rule R381-40]~~ has not been maintained.

(15) "Covered Individual" means any of the following individuals involved with a child care program:

(a) an owner;

(b) a director;

(c) a member of the governing body;

(d) an employee;

(e) a caregiver;

(f) a volunteer, except a parent of a child enrolled in the child care program;

(g) an individual age 12 years old or older who resides in the facility; and

(h) anyone who has unsupervised contact with a child in care.

(16) "Department" means the Utah Department of Health and Human Services.

(17) "Designated Play Surface" means any accessible elevated surface for standing, walking, crawling, sitting or climbing; or an accessible flat surface at least two by two inches in size and having an angle less than 30 degrees from horizontal.

(18) "Director" means an individual who meets the director qualifications under Section R381-40-7, and who assumes the child care program's day-to-day responsibilities under Rule R381-40.

(19) "Early Childhood Education" means a program of study that prepares an individual for the teaching of children in their early years, normally from birth up to the age of eight years old.

(20) "Eligible" means that there were no findings in a covered individual's background check that ~~[e]~~ would prohibit that covered individual from being involved with child care.



(21) "Emotional Abuse" is defined in Subsection R512-80-2(12) and also means behavior that could harm a child's emotional development, [such as]including threatening, intimidating, humiliating, demeaning, criticizing, rejecting, using profane language, or using inappropriate physical restraint.

(22) "Entrapment Hazard" means an opening greater than 3-1/2 by 6-1/4 inches and less than nine inches in diameter where a child's body could fit through but the child's head could not fit through, potentially causing a child's entrapment and strangulation.

(23) "Facility" means ~~[a child care program or]~~the premises approved by the department to be used for child care.

(24) "Group" means the children who the provider assigns to one or more caregivers for their care and supervision.~~[are assigned to and supervised by one or more caregivers.]~~

(25) "Guest" means an individual who is not a covered individual and is at the child care facility for a short time with the provider's permission.

(26) "Homeless" means anyone who lacks a fixed, regular, and adequate nighttime residence.

(27) "Inaccessible" means out of reach of children by being:

(a) locked, [such as]including in a locked room, cupboard, or drawer;

(b) secured with a child safety device, [such as]including a child safety cupboard lock or doorknob device;

(c) behind a properly secured child safety gate;

(d) located at least 36 inches above the floor; or

(e) if in a bathroom, at least 36 inches above any surface from where a child could stand or climb.

(28) "Infectious Disease" means an illness that is capable of being spread from one individual to another.

(29) "Involved with Child Care" means to do any of the following at or for a child care program:

(a) care for or supervise children;

(b) volunteer;

(c) own, operate, direct;

(d) reside;

(e) count in the caregiver-to-child ratio; or

(f) have unsupervised contact with a child in care.

(30) "License" means a license issued by the department to provide child care services.

(31) "Licensee" means the legally responsible person or business that holds a valid license from ~~[Child Care Licensing]~~the department.

(32) "LIS Supported Finding" means a supported finding of child abuse or neglect~~[background check information from]~~ in the Licensing Information System (LIS) database for child abuse and neglect, maintained by the ~~[Utah D]~~department~~[of Human Services]~~.

(33) "Over-the-Counter Medication" means medication that an individual can purchase~~[can be bought]~~ without a written prescription~~[.]~~ including herbal remedies, vitamins, and mineral supplements.

(34) "Parent" means the parent or legal guardian of a child in care.

(35) "Person" means an individual or a business entity.

(36) "Physical Abuse" is defined in Subsection R512-80-2(25) and also means causing nonaccidental physical harm to a child.

(37) "Play Equipment Platform" means a flat surface on a piece of stationary play equipment intended for more than one child to stand on, and upon which the children can move freely.

(38) "Preschooler" means a child age two through four years old.

(39) "Protective Barrier" means a structure ~~[such as]including~~ bars, lattice, or a panel that is around an elevated platform and is intended to prevent accidental or deliberate movement through or access to something.

(40) "Protective Cushioning" means a shock-absorbing surface under and around play equipment that reduces the severity of injuries from falls.

(41) "Provider" means the legally responsible person or business that holds a valid license or certification from ~~[Child Care Licensing]~~the department.

(43)2) "Qualifying Child" means:

(a) a child who is younger than 13 years old and is the child of an individual other than the child care provider or caregiver;

(b) a child with a disability who is younger than 18 years old and is the child of an individual other than the provider or caregiver; or

(c) a child who is younger than four years old and is the child of the provider or a caregiver.

(43) "Related Child" means a child for whom a provider is the parent, legal guardian, step[-]parent, grandparent, step-grandparent, great-grandparent, sibling, step-sibling, aunt, step-aunt, great-aunt, uncle, step-uncle, or great-uncle.

(44) "Room" is defined ~~[by the department]~~as follows:

(a) ~~[H]~~if a large room is divided into smaller rooms or areas with barriers [such as]including furniture or with half walls, the room or area is considered:

(i) one room, if the room is divided by a solid barrier that is less than 24 inches, whether the barrier is movable or immovable;

(ii) one room, if the room is divided by a solid barrier that is between 24 and 40 inches in height and there is an opening in the barrier through which caregivers and children can move freely;

(iii) two rooms, if the room is divided by a solid barrier that is between 24 and 40 inches in height and there is no opening in the barrier through which caregivers and children can move freely, or there is an opening between the two sides but the opening is blocked [such as]including with a child safety gate, including ~~[.]~~This also applies to a diaper changing station that is located behind a closed gate;~~[or]~~

(iv) two rooms, if the room is divided by a solid barrier that is over 40 inches in height and there is no opening in the barrier through which caregivers and children can move freely, or there is an opening between the two sides but the opening is blocked ~~[such as]including~~ with a child safety gate~~[.]~~; or ~~[If there is an opening through which caregivers and children can move freely and the opening is not blocked, refer to the instructions for a large opening, archway, or doorway.]~~

(v) if there is an opening through which caregivers and children can move freely and the opening is not blocked, refer to the instructions for a large opening, archway, or doorway;

(b) ~~[H]~~if two rooms or areas are connected by a large opening, archway, or doorway, the rooms or areas are considered:

(i) one room, if the width of the opening or archway is equal to or greater than the combined width of the walls on each side of the opening or archway, in the larger of the two rooms or areas, and there is no furniture or other dividers blocking the opening or archway~~[.]~~ ~~[or]~~ otherwise the department shall consider this to be two rooms; or

(ii) two rooms, if the width of the opening or archway is smaller than the combined width of the walls on each side of the opening or archway, in the larger of the two rooms or areas~~[.]~~ and

(c) ~~[H]~~if in outdoor areas separated by interior fences, areas are considered:

(i) one area, if the interior fence is 24 inches in height or lower, whether or not the fence has an opening;

(ii) one area, if the interior fence is 40 inches or lower in height with an opening through which caregivers and children can move freely;

(iii) two areas if the interior fence is higher than 24 inches and there is no opening; or

(iv) two areas, if the interior fence is higher than 40 inches whether or not the fence has an opening.

(45) "Sanitize" means to use a product or process to reduce contaminants and bacteria to a safe level.

(46) "Sexual Abuse" is defined in Subsection R512-80-2(30) and also means to take indecent liberties with a child with the intention to arouse or gratify the sexual desire of an individual or to cause pain or discomfort.

(47) "Sexually Explicit Material" means any depiction of actual or simulated sexually explicit conduct.

(48) "Sleeping Equipment" means a cot, mat, crib, bassinet, porta-crib, playpen, or bed.

(49) "Stationary Play Equipment" means equipment ~~[such as]~~including a climber, slide, swing, merry-go-round, or spring rocker that is meant to stay in one location when a child uses it. Stationary play equipment does not include:

(a) a sandbox;

(b) a stationary circular tricycle;

(c) a sensory table; or

(d) a playhouse that sits on the ground or floor and does not have an attached slide, swing, or climber.

(50) "Strangulation Hazard" means something on which a child's clothes or drawstrings could become caught, or something in which a child could become entangled ~~[such as]~~including:

(a) a protruding bolt end that extends more than two threads beyond the face of the nut;

(b) hardware that forms a hook or leaves a gap or space between components ~~[such as]~~including a protruding open S-hook; or

(c) a rope, cord, or chain that is attached to a structure and is long enough to encircle a child's neck.

(51) "Unsupervised Contact" means being with, caring for, communicating with, or touching a child in the absence of a caregiver or other employee who is at least 18 years old and is considered eligible by CCL~~[has passed a Child Care Licensing background check]~~.

(52) "Use Zone" means the area beneath and surrounding a play structure or piece of equipment that is designated for unrestricted movement around the equipment, and onto which a child falling from or exiting the equipment could be expected to land.

~~[(53) "Volunteer" means an individual who receives no form of direct or indirect compensation for their service.]~~

(5~~4~~3) "Working Days" means the days of the week the department is open for business.

### **R381-40-3. License Required.**

(1) A person shall ~~[have]~~obtain a preschool program license from the department if they provide care:

(a) in the absence of the child's parent;

(b) in a place other than the provider's home or the child's home;

(c) for five or more qualifying children between the ages of two and four years old, and five years old if the child is not attending school;

(d) for each individual child for less than four hours a day;

(e) on an ongoing basis for more than two days a week and for four or more weeks in a year;

(f) for direct or indirect compensation; and

(g) where care does not include preparing meals for children.

(2) A person who ~~[is not required to be licensed]~~does not meet licensing requirements may voluntarily receive a license, except for care that is for related children only or on a sporadic basis.

(3) ~~[A provider may be licensed to provide child care in a facility that is also licensed to offer foster or respite care services, or another licensed or certified human services program, if the part of the building requesting a CCL license is physically separated from the other building services.]~~The department may license a provider to provide child care in a facility that the department licensed to offer foster or respite care services, or another licensed or certified human services program, if the part of the building requesting a CCL license is physically separate from the other building services.

### **R381-40-4. License Application, Renewal, Changes, and Variances.**

(1) Each applicant for a new child care license shall:

(a) submit a CCL online application;

(b) submit a copy of a current local fire clearance or a written statement from the local fire authority that a fire inspection is not required;

(c) submit a copy of a current local business license or a written statement from the city that a business license is not required;

(d) submit a copy of a current local health department kitchen clearance for a facility providing food service or a written statement from the local health department that a kitchen inspection is not required;

~~[(d)]~~(e) have a copy of the educational credentials of the individual who will be the director as required in Section R381-40-7, ready for review by the department;

~~[(e)]~~(f) complete CCL background checks for covered individuals as required in Section R381-40-8;

~~[(f)]~~(g) complete CCL new provider training no more than six months before becoming licensed; and

~~[(g)]~~(h) pay any required fees, which are nonrefundable.

(2) Each applicant shall pass a department's inspection of the facility before a new or a renewal license is issued.

(3) If the local fire authority states in writing that an applicant for a new or a renewal license does not require a fire inspection, the department shall verify the applicant's compliance with the following:

(a) address numbers and letters are readable from the street;

(b) exit doors operate properly and are well maintained;

(c) there are no obstructions in exits, aisles, corridors, and stairways;

(d) exit doors are unlocked from the inside during business hours;

(e) exits are clearly identified;

(f) there is at least one unobstructed fire extinguisher on each level of the building, currently charged and serviced, and mounted not more than five feet above the floor;

(g) there are working smoke detectors that are properly installed on each level of the building; and

(h) boiler, mechanical, and electrical panel rooms are not used for storage.

(4) If an applicant for a new or a renewal license serves food and the local health department states in writing that a kitchen

inspection is not required, the department shall verify the applicant's compliance with the following:

- (a) the refrigerator is clean, in good repair, and working at or below 41 degrees Fahrenheit;
- (b) there is a working thermometer in the refrigerator;
- (c) reusable food holders, utensils, and food preparation surfaces are washed, rinsed, and sanitized before each use;
- (d) chemicals are stored away from food and food service items;
- (e) food is properly stored, kept to the proper temperature, and in good condition; and
- (f) there is a working handwashing sink in the kitchen and handwashing instructions posted by the sink.

(5)(a) Each applicant for a new license shall ~~have~~ complete the licensing process within six months from the time any portion of the application is submitted to the department. ~~finish the licensing process. If unsuccessful, the applicant shall reapply. Any resubmission must include the required documentation, payment of licensing fees, and a new inspection of the facility to be licensed.~~

(b) If successful licensure is not achieved by the applicant within six months, the applicant shall reapply.

(c) Any resubmission shall include the required documentation and payment of licensing fees.

(d) The department shall conduct a new inspection of the facility before issuing a license.

(6) The department may deny an application for a new or renewal license if, within the five years preceding the application date, the applicant held a license or a certificate that was:

- (a) closed under an immediate closure;
- (b) revoked;
- (c) closed as a result of a settlement agreement resulting from a notice of intent to revoke, a notice of revocation, or a notice of immediate closure;
- (d) voluntarily closed after ~~an~~ the department found a violation to any rule under Rule R381-40 that would have resulted in a notice of intent to revoke or a notice of revocation had the provider not closed voluntarily; or

(e) voluntarily closed having unpaid fees or civil money penalties issued by the department.

(7) Each child care license expires at midnight on the last day of the month shown on the license, unless the department revokes the license ~~was previously revoked by the department, or the provider voluntarily closes the license~~ by the provider.

(8) Within 30 to 90 days before a current license expires, each provider shall submit for renewal:

- (a) an online renewal request;
- (b) applicable renewal fees;
- (c) any previous unpaid fees; and
- (d) a copy of a current fire inspection report.

(9) The department may grant a provider who fails to renew their license by the expiration date an additional 30 days to complete the renewal process if the provider pays a late fee.

(10) The department may deny renewal of a license for a provider who is no longer caring for children.

(11) Each provider shall submit a complete application for a new license at least 30 days before any of the following changes occur:

- (a) a change of the child care facility's location; or
- (b) a change that transfers 50% or more ownership or controlling interest to a new individual or entity.

(12) A provider shall submit a complete online change[s] request to amend an existing license at least 30 days before any of the following changes:

- (a) an increase or decrease of licensed capacity, including any change to the amount of usable indoor or outdoor space where child care is provided;
- (b) a change in the name of the program;
- (c) a change in the regulation type of the program;
- (d) a change in the name of the provider;
- (e) an addition or loss of a director; or
- (f) a change in ownership that does not require a new license.

(13) The department may amend a license after verifying that the applicant is in compliance with each applicable rule under Rule R381-40 and has paid the required fees ~~have been paid~~. The expiration date of the amended license remains the same as the previous license.

(14) Only the department may assign, transfer, or amend a license.

(15)(a) If an applicant or provider cannot comply with a rule under Rule R381-40 but can meet the intent of the rule in another way, the applicant or provider may apply for a variance to that rule by submitting a request to the department.

~~(16)~~(b) The department may:

~~(a)~~i) require additional information before acting on ~~the~~a variance request; and

~~(b)~~ii) impose health and safety requirements as a condition of granting a variance.

~~(17)~~c) Each provider shall comply with the existing Rule R381-40 ~~rules until~~ unless the department approves a variance. ~~is approved by the department.~~

~~(18)~~d) If the department approves a variance ~~is approved~~, the provider shall keep a copy of the written approval on-site for review by parents and the department.

~~(19)~~e) The department may grant variances for up to 12 months.

~~(20)~~f) The department may revoke a variance if:

~~(a)~~i) the provider is not meeting the intent of the rule as stated in their approved variance;

~~(b)~~ii) the provider fails to comply with the conditions of the variance; or

~~(c)~~iii) a change in statute, rule, or case law affects the basis for the variance.

#### **R381-40-5. Rule ~~Violations~~Noncompliance, Penalties, and ~~Appeals~~Agency Action Reviews.**

(1) The department may place a program's child care license on a conditional status for the following causes:

(a) chronic, ongoing noncompliance with the requirements under Rule R381-40;

(b) unpaid fees; or

(c) a serious rule violation that places children's health or safety in immediate jeopardy.

(2) The department shall establish the length of the conditional status and set the conditions that the child care provider shall satisfy to remove the conditional status.

(3) The department may increase monitoring of the program that is on conditional status to verify compliance with ~~the rules under~~ Rule R381-40.



(4) The department may deny or revoke a license if the child care provider:

(a) fails to meet the conditions of a license on conditional status;

(b) violates ~~[the Child Care Licensing Act]~~ any part of Title 26B, Chapter 2, Part 4, Child Care Licensing;

(c) provides false or misleading information to the department;

(d) misrepresents information by intentionally altering a license or any other document issued by the department;

(e) fails to allow authorized representatives of the department access to the facility to ensure compliance with the requirements under Rule R381-40;

(f) fails to submit or make available to the department any written documentation needed to verify compliance with the requirements under Rule R381-40;

(g) commits a serious rule violation that results in death or serious harm to a child, or that places a child at risk of death or serious harm; or

(h) has committed an illegal act that would exclude an individual from having a license.

(5) Within ten working days of receipt of a revocation notice, the provider shall submit to the department the names and mailing addresses of the parents of each enrolled child so the department can notify the parents of the revocation.

(6) The department may order the immediate closure of a facility if conditions create a clear and present danger to any child in care and may require immediate action to protect the children's health or safety.

(7) Upon receipt of an immediate closure notice, the provider shall give the department the names and mailing addresses of the parents of each enrolled child so the department can notify the parents of the immediate closure.

(8) If there is a severe injury or the death of a child in care, the department may order a child care provider to suspend services and prohibit new enrollments, pending a review by the DHHS Child Fatality Review Committee or a determination of the probable cause of death or injury by a medical professional.

~~[(9) If a person is providing care for more than four unrelated children without the appropriate license, the department may:~~

~~(a) issue a cease and desist order; or~~

~~(b) allow the person to continue operation if:~~

~~(i) the person was unaware of the need for a license;~~

~~(ii) conditions do not create a clear and present danger to the children in care; and~~

~~(iii) the person agrees to apply for the appropriate license within 30 calendar days of notification by the department.]~~

(9) An unlicensed person providing care that requires a license may be charged with a civil money penalty and a class A misdemeanor unless they:

(a) stop providing child care that requires a license; or

(b) apply for the appropriate license within 30 calendar days of notification by the department.

(10) If a person providing care without the appropriate license agrees to apply for a license but does not submit an application and the required application documents within 30 days, the department may issue a cease and desist order.

(11) A violation of any of the requirements under Rule R381-40 is punishable by an administrative civil money penalty of up to \$5,000 a day as provided in Section ~~[26-39-601]~~ 26B-2-409.

(12) The department may assess a civil money penalty and also take action to deny, place on conditional status, revoke, immediately close, or refuse to renew a license.

(13) The department may deny an application or revoke a license for failure to pay any required fees, including fees for applications, late fees, returned checks, license changes, additional inspections, conditional monitoring inspections, background checks, civil money penalties, and other fees assessed by the department.

(14) An applicant or provider may request an agency review for [hearing to appeal] any department decision within ~~[15]~~ ten working days of being informed in writing of the decision.

#### **R381-40-6. Administration and Children's Records.**

(1) The provider shall:

(a) be at least 21 years old;

(b) be considered eligible by a CCL background check before becoming involved with child care; and

(c) complete the new provider training offered by the department.

(2) If the owner is not a sole proprietor, the business entity shall submit to the department the names and contact information of the individuals who shall legally represent them and who shall comply with the requirements under Subsection R381-40-6(1).

(3) The provider shall protect children from conduct that endangers children in care, or is contrary to the health, ~~[morals,~~ ]welfare, and safety of the public.

(4) The provider shall know and comply with each applicable federal, state, and local law, ordinance, and rule, and ~~[shall be responsible]~~ maintain responsibility for the operation and management of a child care program.

(5) The provider shall comply with the requirements under Rule R381-40 any time a child in care is present.

(6) The provider shall post their unaltered child care license on the facility premises in a place readily visible and accessible to the public.

(7) The provider shall post a current copy of the department's Parent Guide at the facility for parent review during business hours.

(8) The provider shall inform parents and the department of any changes to the program's telephone number and other contact information within 48 hours of the change.

(9) The provider shall:

(a) have liability insurance; or

(b) inform parents in writing that the provider does not have liability insurance.

(10) The provider shall ensure that a parent completes an admission and health assessment form for their child before the child is admitted into the child care program.

(11) The provider shall ensure that each child's admission and health assessment form includes the following information:

(a) child's name;

(b) child's date of birth;

(c) parent's name, address, and phone number, including a daytime phone number;

(d) names of individuals authorized by the parent to sign the child out from the facility;

(e) name, address, and phone number of an individual to be contacted if an emergency happens and the provider cannot contact the parent;

(f) if available, the name, address, and phone number of an out-of-area emergency contact individual for the child;

(g) parent's permission for emergency transportation and emergency medical treatment;

(h) any known allergies of the child;

(i) any known food sensitivities of the child;

(j) any chronic medical conditions that the child may have;

(k) instructions for special or nonroutine daily health care of the child;

(l) current ongoing medications that the child may be taking; and

(m) any other special health instructions for the caregiver; and

~~(n) certification that required immunizations are current.~~

(12) The provider shall ensure that the admission and health assessment form is:

(a) reviewed, updated, and signed or initialed by the parent at least annually; and

(b) kept on-site for review by the department.

(13) Before admitting any child into the program, including the provider's and employees' own children, the provider shall obtain the following documentation from the child's parent:

(a) current immunizations;

(b) a medical schedule to receive required immunizations;

(c) a legal exemption; or

(d) a 90-day exemption for foster children and children who are homeless.

~~(13)~~ (14) The provider shall ensure that each child's information is ~~[kept]~~ confidential and not released without written parental permission except to the department.

#### **R381-40-7. Personnel and Training Requirements.**

(1) The provider shall ensure that employees and volunteers are supervised, qualified, and trained as stated under Rule R381-40 to:

(a) meet the needs of the children; and

(b) comply with each requirement.

(2) The provider shall ensure that the preschool program has a qualified director as required under Section R381-40-7.

(3) The provider shall ensure that the director:

(a) is at least 21 years old;

(b) is considered eligible by a CCL background check before becoming involved with child care;

~~(c) [receives at least 2 1/2 hours of preservice training before beginning job duties];~~ if hired after January 1, 2023, has completed the 2-1/2 hour preservice training offered by the department;

(d) completes the new director training offered by the department within 60 working days of assuming director duties;

(e) knows and follows any applicable laws and requirements under Rule R381-40; and

(f) completes at least ~~[40]~~ten hours of child care training each year based on the facility's license date, or at least 45 minutes of child care training each month they work if hired partway through the facility's licensing year.

(4) The provider shall ensure that new directors have one of the following educational credentials:

(a) any bachelor's or higher education degree;

(b) at least 60 clock hours of ~~[approved Utah Early Childhood Career Ladder courses]~~ coursework in child development, social and emotional development, and the child care environment; or 60 clock hours of equivalent training as approved by the department;

(c) at least 12 college credit hours of child development courses;

(d) a currently valid national certification ~~[such as]~~including a Certified Childcare Professional ~~[(CCP)]~~issued by the National Child Care Association, a current Child Development Associate ~~[(CDA)]~~issued by the Council for Early Childhood Professional Recognition, a current National Administrator Credential ~~[(NAC)]~~, or other equivalent credential as approved by the department;

(e) at least ~~[a Level 9 from the Utah Early Childhood Career Ladder system]~~an associate degree in early childhood development or related field; or

(f) proof of at least five years of early education teaching experience.

(5) The provider shall ensure that the director is on duty at the facility for at least half of the time every week the program is open.

(6) The provider shall ensure that there is a director designee with authority to act on behalf of the director in the director's absence.

(7) The provider shall ensure that the director designee:

(a) is at least 18 years old;

(b) is considered eligible by a CCL background check before becoming involved with child care;

~~(c) [receives at least 2 1/2 hours of preservice training];~~ if hired after January 1, 2023, has completed the 2-1/2 hour preservice training offered by the department before beginning job duties;

(d) knows and follows any applicable laws and requirements under Rule R381-40;

(e) completes at least ~~[40]~~ten hours of child care training each year based on the facility's license date, or at least 45 minutes of child care training each month they work if hired partway through the facility's licensing year; and

(f) has current first aid and cardio pulmonary resuscitation (CPR) certification.

(8) The provider shall ensure that the director or the director designee is present at the facility when the program is open for care.

(9) The provider shall ensure that caregivers:

(a) are at least 16 years old;

(b) are considered eligible by a CCL background check before becoming involved with child care;

~~(c) [receive at least 2 1/2 hours of preservice training];~~ complete the 2-1/2 hour preservice training offered by the department before caring for children;

(d) know and follow any applicable laws and requirements under Rule R381-40; ~~[and]~~

(e) are introduced to other program staff and to the caregiver's assigned group of children;

(f) review the information in each child's health assessment in the caregiver's assigned group, including allergies, food sensitivities, and other individual needs; and

(g) complete at least [40]ten hours of child care training each year, based on the facility's license date, or at least 45 minutes of child care training each month they work if hired partway through the facility's licensing year.

(10) The provider shall ensure that any other staff ~~[such as]~~including drivers, cooks, and clerks:

(a) are considered eligible by a CCL background check before becoming involved with child care;

(b) ~~[receive at least 2 1/2 hours of preservice training]~~complete the 2-1/2 hour preservice training offered by the department before beginning job duties; and

(c) know and follow any applicable laws and requirements under Rule R381-40.

(11) The provider shall ensure that volunteers are ~~[considered]~~ eligible by a CCL background check before becoming involved with child care.

(12) The provider shall ensure that student interns who are registered and participating in a high school or college child care course and guests wear a guest nametag.

(1~~4~~3) The provider shall ensure that household members who are:

(a) 12 to 17 years old are considered eligible by a CCL background check; and

(b) 18 years old or older are ~~[considered]~~ eligible by a CCL background check that includes fingerprints.

(1~~5~~4) The provider shall ensure that individuals who provide Individualized Educational Plan ~~[(IEP)]~~ or Individualized Family Service plan ~~[(IFSP)]~~ services ~~[such as]~~ including physical, occupational, or speech therapists:

(a) provide proper identification before having access to the facility or to a child at the facility; and

(b) have received the child's parent's permission for services to take place at the facility.

(1~~6~~5) The provider shall ensure that individuals from law enforcement, Child Protective Services, the department, and any similar entities provide proper identification before having access to the facility or to a child at the facility.

~~[(17) The provider shall ensure that preservice training includes at least the following topics:~~

~~\_\_\_\_\_ (a) job description and duties;~~

~~\_\_\_\_\_ (b) current department rule Sections R381-40-7 through R381-40-22;~~

~~\_\_\_\_\_ (c) disaster preparedness, response, and recovery;~~

~~\_\_\_\_\_ (d) pediatric first aid and CPR;~~

~~\_\_\_\_\_ (e) children with special needs;~~

~~\_\_\_\_\_ (f) safe handling and disposal of hazardous materials;~~

~~\_\_\_\_\_ (g) prevention, signs, and symptoms of child abuse and neglect, including child sexual abuse, and legal reporting requirements;~~

~~\_\_\_\_\_ (h) principles of child growth and development, including brain development;~~

~~\_\_\_\_\_ (i) recognizing the signs of homelessness and available assistance;~~

~~\_\_\_\_\_ (j) a review of the information in each child's health assessment in the caregiver's assigned group, including allergies, food sensitivities, and other special needs; and~~

~~\_\_\_\_\_ (k) an introduction and orientation to the children in care.]~~

(16) The provider shall ensure that each covered individual required to complete preservice training receives the 2-1/2 hour preservice training offered by the department that includes at least the following topics:

\_\_\_\_\_ (a) applicable laws and requirements under Rule R381-40;

\_\_\_\_\_ (b) children whose special needs may include a disability;

\_\_\_\_\_ (c) recognizing the signs of homelessness and available assistance;

\_\_\_\_\_ (d) building and physical premises safety;

\_\_\_\_\_ (e) prevention, signs, and symptoms of child abuse and neglect, including child sexual abuse, and legal reporting requirements;

\_\_\_\_\_ (f) pediatric first aid and CPR;

\_\_\_\_\_ (g) emergency preparedness, response, and recovery plan;

\_\_\_\_\_ (h) prevention of and response to emergencies due to food and allergy reactions;

\_\_\_\_\_ (i) safe handling and disposal of hazardous materials and bio contaminants;

\_\_\_\_\_ (j) prevention and control of infectious diseases including immunizations;

\_\_\_\_\_ (k) administration of medication;

\_\_\_\_\_ (l) child and brain development, including the social, emotional, physical, cognitive, and language principles of child growth;

\_\_\_\_\_ (m) precautions in transporting children;

\_\_\_\_\_ (n) prevention of shaken baby syndrome, abusive head trauma, child maltreatment, and coping with crying babies; and

\_\_\_\_\_ (o) prevention of sudden infant death syndrome and the use of safe sleeping practices.

~~[(18) The provider shall keep documentation of each individual's preservice training on-site for review by the department and shall ensure that documentation includes at least the following:~~

~~\_\_\_\_\_ (a) training topics;~~

~~\_\_\_\_\_ (b) date of the training; and~~

~~\_\_\_\_\_ (c) total hours or minutes of training.]~~

(1~~9~~7) The provider shall ensure that annual child care training includes at least the following topics:

\_\_\_\_\_ (a) ~~[current department rule]~~ Sections R381-40-7 through R381-40-22; and

\_\_\_\_\_ ~~[(b) disaster preparedness, response, and recovery;~~

\_\_\_\_\_ ~~(c) pediatric first aid and CPR;~~

\_\_\_\_\_ ~~(d) children with special needs;~~

\_\_\_\_\_ ~~(e) safe handling and disposal of hazardous materials;~~

\_\_\_\_\_ ~~(f) the prevention, signs, and symptoms of child abuse and neglect, including child sexual abuse, and legal reporting requirements;~~

\_\_\_\_\_ ~~(g) principles of child growth and development, including brain development; and~~

\_\_\_\_\_ ~~(h) recognizing the signs of homelessness and available assistance.]~~

\_\_\_\_\_ ~~(b) each topic listed in Subsections R381-40-7(16)(a) through (o).~~

(2~~0~~18) The provider shall ensure that documentation of each individual's annual child care training is ~~[kept]~~ on-site for review by the department and includes the following:

\_\_\_\_\_ (a) training topic;

\_\_\_\_\_ (b) date of the training;

\_\_\_\_\_ (c) name of the individual or organization that presented the training; and

\_\_\_\_\_ (d) total hours or minutes of training.

(2~~1~~19) The provider shall ensure that at least one staff member with a current Red Cross, American Heart Association, or equivalent pediatric first aid and CPR certification is present when children are in care:

\_\_\_\_\_ (a) at the facility;

\_\_\_\_\_ (b) in each vehicle transporting children; and

\_\_\_\_\_ (c) at each offsite activity.

(2~~2~~0) The provider shall ensure that CPR certification includes hands-on testing.

(2~~3~~1) The provider shall ensure that the following records for each covered individual are ~~[kept]~~ on-site for review by the department:

\_\_\_\_\_ (a) the date of initial employment or association with the program;

\_\_\_\_\_ (b) a current pediatric first aid and CPR certification, if required under Rule R381-40; and

- (c) a six-week record of the times worked each day.

#### **R381-40-8. Background Checks.**

~~[(1) Before a new covered individual becomes involved with child care in the program, the provider shall use the CCL provider portal search to:~~

- ~~\_\_\_\_\_ (a) verify that the individual is eligible; and~~  
~~\_\_\_\_\_ (b) associate that individual with their facility if the covered individual appears in the search.]~~

(1) Before a new covered individual becomes involved with child care, the provider shall use the CCL provider portal search to verify that the individual is eligible and:

- \_\_\_\_\_ (a) associate that individual with their facility; or  
\_\_\_\_\_ (b) not associate the individual if the individual is associated with another CCL facility and the new individual will be at the facility for no more than one business day.

(2) Before a new covered individual who does not appear in the CCL provider portal search becomes involved with child care in the program, the provider shall:

(a) [have-]require the individual to submit an online background check form and fingerprints for individuals age 18 years old and older;

(b) authorize the individual's background check through the CCL provider's portal;

(c) pay any required fees; and

(d) receive written notice from CCL that the individual is eligible.

(3) To keep their background check eligibility current, the provider shall require a covered individual to submit a new background check form, fingerprints, and fees if the covered individual has[also ensure that a new background check form and fingerprints are submitted and authorized and fees are paid for any covered individual who has]:

(a) resided outside of Utah since their last background check was completed;

(b) not been associated with an active, CCL approved child care facility within the past 180 days; or

(c) has turned 18 years old and has not previously submitted fingerprints for a CCL background check. If the 18-year-old has previously submitted fingerprints for a CCL background check, only a new background check form will be required.

(4) Within ten working days from when a child who resides in the facility turns 12 years old, the provider shall:

(a) ensure that an online background check form is submitted;

(b) authorize the child's background check through the CCL provider's portal; and

(c) pay any required fees.

(5) The provider shall ensure that fingerprints are prepared by a local law enforcement agency or an agency approved by local law enforcement.

(6) If a covered individual submits fingerprints [are submitted-]electronically through live scan, the provider shall ensure that the agency taking the fingerprints is one that follows the department's guidelines.

(7) The department may consider a covered individual not eligible for any of the following reasons:

(a) LIS supported findings;

(b) the covered individual's name appears on the Utah or national sex offender registry;

(c) the covered individual refuses to consent to the criminal background check;

(d) the covered individual knowingly makes a false statement in connection with their background check;

(e) any felony convictions; or

(f) for any of the reasons listed under Subsection R381-40-8(8).

(8) The department may also consider a covered individual not eligible for any of the following convictions regardless of severity:

(a) child pornography;

(b) sexual enticing of a minor;

(c) voyeurism;

(d) a sexual exploitation act;

(e) pornographic material or performance;

(f) any crime against an individual;

(g) providing dangerous weapons or fire arms to a minor;

or

(h) driving under the influence [~~(DUI)~~]while a child is present in the vehicle.

(9) The department shall consider a covered individual eligible if the only background finding is a conviction or plea of no contest to a nonviolent drug offense that occurred ten or more years before [the-]CCL conducted the background check[~~was conducted~~].

(10) If the provider is [deemed-]not eligible by CCL, the department may suspend or deny their license until the reason for the background check finding is resolved.

(11) If a covered individual is deemed not eligible by CCL, including that the individual has been convicted, has pleaded no contest, or is currently subject to a plea in abeyance or diversion agreement for a felony or misdemeanor, the provider shall prohibit that individual from being employed by the child care program or residing at the facility until the reason for the background check finding is resolved.

(12) If the department denies a covered individual [is denied-]a license or employment by the provider based upon the criminal background check and disagrees with the information provided by the Department of Public Safety, the covered individual may appeal the information to the Department of Public Safety.

(13) [If a covered individual disagrees with a supported finding on the Department of Human Services LIS, the covered individual may appeal the finding to the Department of Human Services.

\_\_\_\_\_ (14)-]The provider and the covered individual shall notify the department within 48 hours of becoming aware of the covered individual's arrest warrant, felony or misdemeanor arrest, charge, conviction, or supported LIS finding. Failure to notify the department within 48 hours may result in disciplinary action, including revocation of the license.

(1[5]4) The Executive Director of the department, or their designee may overturn a CCL background check decision if they [Executive Director-]determine[s] that the nature of the background finding or mitigating circumstances do not pose a risk to children.

#### **R381-40-9. Facility.**

(1) The provider shall ensure that any building or play structure on the premises constructed before 1978 that has peeling, flaking, chalking, or failing paint undergoes a test [is tested-]for lead. If there is lead-based paint at the facility[~~is found~~], the provider shall contact their local health department within five working days and follow required procedures for remediation of the lead hazard.

(2) The provider shall ensure that each room and indoor area that [is used by-]children use is ventilated by mechanical ventilation, or by windows that open and have screens.

(3) The provider shall ensure that windows and glass doors within 36 inches from the floor or ground are made of safety or tempered glass, or have a protective guard.

(4) The provider shall ensure that rooms and areas have adequate light intensity for the safety of the children and the type of activity ~~the provider is conducting.~~ ~~[being conducted.]~~

(5) The provider shall maintain the indoor temperature between 65 and 82 degrees Fahrenheit.

(6) The provider shall ensure that there is a working telephone at the facility, in each vehicle while transporting children, and during offsite activities.

(7) The provider shall ensure that there is at least one working toilet and one working sink when there are up to 15 children in the facility, and at least two working toilets and two working sinks when there are more than 15 children present in the facility.

(8) If there is an outdoor area in the facility, the provider shall ensure that the outdoor area:

(a) is safely accessible to the children;

(b) is enclosed within a fence, wall, or solid natural barrier that is at least four feet high; and

(c) has no gaps five by five inches or greater in or under the fence or barrier.

(9) ~~If the provider does not empty the swimming pool on the premises after each use, the provider shall:~~ ~~[there is a swimming pool on the premises that is not emptied after each use, the provider shall:]~~

(a) meet applicable state and local laws and ordinances related to the operation of a swimming pool;

(b) maintain the pool in a safe manner; and

(c) when not in use, cover the pool with a commercially-made safety enclosure that is installed according to the manufacturer's instructions, or enclose the pool within at least a four-foot-high fence or solid barrier that is kept locked and that separates the pool from any other areas on the premises.

(10) The provider shall maintain buildings and outdoor areas in good repair and safe condition including:

(a) ceilings, walls, and floor coverings;

(b) lighting, bathroom, and other fixtures;

(c) draperies, blinds, and other window coverings;

(d) indoor and outdoor play equipment;

(e) furniture, toys, and materials accessible to the children;

and

(f) entrances, exits, steps, and walkways including keeping them free of ice, snow, and other hazards.

(11) The provider shall ensure that accessible raised decks or balconies that are five feet or higher, and open stairwells that are five feet or deeper have protective barriers that are at least three feet high.

(12) If the facility is subdivided, any part of the building is rented out, or any area of the facility is shared including the outdoor area, the department may inspect the entire facility and the provider shall ensure that covered individuals in the facility comply with the requirements under Rule R381-40, except when ~~[the following conditions are met]:~~

(a) there is a separate entrance for the child care program;

(b) there are no connecting interior doorways that can be used by unauthorized individuals; and

(c) there is no shared access to the outdoor area used for child care.

### **R381-40-10. Capacity and Ratio.**

(1) The department may limit the maximum allowed capacity for a child care facility based on local ordinances.

(2) The provider shall ensure that the number of children in care at any given time does not exceed the capacity identified on the license.

(3) The department may determine the total capacity based on the number of rooms and the ages of children cared for in those rooms.

(4) As listed in Table 1 for single-age groups of children, the provider shall:

(a) maintain at least the number of caregivers; and

(b) not exceed the number of children in the caregiver-to-child ratio per room.

TABLE 1 Caregiver-to-child Ratios			
Number of Caregivers	Ages of Children	Number of Children	
At least 1	2 years old	7	
At least 1	3 years old	12	
At least 1	4 years old	15	
At least 1	5 years old	20	

(5) As listed in Tables 2[-] ~~through~~ 4 for mixed-age groups of children, the provider shall:

(a) maintain at least the number of caregivers[-]; and

(b) not exceed the number of children in the caregiver-to-child ratio per room.

TABLE 2 Two-to-Five-Year-Olds		
[#]Number of Caregivers Required	Ages of children	[#]Number of Children Present
At least 1	2 years old	1-6
	3, 4, and 5 years old	1-10
Maximum Total of Children in the Room: 11		

TABLE 3 Three-to-Five-Year-Olds		
[#]Number of Caregivers Required	Ages of children	[#]Number of Children Present
At least 1	3 years old	1-11
	4 years old	1-14
	5 years old	1-14
Maximum Total of Children in the Room: 16		

TABLE 4 Four-to-Five-Year-Olds		
[#]Number of Caregivers Required	Ages of children	[#]Number of Children Present
At least 1	4 years old	1-14
	5 years old	1-17
Maximum Total of Children in the Room: 18		

(6) The provider may exclude the provider's or an employee's child age four years or older from the caregiver-to-child ratio when the parent of the child is working at the facility.

(7) The provider may include caregivers, student interns who are registered in a high school or college child care course, and volunteers who are 16 years old or older in the caregiver-to-child ratio.

#### **R381-40-11. Child Supervision and Security.**

(1) The provider shall ensure that caregivers provide and maintain active supervision of each child, including:

(a) the caregiver is physically present in the room or area with the children;

(b) caregivers know the number of children in their care at any time;

(c) caregivers' attention is focused on the children and not on caregivers' personal interests;

(d) caregivers are aware of the entire group of children even when interacting with a smaller group or an individual child; and

(e) caregivers position themselves so each child in their assigned group is actively supervised.

(2) The provider shall ensure that staff and household members who are 16 or 17 years old only have unsupervised contact with any child in care, including during offsite activities and transportation when:

(a) they are left unsupervised for no more than two consecutive hours per group;

(b) the director or the director designee is physically present and available as needed; and

(c) they are not volunteers.

(3) The provider shall ensure that staff, volunteers, and household members who are younger than 16 years old are not assigned to care for or supervise any child in care.

(4) The provider shall ensure that student interns who are registered and participating in a high school or college child care course and guests do not have unsupervised contact with any child in care, including during offsite activities and transportation.

(5) The provider shall ensure that parents of children in care do not have unsupervised contact with any child in care, except with their own children.

(6) The provider shall ensure that parents have access to their child and the areas used to care for their child when their child is in care.

(7) To maintain security and supervision of children, the provider shall ensure that:

(a) each child is signed in and out in accordance with this section;

(b) only parents or persons with written authorization from the parent may sign-out a child;

(c) photo identification is required if the individual signing the child in or out is unknown to the provider;

(d) persons signing children in and out use identifiers, [such as] including a signature, initials, or electronic code; and

(e) the sign-in and sign-out records include the date and time each child arrives and leaves.

(8) In an emergency, the provider shall accept the parent's verbal authorization to release a child if the provider can confirm the identity of:

(a) the person giving verbal authorization; and

(b) the person picking up the child.

(9) The provider shall ensure that a six-week record of each child's daily attendance, including sign-in and sign-out records, is kept on-site for review by the department.

#### **R381-40-12. Child Guidance and Interaction.**

(1) The provider shall ensure that no child is subjected to physical, emotional, or sexual abuse while in care.

(2) The provider shall inform parents, children, and those who interact with the children of the program's behavioral expectations and how any misbehavior will be handled.

(3) The provider shall ensure that individuals who interact with the children guide children's behavior by using positive reinforcement, redirection, and by setting clear limits that promote children's ability to become self-disciplined.

(4) The provider shall ensure that caregivers use gentle, passive restraint with children only when it is needed to protect children from injuring themselves or others, or to stop them from destroying property.

(5) The provider shall ensure that interactions with the children do not include:

(a) any form of corporal punishment or any action that produces physical pain or discomfort [such as] including hitting, spanking, shaking, biting, or pinching;

(b) restraining a child's movement by binding, tying, or any other form of restraint that exceeds gentle, passive restraint;

(c) shouting at children;

(d) any form of emotional abuse;

(e) forcing or withholding food, rest, or toileting; or

(f) confining a child in a closet, locked room, or other enclosure [such as] including a box, cupboard, or cage.

(6) Any individual who witnesses or suspects that a child has been subjected to abuse, neglect, or exploitation shall immediately notify Child Protective Services or law enforcement as required in [state law] Section 80-2-602.

#### **R381-40-13. Child Safety and Injury Prevention.**

(1) The provider shall ensure that children and staff use [that] the building, outdoor area, toys, and equipment safely and as intended by the manufacturer to prevent injury to children [are used in a safe manner and as intended by the manufacturer to prevent injury to children].

(2) The provider shall ensure that poisonous and harmful plants are inaccessible to children.

(3) The provider shall ensure that sharp objects, edges, corners, or points that could cut or puncture skin are inaccessible to children.

(4) The provider shall ensure that choking hazards are inaccessible to children younger than three years old.

(5) The provider shall ensure that strangulation hazards [such as] including ropes, cords, chains, and wires attached to a structure and long enough to encircle a child's neck are inaccessible to children.

(6) The provider shall ensure that tripping hazards [such as] including unsecured flooring, rugs with curled edges, or cords in walkways are inaccessible to children.

(7) The provider shall ensure that empty plastic bags large enough for a child's head to fit inside, latex gloves, and balloons are inaccessible to children younger than five years old.

(8) The provider shall ensure that standing water that measures two inches or deeper and five by five inches or greater in diameter is inaccessible to children.

(9) The provider shall ensure that toxic or hazardous chemicals ~~[such as]~~including cleaners, insecticides, lawn products, and flammable, corrosive, and reactive materials are:

- (a) inaccessible to children;
- (b) used according to manufacturer instructions;
- (c) stored in containers labeled with the contents of the container; and
- (d) disposed of properly.

(10) The provider shall ensure that the following items are inaccessible to children:

- (a) matches or cigarette lighters;
- (b) open flames;
- (c) hot wax or other hot substances; and
- (d) when in use, portable space heaters, wood burning stoves, and fireplaces.

(11) The provider shall ensure that the following items are inaccessible to children:

- (a) live electrical wires; and
- (b) for children younger than five years old, electrical outlets and surge protectors without protective caps or safety devices when not in use.

(12) Unless used and stored ~~[in compliance with the Utah Concealed Weapons Act or]~~ ~~as]~~ otherwise allowed by any state or federal law, the provider shall ensure that firearms ~~[such as]~~including guns, muzzleloaders, rifles, shotguns, hand guns, pistols, and automatic guns are:

- (a) locked in a cabinet or area using a key, combination lock, or fingerprint lock; and
- (b) stored unloaded and separate from ammunition.

(13) The provider shall ensure that weapons ~~[such as]~~including paintball guns, BB guns, airsoft guns, sling shots, arrows, and mace are inaccessible to children.

(14) The provider shall ensure that alcohol, illegal substances, and sexually explicit material are inaccessible, and not used on the premises, during offsite activities, or in program vehicles any time a child is in care.

(15) If there is an outdoor area used by the children, the provider shall ensure that an outdoor source of drinking water, ~~[such as]~~including individually labeled water bottles, a pitcher of water and individual cups, or a working water fountain is available to each child when the outside temperature is 75 degrees or higher.

(16) The provider shall ensure that areas accessible to children are free of heavy or unstable objects that children could pull down on themselves, ~~[such as]~~including furniture, unsecured televisions, and standing ladders.

(17) The provider shall ensure that hot water accessible to children does not exceed 120 degrees Fahrenheit.

(18) The provider shall ensure that tobacco, e-cigarettes, e-juice, e-liquids, and similar products are inaccessible and, in compliance with ~~[the]~~Title 26, Chapter 38, Utah Indoor Clean Air Act, are not used:

- (a) in the facility or any other building when a child is in care;
- (b) in any vehicle that is being used to transport a child in care;
- (c) within 25 feet of any entrance to the facility or other building occupied by a child in care; or
- (d) in any outdoor area or within 25 feet of any outdoor area occupied by a child in care.

#### **R381-40-14. Emergency Preparedness and Response.**

(1) The provider shall ~~[have]~~develop and follow a written emergency preparedness, response, and recovery plan that:

(a) includes procedures for evacuation, relocation, shelter in place, lockdown, communication with and reunification of families, and continuity of operations;

(b) includes procedures for accommodations for children with disabilities, and children with chronic medical conditions;

(c) includes instructions to follow in case of an allergy or serious reaction to food or any other trigger that may affect the child's health;

~~[(e)]~~(d) is available for review by parents, staff, and the department during business hours; and

~~[(f)]~~(e) is followed if an emergency happens, unless otherwise instructed by emergency personnel.

(2) The provider shall post the facility's street address and emergency numbers, including at least fire, police, and poison control, near each telephone in the facility or in an area clearly visible to anyone needing the information.

(3) The provider shall keep first aid supplies in the facility, including at least antiseptic, bandages, and tweezers.

(4) The provider shall conduct fire evacuation drills at least quarterly and make sure drills include a complete exit of each child, staff, and volunteer from the building.

(5) The provider shall conduct drills for disasters other than fires at least once every ~~[6]~~six months.

(6) The provider shall give parents a written report of every incident, accident, or injury involving their child.

(7) If a child is injured and the injury appears serious but not life-threatening, the provider shall contact the child's parent immediately.

(8) If a life-threatening injury to a child, or an injury that poses a threat of the loss of vision, hearing, or a limb happens, the provider shall:

- (a) call emergency personnel immediately;
- (b) contact the parent after emergency personnel are called;

and

(c) if the parent cannot be reached, try to contact the child's emergency contact individual.

(9) If a child is injured while in care and receives medical attention, or for a child fatality, the provider shall:

(a) submit a completed accident report form to the department within the next business day of the incident; or

(b) contact the department within the next business day and submit a completed accident report form within five business days of the incident.

(10) The provider shall keep a six-week record of each incident, accident, and injury report on-site for review by the department.

#### **R381-40-15. Health and Infection Control.**

(1) The provider shall keep the building, furnishings, equipment, and outdoor area clean and sanitary including:

(a) walls and flooring free of spills, dirt, and grime;

(b) areas and equipment used for the storage, preparation, and service of food;

(c) surfaces free of rotting food or a build-up of food;

(d) the building and grounds free of a build-up of litter, trash, and garbage;

(e) frequently touched surfaces, including doorknobs and light switches; and

(f) the facility free of animal feces.

(2) The provider shall take safe and effective measures to prevent and eliminate the presence of insects, rodents, and other pests.

(3) The provider shall ensure that fabric toys and items ~~[such as]~~ including stuffed animals, cloth dolls, pillow covers, and dress-up clothes are machine washable and washed weekly, and as needed.

(4) The provider shall clean and sanitize any toys and materials used by children:

- (a) at least once a week or more often if needed; and
- (b) after being contaminated by a body fluid.

(5) The provider shall ensure that water play tables or tubs are cleaned and sanitized daily, if used by the children.

(6) The provider shall ensure that staff clean and sanitize bathroom surfaces including toilets, sinks, faucets, and counters ~~[are cleaned and sanitized each day]~~.

(7) The provider shall ensure that toilet paper is accessible to children and kept in a dispenser.

(8) The provider shall post handwashing procedures that are readily visible from each handwashing sink and shall ensure that the procedures are followed.

(9) The provider shall ensure that staff and volunteers wash their hands thoroughly with liquid soap and running water at required times including:

- (a) upon arrival;
- (b) after using the toilet or helping a child use the toilet;
- (c) after contact with a body fluid;
- (d) after cleaning up or taking out garbage;
- (e) after diapering a child;
- (f) before administering medications to children;
- ~~(d)~~ (g) before and after eating meals and snacks or feeding

a child; and

- ~~(e)~~ (h) when coming in from outdoors.

(10) The provider shall ensure that caregivers teach children how to wash their hands thoroughly and oversee handwashing when possible.

(11) The provider shall ensure that children wash their hands thoroughly with liquid soap and running water at required times including:

- (a) upon arrival;
- (b) after using the toilet;
- (c) after contact with a body fluid;
- (d) before using a water play table or tub;
- (e) before eating a snack; and
- (f) when coming in from outdoors.

(12) The provider shall ensure that only single-use towels from a covered dispenser or an electric hand dryer is used to dry hands.

(13) The provider shall ensure that personal hygiene items, ~~[such as]~~ including toothbrushes, combs, and hair accessories, are not be shared and are stored so they do not touch each other, or they are sanitized between each use.

(14) The provider shall ensure the ~~[at]~~ prompt change of a child's clothing ~~[is promptly changed]~~ if the child has a toileting accident.

(15) The provider shall ensure that children's clothing that is wet or soiled from a body fluid is:

- (a) not rinsed or washed at the facility;
- (b) placed in a leakproof container that is labeled with the child's name; and
- (c) returned to the parent; or
- (d) thrown away with parental consent.

(16) The provider shall ensure that staff take precautions when cleaning floors, furniture, and other surfaces contaminated by blood, urine, feces, or vomit. Except for toileting accidents, staff shall:

- (a) wear waterproof gloves;
- (b) clean the surface using a detergent solution;
- (c) rinse the surface with clean water;
- (d) sanitize the surface;

(e) throw away in a leakproof plastic bag the disposable materials, ~~[such as]~~ including paper towels, that were used to clean up the body fluid;

(f) wash and sanitize any non-disposable materials used to clean up the body fluid, ~~[such as]~~ including cleaning cloths, mops, or reusable rubber gloves, before reusing them; and

- (g) wash their hands after cleaning up the body fluid.

(17) The provider shall ensure that a child who is ill with an infectious disease is not cared for at the facility except when the child shows signs of illness after arriving at the facility.

(18) If a child becomes ill while in care:

(a) the provider shall contact the child's parent or, if the parent cannot be reached, an individual listed as the emergency contact to immediately pick up the child; and

(b) if the child is ill with an infectious disease, the provider shall make the child comfortable in a safe, supervised area that is separated from the other children until the parent arrives.

(19) ~~[When]~~ If any child or employee has an infectious disease, an unusual or serious illness, or a sudden onset of an illness, the provider shall notify the local health department on the day the provider discovers the illness ~~[is discovered]~~.

(20) If a staff member or child has an infectious disease or parasite, the provider shall post a notice at the facility that:

(a) does not disclose any personal identifiable information;

(b) is posted in a conspicuous place where it can be seen by parents;

(c) is posted and dated on the same day that the disease or parasite is discovered; and

- (d) remains posted for at least five business days.

#### **R381-40-16. Food and Nutrition.**

(1) The provider shall ensure that each child is offered a snack when services are provided for three or more hours.

(2) The provider shall ensure that the person who serves snacks to children:

(a) is aware of the children in their assigned group who have food allergies or sensitivities~~[-]~~; and

(b) ensures that the children are not served the snack to which they are allergic or sensitive.

(3) The provider shall ensure that food and drink brought in by parents for their child's use is:

- (a) labeled with the child's name;
- (b) refrigerated if needed; and
- (c) consumed only by that child.

#### **R381-40-17. Medications.**

(1) The provider shall lock nonrefrigerated medications or store them at least 48 inches above the floor.

(2) The provider shall lock refrigerated medications or store them at least 36 inches above the floor and, if liquid, store them in a separate leakproof container.

(3) If parents supply any over-the-counter or prescription medications, the provider shall ensure those medications ~~[are]~~ are

- (a) are labeled with the child's full name;



- (b) ~~are stored~~<sup>kept</sup> in the original or pharmacy container;
- (c) have the original label; and
- (d) have child safety caps.

(4) The provider shall ~~have~~<sup>obtain</sup> a written medication permission form completed and signed by the parent before administering any medication supplied by the parent for their child.

(5) The provider shall ensure that the medication permission form includes at least:

- (a) the name of the child;
- (b) the name of the medication;
- (c) written instructions for administration; and
- (d) the parent signature and the date signed.

(6) The provider shall ensure that instructions for administering the medication include at least:

- (a) the dosage;
- (b) how the medication will be given;
- (c) the times and dates to administer the medication; and
- (d) the disease or condition being treated.

(7) If the provider supplies an over-the-counter medication for children's use, the provider shall ensure that ~~no staff administer the medication to any child~~<sup>is not administered to any child</sup> without previous parental consent for each instance it is given. The provider shall ensure that the consent is:

- (a) written; or
- (b) verbal, if the date and time of the consent is documented and signed by the parent upon picking up their child.

(8) The provider shall ensure that the staff administering the medication:

- (a) washes their hands;
- (b) check the medication label to confirm the child's name if the parent supplied the medication;

(c) checks the medication label or the package to ensure that a child is not given a dosage larger than that recommended by the health care professional or manufacturer; and

- (d) administers the medication.

(9) The provider shall ensure that immediately after administering a medication, the staff giving the medication records the following information:

- (a) the date, time, and dosage of the medication given;
- (b) any error in administering the medication or adverse reactions; and

- (c) their signature or initials.

(10) The provider shall report to the parent a child's adverse reaction to a medication or error in administration of the medication immediately upon recognizing the reaction or error, or after notifying emergency personnel if the reaction is life-threatening.

(11) The provider shall notify the parent before the ~~scheduled medication dosage~~<sup>time a medication needs to be given</sup> to a child if the provider chooses not to administer medication as instructed by the parent.

(12) The provider shall keep a six-week record of medication permission and administration forms on-site for review by the department.

#### **R381-40-18. Activities.**

(1) The provider shall offer daily activities that support each child's healthy physical, social, emotional, cognitive, and language development.

(2) The provider shall ensure that physical development activities include light, moderate, and vigorous physical activity for a daily total of at least 15 minutes for every 2 hours children spend in the program.

(3) The provider shall post a daily schedule that includes activities that support children's healthy development.

(4) The provider shall ensure that toys, materials, and equipment needed to support children's healthy development are available to the children.

(5) Except for occasional special events, the provider shall ensure that the children's primary screen time activity on media ~~such as~~<sup>including</sup> television, cell phones, tablets, and computers is limited to 30 minutes per day, or 2-1/2 hours per week.

(6) If ~~the provider offers~~<sup>swimming activities</sup> ~~are offered~~<sup>for</sup> if wading pools are used, the provider shall ensure that:

(a) the parent gives permission before their child in care uses the pool;

(b) caregivers stay at the pool supervising when a child is in the pool or has access to the pool, and when an accessible pool has water in it;

(c) diapered children wear swim diapers when they are in the pool;

(d) wading pools are emptied and sanitized after use by each group of children;

(e) if the pool is over four feet deep, there is a lifeguard on duty who is certified by the Red Cross or other approved certification program any time children have access to the pool; and

(f) lifeguards and pool personnel do not count toward the caregiver-to-child ratio.

(7) If ~~the provider offers~~<sup>offsite activities</sup> ~~are offered~~<sup>],</sup> the provider shall ensure that:

- (a) the parent gives written consent before each activity;

(b) the required caregiver-to-child ratio and supervision are maintained during the entire activity;

(c) first aid supplies, including at least antiseptic, bandages, and tweezers are available;

(d) children wear or carry with them the name and phone number of the program;

(e) children's names are not used on nametags, t-shirts, or in other visible ways; and

(f) there is a way for caregivers and children to wash their hands with soap and water, or with wet wipes and hand sanitizer if there is no source of running water.

(8) The provider shall ensure that caregivers take the written emergency information and releases for each child in the group on any offsite activity, and that the information includes:

- (a) the child's name;

- (b) the parent's name and phone number;

(c) the name and phone number of a person to notify in case of an emergency if the parent cannot be contacted;

(d) the names of people authorized by the parents to pick up the child; and

(e) current emergency medical treatment and emergency medical transportation releases.

#### **R381-40-19. Play Equipment.**

(1) The provider shall ensure that children using play equipment use it safely and ~~in the manner~~<sup>as</sup> intended by the manufacturer.

(2) The provider shall ensure that stationary play equipment has a surrounding use zone that extends from the outermost edge of the equipment, and with the exception of swings, that stationary play equipment has at least a six-foot use zone if any designated play surface is higher than 20 inches.

(3) The provider shall ensure that the use zone in the front and rear of a single-axis, enclosed swing extends at least twice the distance of the swing pivot point to the swing seat.

(4) The provider shall ensure that the use zone in the front and rear of a single-axis swing extends at least twice the distance of the swing pivot point to the ground.

(5) The provider shall ensure that the use zone for a multi-axis swing, ~~[such as]~~including a tire swing, extends at least the measurement of the suspending rope or chain plus six feet.

(6) The provider shall ensure that the use zone for a merry-go-round extends at least six feet in all directions from its outermost edge.

(7) The provider shall ensure that the use zone for a spring rocker extends at least six feet from the outermost edge of the rocker when at rest if the seat is higher than 20 inches.

(8) The provider shall ensure that the following use zones do not overlap the use zone of any other piece of play equipment:

- (a) the use zone in front of a slide;
- (b) the use zone in the front and rear of any single-axis swing, including a single-axis enclosed swing;
- (c) the use zone of a multi-axis swing; and
- (d) the use zone of a merry-go-round if the platform diameter measures 20 inches or more.

(9) Unless prohibited under Subsection R381-40-19(8), the provider shall ensure that the use zones of play equipment only overlap when there is at least six feet between the pieces of equipment if the designated play surface is 30 inches or lower, or there is at least nine feet between the pieces of equipment if the designated play surface is higher than 30 inches.

(10) The provider shall ensure that, when in use, stationary play equipment is not placed on a hard surface ~~[such as]~~including concrete, asphalt, dirt, or the bare floor.

(11) The provider shall ensure that protective cushioning covers the entire surface of each required use zone and its depth or thickness is determined by the highest designated play surface of the equipment.

(12) If the provider uses sand, gravel, or shredded tires ~~[are used]~~ as protective cushioning, the provider shall ensure that the depth of the material meets the guidelines in Table 5, and:

- (a) that the cushioning is periodically checked for compaction and loosened to the depth listed in Table 5 if compacted; and
- (b) if the material cannot be loosened due to extreme weather conditions, not allow children to play on the equipment until the material can be loosened to the required depth.

[TABLE 5

Depths of Protective Cushioning Required  
for Sand, Gravel, and Shredded Tires

Highest Designated Play Surface, Climbing Bar, or Swing Pivot Point	Fine Sand	Coarse Sand	Fine Gravel	Medium Gravel	Shredded Tires
Up to 5' high	6"	6"	6"	6"	6"
Over 5' up to 6'	6"	9"	6"	9"	6"
Over 6' up to 9'	9"	not allowed	9"	not allowed	6"
Over 9' up to 10'	not allowed	not allowed	9"	not allowed	6"
Over 10' up to 12'	not allowed	not allowed	not allowed	not allowed	6"

TABLE 5 Depths of Protective Cushioning Required for sand, Gravel, and Shredded Tires and Rubber Products					
Highest Designated Play Surface, Climbing Bar, or Swing Pivot Point	Fine sand	Coarse Sand	Fine Gravel	Medium Gravel	Shredded Tires and Rubber Products
Up to 5' high	6"	6"	6"	6"	6"
Over 5' up to 6'	6"	9"	6"	9"	6"
Over 6' up to 9'	9"	Not allowed	9"	Not allowed	6"
Over 9' up to 10'	Not allowed	Not allowed	9"	Not allowed	6"
Over 10' up to 12'	Not allowed	Not allowed	Not allowed	Not allowed	6"

(13) If the provider uses shredded wood products ~~[are used]~~ as protective cushioning, the provider shall:

- (a) keep on-site for review by the department documentation from the manufacturer that the wood product is protective cushioning;
- (b) ensure there is adequate drainage under the material; and
- (c) ensure the depth of the shredded wood meets the guidelines in Table 6.

[TABLE 6

Depths of Protective Cushioning Required  
for Shredded Wood Products

Highest Designated Play Surface, Climbing Bar, or Swing Pivot Point	Engineered Wood Fibers	Wood Chips	Double Shredded Bark Mulch
Up to 6' high	6"	6"	6"
Over 6' up to 7'	9"	6"	9"
Over 7' up to 11'	9"	9"	9"
Over 11'	9"	not allowed	not allowed

TABLE 6 Depths of Protective Cushioning Required for Shredded Wood Products			
Highest Designated Play Surface, Climbing Bar, or Swing Pivot Point	Engineered Wood fibers	Wood Chips	Double Shredded Bark Mulch
Up to 6' high	6"	6"	6"
Over 6' up to 7'	9"	6"	9"
Over 7' up to 11'	9"	9"	9"
Over 11'	9"	Not allowed	Not allowed

(14) If the provider uses a unitary cushioning ~~[is used]~~, the provider shall maintain on-site for review by the department documentation from the manufacturer that the material is cushioning for playgrounds.

(15) If the provider uses a unitary cushioning ~~[is used]~~, the provider shall ensure that the cushioning material is securely installed, so that it cannot become displaced when children jump, run, walk, land, or move on it, or be moved by children picking it up.

(16) ~~[(1)]~~The provider shall ensure that a play equipment platform that is more than 30 inches above the floor or ground has a protective barrier that is at least 29 inches high.

(17) The provider shall ensure that there is no gap greater than 3-1/2 inches in or under a required protective barrier on a play equipment platform.

(18) The provider shall ensure that stationary play equipment is stable or securely anchored.

(19) The provider shall ensure that there are no trampolines on the premises that are accessible to any child in care.

(20) The provider shall ensure that there are no entrapment hazards on or within the use zone of any piece of stationary play equipment.

(21) The provider shall ensure that there are no strangulation hazards on or within the use zone of any piece of stationary play equipment.

(22) The provider shall ensure that there are no crush, shearing, or sharp edge hazards on or within the use zone of any piece of stationary play equipment.

(23) The provider shall ensure that there are no tripping hazards ~~[such as]~~including concrete footings, tree stumps, tree roots, or rocks within the use zone of any piece of stationary play equipment.

(24) For preschool programs operating before January 1, 2021 that need to make compliance modifications to existing play equipment, the department may facilitate a phase-in schedule for up to five years from the initial inspection.

#### **R381-40-20. Transportation.**

~~[If transportation services are offered:]~~

(1) For each child ~~that the licensee transports~~being transported, the provider shall ~~[have]~~obtain a transportation permission form:

- (a) signed by the parent; and
- (b) on-site for review by the department.

(2) The provider shall ensure that each vehicle used for transporting children:

- (a) is enclosed with a roof or top;
- (b) is equipped with safety restraints;
- (c) has a current vehicle registration;
- (d) is maintained in a safe and clean condition; and
- (e) contains first aid supplies, including at least antiseptic, bandages, and tweezers.

(3) The provider shall ensure that the safety restraints in each vehicle that transports children are:

- (a) appropriate for the age and size of each child who is transported, as required by Utah law;
  - (b) properly installed; and
  - (c) in safe condition and working order.
- (4) The provider shall ensure that the driver of each vehicle who is transporting children:

- (a) is at least 18 years old;
- (b) has and carries with them a current, valid driver's license for the type of vehicle being driven;
- (c) has with them the~~[-written]~~ emergency contact information for each child being transported;
- (d) ensures that each child being transported is in an individual safety restraint that is used according to Utah law;
- (e) ensures that the inside vehicle temperature is between 60-85 degrees Fahrenheit;
- (f) never leaves a child in the vehicle unattended by an adult;

(g) ensures that children stay seated while the vehicle is moving;

(h) never leaves the keys in the ignition when not in the driver's seat; and

(i) ensures that the vehicle is locked during transport.

(5) If the provider walks or uses public transportation to transport children to or from the facility, the provider shall ensure that:

(a) each child being transported has a completed transportation permission form signed by their parent;

(b) a caregiver goes with the children and actively supervises the children;

(c) the caregiver-to-child ratio is maintained; and

(d) a caregiver with the children has~~[-written]~~ emergency contact information and releases for the children being transported.

(6) The provider shall:

(a) have transport liability insurance; or

(b) inform parents in writing that the provider does not have transport liability insurance.

#### **R381-40-21. Animals.**

(1) The provider shall inform parents of the kinds of animals allowed at the facility.

(2) The provider shall ensure that there is no animal on the premises that:

(a) is naturally aggressive;

(b) has a history of dangerous, attacking, or aggressive behavior; or

(c) has a history of biting even one individual.

(3) The provider shall ensure that animals at the facility are clean and free of obvious disease or health problems that could adversely affect children.

(4) The provider shall ensure that there is no animal or animal equipment in food preparation or eating areas.

(5) The provider shall ensure that children do not assist with the cleaning of animals or animal cages, pens, or equipment.

(6) The provider shall ensure that children and staff wash their hands immediately after playing with or touching reptiles and amphibians.

(7) The provider shall ensure that dogs, cats, and ferrets that ~~[are housed at]~~the facility houses have current rabies vaccinations.

(8) The provider shall keep current animal vaccination records on-site for review by the department.

#### **R381-40-22. Diapering.**

~~[If the provider accepts children who wear diapers:]~~

(1) This section applies only to a provider that accepts children who wear diapers.

([2]2) The provider shall post diapering procedures at each diapering station and ensure that each staff member follows the procedures.[ they are followed.]

([2]3) The provider shall ensure that each child's diaper is:

(a) checked at least once every two hours; and

(b) promptly changed when wet or soiled.

([3]4) The provider shall ensure that caregivers change children's diapers at a diapering station and not changed on surfaces used for any other purpose.

([4]5) The provider shall ensure that the diapering surface is smooth, waterproof, and in good repair.

([5]6) The provider shall ensure that caregivers do not leave children unattended on the diapering surface.

([6]7) The provider shall ensure that caregivers clean and sanitize the diapering surface after each diaper change, or use a disposable, waterproof diapering surface that is thrown away after each diaper change.

([7]8) The provider shall ensure that caregivers wash their hands after each diaper change.

([8]9) The provider shall ensure that caregivers place wet and soiled disposable diapers:

(a) in a container that has a disposable plastic lining and a tight-fitting lid;

(b) directly in an outdoor garbage container that has a tight-fitting lid; or

(c) in a container that is inaccessible to children.

([9]10) The provider shall ensure that indoor containers where wet and soiled diapers are placed are cleaned and sanitized each day.

**KEY: child care facilities, child care, commercial preschool programs**

**Date of Last Change: 2023**~~June 1, 2022~~

**Authorizing, and Implemented or Interpreted Law:** ~~[26-39-203(1)(a)]~~**26B-2-402**

## NOTICE OF PROPOSED RULE

**TYPE OF FILING:** Amendment

<b>Rule or Section Number:</b>	<b>R381-70</b>	<b>Filing ID:</b> <b>55691</b>
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## Agency Information

<b>1. Department:</b>	Health and Human Services		
<b>Agency:</b>	Child Care Center Licensing		
<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>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	
Simon Bolivar	801-803-4618	sbolivar@utah.gov	

**Please address questions regarding information on this notice to the persons listed above.**

## General Information

**2. Rule or section catchline:**

R381-70. Out of School Time Child Care Programs

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

The purpose of this amendment is to update language, clarify processes, and update citations following the consolidation and recodification of the Department of Health and Human Services' (DHHS) statute in 2023 General Session.

Additionally, this amendment incorporates changes based on the input and approval of the Child Care Licensing Committee.

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

The amendment adds clarifying language compliant with the Rulewriting Manual for Utah.

Additionally, this aligns terminology and processes with current enforcement standards.

It also updates citations following the recodification and consolidation of the DHHS statute.

Substantive changes include new language to comply with S.B. 123 retitling Childcare Licensing Committee to Childcare Provider Licensing Committee (Committee).

## 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 Rulewriting Manual for Utah standards.

Substantive changes add clarification with no fiscal impact to enforcement or state government.

#### B) Local governments:

The Committee does not expect any costs or savings to the local governments caused by the proposed rule amendments because they are mostly changes that will facilitate and clarify the current process.

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

The Committee does not expect any costs or savings caused by the proposed rule amendments because they are mostly changes that will facilitate and clarify the current process.

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

The Committee does not expect any costs or savings to non-small businesses caused by the proposed rule amendments because they are mostly changes that will facilitate and clarify the current process.

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

The Committee does not expect any costs or savings to other persons caused by the proposed rule amendments because they are mostly changes that will facilitate and clarify the current process.

**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 costs generated by the proposed rule changes because they are mostly changes that will facilitate and clarify the current process.

**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-2-402		
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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.)

**A) Comments will be accepted until:** 10/16/2023

**9. This rule change MAY become effective on:** 10/23/2023

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>	08/25/2023
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#### **R381. Health and Human Services, Child Care Center Licensing.**

##### **R381-70. Out-of-School-Time Child Care Programs.**

##### **R381-70-1. Legal Authority and Purpose.**

(1) This rule is enacted and enforced in accordance with [Title 26, Chapter 39, Utah Child Care Licensing Act.] Section 26B-2-402.

(2) This rule establishes the foundational standards necessary to protect the health and safety of children in out-of-school-time programs and defines the general procedures and requirements to get and maintain a license.

##### **R381-70-2. Definitions.**

(1) "Applicant" means a person or business who has applied for a new or a renewal of a license from [Child Care Licensing] the department.

(2) "Background Finding" means information in a background check that [Child Care Licensing] the department uses to determine if a covered individual is or is not eligible to be involved with child care.

(3) "Barrier" means an enclosing structure ~~[such as]~~including a fence, wall, bars, railing, or solid panel to prevent accidental or deliberate movement through or access to something.

(4) "Body Fluid" means blood, urine, feces, vomit, mucus, or saliva.

(5) "Business Days and Hours" means the days of the week and times the facility is open for business.

(6) "Caregiver" means a covered individual who protects the health and safety of children. A covered individual is a caregiver when they:

(a) count in the caregiver-to-child ratio;

(b) meet the physical or emotional needs of the children, including toileting, feeding, or protecting them from harm; or

(c) supervise children.

(7) "Capacity" means the maximum number of children the provider is allowed to care for at any given time.

(8) "CCL" means the Child Care Licensing Program under the Office of Licensing that is delegated with the responsibility to enforce the ~~[Utah Child Care Licensing Act]~~rules under Titles R381 and R430.

(9) "Child Care ~~[Center]~~Provider Licensing Committee" means the Child Care ~~[Center]~~Provider Licensing Committee created in ~~Section 26B-1-414, [the Utah Child Care Licensing Act]~~

(10) "Conditional Status" means that the provider is at risk of losing their child care license because compliance with any laws or administrative [licensing] rules has not been maintained.

(11) "Covered Individual" means any of the following individuals involved with the program:

(a) an owner;

(b) a director;

(c) a member of the governing body;

(d) an employee;

(e) a volunteer, except a parent of a child enrolled in the program; and

(f) anyone who has unsupervised contact with a child in the program.

(12) "Department" means the Utah Department of Health and Human Services.

(13) "Designated Play Surface" means any accessible elevated surface for standing, walking, crawling, sitting or climbing; or an accessible flat surface at least two by two inches in size and having an angle less than 30 degrees from horizontal.

(14) "Director" means an individual who meets the director qualifications in this rule, and who assumes the child care program's day-to-day responsibilities for compliance with Child Care Licensing rules.

(15) "Eligible" means that there were no findings in a covered individual's background check that ~~[e]~~would prohibit that covered individual from being involved with child care.

(16) "Emotional Abuse" is defined in Subsection R512-80-2(12) and also means behavior that could harm a child's emotional development, ~~[such as]~~including threatening, intimidating, humiliating, demeaning, criticizing, rejecting, using profane language, or using inappropriate physical restraint.

(17) "Entrapment Hazard" means an opening greater than 3-1/2 by 6-1/4 inches and less than nine inches in diameter where a child's body could fit through but the child's head could not fit through, potentially causing a child's entrapment and strangulation.

(18) "Facility" means a program or the premises approved ~~[by the department]~~ and licensed by ~~[Child Care Licensing]~~the department.

(19) "Group" means the children who the provider assigns to one or more caregivers for their care and supervision. ~~[are assigned to and supervised by one or more staff members.]~~

(20) "Group Size" means the total number of children in a group per room or area.

(21) "Guest" means an individual who is not a covered individual and is at the facility with the provider's permission.

(22) "Health Care Provider" means a licensed health professional, ~~[such as]~~including a physician, dentist, nurse practitioner, or physician's assistant.

(23) "Homeless" means anyone who lacks a fixed, regular, and adequate nighttime residence.

(24) "Inaccessible" means out of reach of children by being:

(a) locked, ~~[such as]~~including in a locked room, cupboard, or drawer;

(b) secured with a safety device;

(c) behind a properly secured safety gate;

(d) located in a cupboard or on a shelf that is at least 48 inches above the floor; or

(e) in a bathroom, locked or secured with a safety device.

(25) "Infectious Disease" means an illness that is capable of being spread from one person to another.

(26) "Involved with Children" means to do any of the following at or for an out-of-school-time program:

(a) supervise or be assigned to work with children;

(b) volunteer;

(c) own, operate, direct;

(d) reside;

(e) count in the staff-to-child ratio; or

(f) have unsupervised contact with a child in care.

(27) "License" means a license issued by the department to provide out-of-school-time program services.

(28) "Licensee" means the legally responsible person or business that holds a valid license from ~~[Child Care Licensing]~~the department.

(29) "LIS Supported Finding" means a supported finding of child abuse or neglect in [background check information from] the Licensing Information System (LIS) database for child abuse and neglect, maintained by the ~~[Utah D]~~department ~~[of Human Services].~~

(30) "Over-the-Counter Medication" means medication that an individual can purchase ~~[can be purchased]~~ without a written prescription including herbal remedies, vitamins, and mineral supplements.

(31) "Parent" means the parent or legal guardian of a child in the program.

(32) "Person" means an individual or a business entity.

(33) "Physical Abuse" is defined in Subsection R512-80-2(25) and also means causing nonaccidental physical harm to a child.

(34) "Play Equipment Platform" means a flat surface on a piece of stationary play equipment intended for more than one child to stand on, and upon which the children can move freely.

(35) "Protective Barrier" means a structure ~~[such as]~~including bars, lattice, or a panel that is around an elevated platform and is intended to prevent accidental or deliberate movement through or access to something.

(36) "Protective Cushioning" means a shock-absorbing surface under and around play equipment that reduces the severity of injuries from falls.

(37) "Provider" means the legally responsible person or business that holds a valid license or certification from ~~[Child Care Licensing]~~the department.

(38) "Qualifying Child" means:

(a) a child who is between five and 13 years old and is the child of a person other than the provider or a staff member[-]; and

(b) a child with a disability who is between five and 18 years old and is the child of a person other than the provider or a staff member.

(39) "Related Child" means a child for whom a provider is the parent, legal guardian, step[-]parent, grandparent, step-grandparent, great-grandparent, sibling, step-sibling, aunt, step-aunt, great-aunt, uncle, step-uncle, or great-uncle.

(40) "Room" is defined ~~[by the department]~~ as follows:

(a) ~~[i]~~ if a large room is divided into smaller rooms or areas with barriers ~~[such as]~~ including furniture or with half walls, the room or area is considered:

(i) ~~[i]~~ one room, if the room is divided by a solid barrier that is less than 24 inches, whether the barrier is movable or immovable[-];

(ii) ~~[i]~~ one room, if the room is divided by a solid barrier that is between 24 and 40 inches in height and there is an opening in the barrier through which caregivers and children can move freely[-];

(iii) ~~[i]~~ two rooms, if the room is divided by a solid barrier that is between 24 and 40 inches in height and there is no opening in the barrier through which caregivers and children can move freely, or there is an opening between the two sides but the opening is blocked ~~[such as]~~ including with a child safety gate, including ~~[-]~~. ~~This also applies to~~ a diaper changing station that is located behind a closed gate[-];

(iv) ~~[i]~~ two rooms, if the room is divided by a solid barrier that is over 40 inches in height and there is no opening in the barrier through which caregivers and children can move freely, or there is an opening between the two sides but the opening is blocked ~~[such as]~~ including with a child safety gate~~[-]~~; ~~or~~ ~~[if there is an opening through which caregivers and children can move freely and the opening is not blocked, refer to the instructions for a large opening, archway, or doorway.]~~

(v) if there is an opening through which caregivers and children can move freely and the opening is not blocked, refer to the instructions for a large opening, archway, or doorway;

(b) ~~[i]~~ if two rooms or areas are connected by a large opening, archway, or doorway, the rooms or areas are considered:

(i) ~~[i]~~ one room, if the width of the opening or archway is equal to or greater than the combined width of the walls on each side of the opening or archway, in the larger of the two rooms or areas, and there is no furniture or other dividers blocking the opening or archway~~[-]~~; ~~otherwise the department shall consider this to be two rooms[-]; or~~

(ii) ~~[i]~~ two rooms, if the width of the opening or archway is smaller than the combined width of the walls on each side of the opening or archway, in the larger of the two rooms or areas~~[-]; and~~

(c) ~~[i]~~ if in outdoor areas separated by interior fences, the department considers it:

(i) ~~[i]~~ one area, if the interior fence is lower than 24 inches in height, whether or not the fence has an opening[-];

(ii) ~~[i]~~ one area, if the interior fence is 40 inches or lower in height with an opening through which caregivers and children can move freely[-];

(iii) ~~[i]~~ two areas if the interior fence is higher than 24 inches and there is no opening~~[-]; or~~

(iv) ~~[i]~~ two areas, if the interior fence is higher than 40 inches whether or not the fence has an opening.

(41) "Sanitize" means to use a product or process to reduce contaminants and bacteria to a safe level.

(42) "School-Age Child" means a child age five through 12 years old.

(43) "Services" means the supervision and response to the needs of five or more qualifying children:

(a) in the absence of the children's parents[-];

(b) in a place other than the provider's home or the child's home[-];

(c) for less than 24 hours a day[-]; and

(d) for direct or indirect compensation.

(44) "Sexual Abuse" is defined in Subsection R512-80-2(30) and also means to take indecent liberties with a child with the intention to arouse or gratify the sexual desire of an individual or to cause pain or discomfort.

(45) "Sexually Explicit Material" means any depiction of actual or simulated sexually explicit conduct.

(46) "Staff-to-Child Ratio" means the number of staff responsible for a specific number of children.

(47) "Stationary Play Equipment" means equipment ~~[such as]~~ including a climber, slide, swing, merry-go-round, or spring rocker that is meant to stay in one location when a child uses it. Stationary play equipment does not include:

(a) a sandbox;

(b) a stationary circular tricycle;

(c) a sensory table; or

(d) a playhouse that sits on the ground or floor and does not have an attached slide, swing, or climber.

(48) "Strangulation Hazard" means something on which a child's clothes or drawstrings could become caught, or something in which a child could become entangled ~~[such as]~~ including:

(a) a protruding bolt end that extends more than two threads beyond the face of the nut;

(b) hardware that forms a hook or leaves a gap or space between components ~~[such as]~~ including a protruding open S-hook; or

(c) a rope, cord, or chain that is attached to a structure and is long enough to encircle a child's neck.

(49) "Unsupervised Contact" means being with, caring for, communicating with, or touching a child in the absence of a staff member who is at least 18 years old and is considered eligible by CCL ~~[has passed a Child Care Licensing background check]~~.

(50) "Use Zone" means the area beneath and surrounding a play structure or piece of equipment that is designated for unrestricted movement around the equipment, and onto which a child falling from or exiting the equipment could be expected to land.

(51) ~~["Volunteer" means an individual who receives no form of direct or indirect compensation for their service.]~~

~~(52)~~ "Working Days" means the days of the week the department is open for business.

### **R381-70-3. License Required.**

(1) A person ~~[or persons]~~ shall ~~[be licensed as]~~ obtain a license for an out-of-school-time program from the department if they provide services:

(a) in the absence of the child's parent;

(b) in a place other than the provider's home or the child's home;

(c) for five or more qualifying children;

(d) for each individual child for less than 24 hours a day;

(e) on an ongoing basis, on three or more days a week and for 30 or more days in a calendar year;

- (f) to children who are at least five years of age; and
- (g) for direct or indirect compensation.

(2) A person who ~~[is not required to be licensed]~~does not meet licensing requirements may voluntarily become licensed, except for care that is for related children only or on a sporadic basis.

(3) ~~[A provider may be licensed to provide child care in a facility that is also licensed to offer foster or respite care services, or another licensed or certified human services program if the part of the building requesting a CCL license is physically separated from the other building services.]~~The department may license a provider to provide child care in a facility that the department licensed to offer foster or respite care services, or another licensed or certified human services program, if the part of the building requesting a CCL license is physically separate from the other building services.

#### **R381-70-4. License Application, Renewal, Changes, and Variances.**

(1) Each applicant for a new care license shall:

- (a) submit a CCL online application;
- (b) submit a copy of a current local fire clearance or a written statement from the local fire authority that a fire inspection is not required;
- (c) submit a copy of a current local health department kitchen clearance for a facility providing food service or a written statement from the local health department that a kitchen inspection is not required;
- (d) submit a copy of a current local business license or a written statement from the city that a business license is not required;
- (e) submit a copy of the educational credentials of the individual who will be the director as required in Section R381-70-7;
- (f) complete CCL background checks for covered individuals as required in Section R381-70-8;
- (g) complete CCL new provider training no more than six months before becoming licensed; and
- (h) pay any required fees, ~~[which]~~that are nonrefundable.

(2) Each applicant shall pass a department's inspection of the facility before the department issues a new license or a renewal ~~[is issued]~~.

(3) If the local fire authority states in writing that an applicant for a new license or a renewal does not require a fire inspection, the department shall verify the applicant's compliance with the following:

- (a) address numbers and letters are readable from the street;
- (b) exit doors operate properly and are well maintained;
- (c) there are no obstructions in exits, aisles, corridors, and stairways;
- (d) exit doors are unlocked from the inside during business hours;
- (e) exits are clearly identified;
- (f) there is at least one unobstructed fire extinguisher on each level of the building, currently charged and serviced, and mounted not more than five feet above the floor;
- (g) there are working smoke detectors that are properly installed on each level of the building; and
- (h) boiler, mechanical, and electrical panel rooms are not used for storage.

(4) If an applicant for a new license or a renewal serves food and the local health department states in writing that a kitchen inspection is not required, the department shall verify the applicant's compliance with the following:

- (a) the refrigerator is clean, in good repair, and working at or below 41 degrees Fahrenheit;
- (b) there is a working thermometer in the refrigerator;
- (c) there is a working stem thermometer available to check cooking and hot hold temperatures;
- (d) cooks have a current food handler's permit available on-site for review by the department;
- (e) cooks use hair restraints and wear clean outer clothing;
- (f) only necessary staff are present in the kitchen;
- (g) reusable food holders, utensils, and food preparation surfaces are washed, rinsed, and sanitized before each use;
- (h) chemicals are stored away from food and food service items;
- (i) food is properly stored, kept to the proper temperature, and in good condition; and
- (j) there is a working handwashing sink in the kitchen and handwashing instructions posted by the sink.

(5)(a) Each applicant for a new license shall ~~[have]~~complete the licensing process within six months from the time any portion of the application is submitted to the department. ~~[finish the licensing process. If unsuccessful, the applicant shall reapply. Any resubmission must include the required documentation, payment of licensing fees, and a new inspection of the facility to be licensed.]~~

(b) If the applicant cannot achieve successful licensure within six months, the applicant shall reapply.

(c) For any resubmission, the applicant shall include the required documentation and payment of licensing fees.

(d) The applicant shall successfully pass a new inspection conducted by the department before receiving a license.

(6) The department may deny an application for a license if, within the five years preceding the application date, the applicant held a license or a certificate that was:

- (a) closed under an immediate closure;
- (b) revoked;
- (c) closed as a result of a settlement agreement resulting from a notice of intent to revoke, a notice of revocation, or a notice of immediate closure;
- (d) voluntarily closed after an inspection of the facility found a rule violation that would have resulted in a notice of intent to revoke or a notice of revocation had the provider not closed voluntarily; or
- (e) voluntarily closed having unpaid fees or civil money penalties issued by the department.

(7) Each child care license expires at midnight on the last day of the month shown on the license, unless the department revokes the license ~~[was previously revoked by the department,]~~or the provider voluntarily closes the license~~[d by the provider]~~.

(8) Within 30 to 90 days before a current license expires, each provider shall submit for renewal:

- (a) an online renewal request;
- (b) applicable renewal fees;
- (c) any previous unpaid fees; and
- (d) a copy of a current fire inspection report.

(9) The department may grant a provider who fails to renew their license by the expiration date an additional 30 days to complete the renewal process if the provider pays a late fee.

(10) The department may deny renewal of a license for a provider who is no longer caring for children.

(11) Each provider shall submit a complete application for a new license at least 30 days before any of the following changes occur:

- (a) a change of the child care facility's location; or



(b) a change that transfers 50% or more ownership or controlling interest to a new individual or entity.

(12) A provider shall submit a complete online changes request to amend an existing license at least 30 days before any of the following changes:

(a) an increase or decrease of licensed capacity, including any change to the amount of usable indoor or outdoor space where child care is provided;

(b) a change in the name of the program;

(c) a change in the regulation type of the program;

(d) a change in the name of the provider;

(e) an addition or loss of a director; or

(f) a change in ownership that does not require a new license.

(13) The department may amend a license after verifying that the applicant is in compliance with any applicable rules and has paid the required fees. ~~[have been paid.]~~ The expiration date of the amended license remains the same as the previous license.

(14) Only the department may assign, transfer, or amend a license.

(15)(a) If an applicant or provider cannot comply with a rule under Rule R381-40 but can meet the intent of the rule in another way, the applicant or provider may apply for a variance to that rule by submitting a request to the department.

~~[(16)b]~~ The department may:

~~[(a)i]~~ require additional information before acting on ~~[the]~~a variance request; and

~~[(b)ii]~~ impose health and safety requirements as a condition of granting a variance.

~~[(17)c]~~ Each provider shall comply with the existing ~~[rules]~~Rule R381-40 ~~[until—]unless the department approves a variance.~~~~[is approved by the department.]~~

~~[(18)d]~~ If the Department approves a variance~~[is approved]~~, the provider shall keep a copy of the written approval on-site for review by parents and the department.

~~[(19)e]~~ The department may grant variances for up to 12 months.

~~[(20)f]~~ The department may revoke a variance if:

~~[(a)i]~~ the provider is not meeting the intent of the rule as stated in their approved variance;

~~[(b)ii]~~ the provider fails to comply with the conditions of the variance; or

~~[(e)iii]~~ a change in statute, rule, or case law affects the basis for the variance.

#### **R381-70-5. Rule ~~[Violations]~~Noncompliance, Penalties, and ~~[Appeals]~~Agency Action Reviews.**

(1) The department may place a program's license on a conditional status for the following causes:

(a) chronic, ongoing noncompliance with rules;

(b) unpaid fees; or

(c) a serious rule violation that places children's health or safety in immediate jeopardy.

(2) The department shall establish the length of the conditional status and set the conditions that the child care provider shall satisfy to remove the conditional status.

(3) The department may increase monitoring of the program that is on conditional status to verify compliance with rules.

(4) The department may deny or revoke a license if the provider:

(a) fails to meet the conditions of a license on conditional status;

(b) violates ~~[the Child Care Licensing Act]~~any part of Title 26B, Chapter 2, Part 4 Child Care Licensing;

(c) provides false or misleading information to the department;

(d) misrepresents information by intentionally altering a license or any other document issued by the department;

(e) fails to allow authorized representatives of the department access to the facility to ensure compliance with this rule;

(f) fails to submit or make available to the department any written documentation required to verify compliance with this rule;

(g) commits a serious rule violation that results in death or serious harm to a child, or that places a child at risk of death or serious harm; or

(h) has committed an illegal act that would exclude an individual from having a license.

(5) Within ten working days of receipt of a revocation notice, the provider shall submit to the department the names and mailing addresses of the parents of each enrolled child so the department can notify the parents of the revocation.

(6) The department may order the immediate closure of a facility if conditions create a clear and present danger to any child in care and may require immediate action to protect the children's health or safety.

(7) Upon receipt of an immediate closure notice, the provider shall give the department the names and mailing addresses of the parents of each enrolled child so the department can notify the parents of the immediate closure.

(8) If there is a severe injury or the death of a child while in the program, the department may order the provider to suspend services and prohibit new enrollments, pending a review by the DHHS Child Fatality Review Committee or a determination of the probable cause of death or injury by a medical professional.

~~[(9) If a person is providing services for more than four unrelated children without the appropriate license, the department may:~~

~~\_\_\_\_\_ (a) issue a cease and desist order; or~~

~~\_\_\_\_\_ (b) allow the person to continue operation if:~~

~~\_\_\_\_\_ (i) the person was unaware of the need for a license;~~

~~\_\_\_\_\_ (ii) conditions do not create a clear and present danger to the children; and~~

~~\_\_\_\_\_ (iii) the person agrees to apply for the appropriate license within 30 calendar days of notification by the department.]~~

[(9) An unlicensed person providing care that requires a license may be charged with a civil money penalty and a class A misdemeanor unless they:

\_\_\_\_\_ (a) stop providing child care that requires a license; or

\_\_\_\_\_ (b) apply for the appropriate license within 30 calendar days of notification by the department.

(10) If a person providing services without the appropriate license agrees to apply for a license but does not submit an application and the required application documents within 30 days, the department may issue a cease and desist order.

(11) A violation of any rule is punishable by an administrative civil money penalty of up to \$5,000 a day as provided in Section ~~[26-39-604]~~26B-2-409.

(12) The department may assess a civil money penalty and also take action to deny, place on conditional status, revoke, immediately close, or refuse to renew a license.

(13) The department may deny an application or revoke a license for failure to pay any required fees, including fees for applications, late fees, returned checks, license changes, additional

inspections, conditional monitoring inspections, background checks, civil money penalties, and other fees assessed by the department.

(14) An applicant or provider may request a hearing to appeal any department decision within ~~[45]~~ten working days of the department informing the applicant ~~[being informed]~~ in writing of the decision.

#### **R381-70-6. Administration and Children's Records.**

(1) The provider shall:

- (a) be at least 21 years old;
- (b) be considered eligible by a CCL background check before becoming involved with child care; and
- (c) complete the new provider training offered by the department.

(2) If the owner is not a sole proprietor, the business entity shall submit to the department the name and contact information of the individual or individuals who shall legally represent them and who shall comply with the requirements stated in Subsection R381-70-6(1).

(3) The provider shall protect children from conduct that endangers children in the program, or is contrary to the health, ~~[morals,~~ welfare, and safety of the public.

(4) The provider shall know and comply with each applicable federal, state, and local law, ordinance, and rule, and shall be responsible for the operation and management of a child care program.

(5) The provider shall comply with licensing rules any time a child is present.

(6) The provider shall post their unaltered license on the facility premises in a place readily visible and accessible to the public.

(7) The provider shall post a current copy of the department's Parent Guide at the facility for parent review during business hours.

(8) The provider shall inform parents and the department of any changes to the program's telephone number and other contact information within 48 hours of the change.

(9) The provider shall:

- (a) have liability insurance; or
- (b) inform parents in writing that the provider does not have liability insurance.

(10) The provider shall ensure that a parent completes an admission and health assessment form for their child before the child is admitted into the program.

(11) The provider shall ensure that each child's admission and health assessment form includes the following information:

- (a) child's name;
- (b) child's date of birth;
- (c) parent's name, address, and phone number, including a daytime phone number;
- (d) names of individuals authorized by the parent to sign the child out from the facility;
- (e) name, address, and phone number of an individual to be contacted if an emergency happens and the provider cannot contact the parent;
- (f) if available, the name, address, and phone number of an out-of-area emergency contact individual for the child;
- (g) parent's permission for emergency transportation and emergency medical treatment;
- (h) any known allergies of the child;
- (i) any known food sensitivities of the child;
- (j) any chronic medical conditions that the child may have;

(k) instructions for special or nonroutine daily health care of the child;

(l) current ongoing medications that the child may be taking; and

(m) any other special health instructions for the caregiver.

(12) The provider shall ensure that the admission and health assessment form is:

(a) reviewed, updated, and signed or initialed by the parent at least annually; and

(b) kept on-site for review by the department.

(13) The provider shall ensure that each child's information is ~~[kept]~~ confidential and not released without written parental permission except to the department.

#### **R381-70-7. Personnel and Training Requirements.**

(1) The provider shall ensure that employees and volunteers are supervised, qualified, and trained to:

(a) meet the needs of the children as required by rule; and

(b) be in compliance with licensing requirements under Rule R381-70.

(2) The provider shall ensure that the center has a qualified director as required by licensing rules.

(3) The provider shall ensure that the director:

(a) is at least 21 years old;

(b) is considered eligible by a CCL background check before becoming involved with child care;

(c) ~~[receives at least 2 1/2 hours of preservice training before beginning job duties;]~~ if hired after January 1, 2023, has completed the 2-1/2 hour preservice training offered by the department;

(d) completes the new director training offered by the department within 60 working days of assuming director duties;

(e) knows and follows any applicable laws and requirements under Rule R381-70; and

(f) completes at least ~~[40]~~ten hours of child related training each year based on the facility's license date, or at least 45 minutes of child related training each month they work if hired partway through the facility's licensing year.

(4) The provider shall ensure that each new director has one of the following educational credentials:

(a) any bachelor's or higher education degree, and at least 60 clock hours of ~~[approved Utah Early Childhood Career Ladder courses]~~ coursework in child development, social and emotional development, and the child care environment~~[;]~~, or 60 clock hours of equivalent training as approved by the department;

(b) at least 12 college credit hours of child development courses, elementary education, or related field;

(c) a currently valid national certification ~~[such as]~~ including a Certified Childcare Professional ~~[(CCP)]~~ issued by the National Child Care Association, a Child Development Associate ~~[(CDA)]~~ issued by the Council for Early Childhood Professional Recognition, or other equivalent credential as approved by the department;

(d) at least ~~[a Level 9 from the Utah Early Childhood Career Ladder system]~~ an associate degree in early childhood development or related field; or

(e) a National Administrator Credential ~~[(NAC)]~~ and at least 60 clock hours of ~~[approved Utah Early Childhood Career Ladder courses]~~ course work in child development, social and emotional development, and the child care environment~~[;]~~, or 60 clock hours of equivalent training as approved by the department.

(5) The provider shall ensure that the director is on duty at the facility during operating hours for at least 50% each time the program is open and has sufficient freedom from other responsibilities to manage the center and respond to emergencies.

(6) The provider shall ensure that there is a director designee with authority to act on behalf of the director in the director's absence.

(7) The provider shall ensure that the director designee:

(a) is at least 18 years old;

(b) is considered eligible by a CCL background check before becoming involved with child care;

(c) ~~receives at least 2 1/2 hours of preservice training~~ if hired after January 1, 2023, has completed the 2-1/2 hour preservice training offered by the department before beginning job duties;

(d) knows and follows any applicable laws and rules;

(e) completes at least ~~[40]~~ten hours of child related training each year based on the facility's license date, or at least 45 minutes of child related training each month they work if hired partway through the facility's licensing year; and

(f) has current first aid and cardio pulmonary resuscitation (CPR).

(8) The provider shall ensure that the director or the director designee is present at the facility when the center is open for business.

(9) The provider shall ensure that staff working with children:

(a) are at least 16 years old;

(b) are considered eligible by a CCL background check before becoming involved with child care;

(c) ~~[receive at least 2 1/2 hours of preservice training]~~ complete the 2-1/2 hour preservice training offered by the department before ~~[working with]~~ caring for children;

(d) know and follow any applicable laws and requirements under Rule R381-70; ~~[and]~~

(e) are introduced to other program staff and to the caregiver's assigned group of children;

(f) review the information in each child's health assessment in the caregiver's assigned group, including allergies, food sensitivities, and other individual needs; and

(g) complete at least [40]ten hours of child related training each year, based on the facility's license date, or at least 45 minutes of child related training each month they work if hired partway through the facility's licensing year.

(10) The provider shall ensure that any other staff ~~[such as]~~ including drivers, cooks, and clerks:

(a) are considered eligible by a CCL background check before becoming involved with child care;

(b) ~~[receive at least 2 1/2 hours of preservice training]~~ complete the 2-1/2 hour preservice training offered by the department before beginning job duties; and

(c) know and follow any applicable laws and requirements under Rule R381-70.

(11) The provider shall ensure that volunteers are ~~[considered]~~ eligible by a CCL background check before becoming involved with child care.

(12) The provider shall ensure that student interns who are registered and participating in a high school or college child care course and guests wear a guest nametag.

(13) The provider shall ensure that household members who are:

(a) 12 to 17 years old are considered eligible by a CCL background check; and

(b) 18 years old or older are ~~[considered]~~ eligible by a CCL background check that includes fingerprints.

(14) The provider shall ensure that individuals who provide Individualized Educational Plan ~~[(IEP)]~~ or Individualized Family Service plan ~~[(IFSP)]~~ services ~~[such as]~~ including physical, occupational, or speech therapists:

(a) provide proper identification before having access to the facility or to a child at the facility; and

(b) have received the child's parent's permission for services to take place at the facility.

(15) The provider shall ensure that individuals from law enforcement, Child Protective Services, the department, and any similar entities provide proper identification before having access to the facility or to a child at the facility.

~~[(16) The provider shall ensure that preservice training includes at least the following topics:~~

~~\_\_\_\_\_ (a) job description and duties;~~

~~\_\_\_\_\_ (b) current department rule Sections R381-70-7 through R381-70-22;~~

~~\_\_\_\_\_ (c) disaster preparedness, response, and recovery;~~

~~\_\_\_\_\_ (d) pediatric first aid and CPR;~~

~~\_\_\_\_\_ (e) children with special needs;~~

~~\_\_\_\_\_ (f) safe handling and disposal of hazardous materials;~~

~~\_\_\_\_\_ (g) prevention, signs, and symptoms of child abuse and neglect, including child sexual abuse, and legal reporting requirements;~~

~~\_\_\_\_\_ (h) principles of child growth and development, including brain development;~~

~~\_\_\_\_\_ (i) recognizing the signs of homelessness and available assistance;~~

~~\_\_\_\_\_ (j) a review of the information in each child's health assessment in the caregiver's assigned group, including allergies, food sensitivities, and other special needs; and~~

~~\_\_\_\_\_ (k) an introduction and orientation to the children in care.]~~ (16) The provider shall ensure that each covered individual required to complete preservice training receives the 2-1/2 hour preservice training offered by the department that includes at least the following topics:

(a) applicable laws and requirements under Rule R381-70;

(b) children whose special needs may include a disability;

(c) recognizing the signs of homelessness and available assistance;

(d) building and physical premises safety;

(e) prevention, signs, and symptoms of child abuse and neglect, including child sexual abuse, and legal reporting requirements;

(f) pediatric first aid and CPR;

(g) emergency preparedness, response, and recovery plan;

(h) prevention of and response to emergencies due to food and allergy reactions;

(i) safe handling and disposal of hazardous materials and bio contaminants;

(j) prevention and control of infectious diseases including immunizations;

(k) administration of medication;

(l) child and brain development, including the social, emotional, physical, cognitive, and language principles of child growth;

(m) precautions in transporting children;

(n) prevention of shaken baby syndrome, abusive head trauma, child maltreatment, and coping with crying babies; and

(o) prevention of sudden infant death syndrome and the use of safe sleeping practices.

~~[(17) The provider shall keep documentation of each individual's preservice training on site for review by the department and shall ensure that documentation includes at least the following:~~

- ~~(a) training topics;~~
- ~~(b) date of the training; and~~
- ~~(c) total hours or minutes of training.]~~

(1[8]7) The provider shall ensure that annual child care training includes at least the following topics:

(a) ~~[current department rule]~~ Sections R381-70-7 through R381-70-22; and

- ~~[(b) disaster preparedness, response, and recovery;~~
  - ~~(c) pediatric first aid and CPR;~~
  - ~~(d) children with special needs;~~
  - ~~(e) safe handling and disposal of hazardous materials;~~
  - ~~(f) the prevention, signs, and symptoms of child abuse and neglect, including child sexual abuse, and legal reporting requirements;~~
  - ~~(g) principles of child growth and development, including brain development; and~~
  - ~~(h) recognizing the signs of homelessness and available assistance.]~~
- (b) each topic listed in Subsections R381-70-7(16)(a) through (o).

(1[9]8) The provider shall ensure that documentation of each individual's annual child care training is ~~[kept]~~ on-site for review by the department and includes the following:

- (a) training topic;
- (b) date of the training;
- (c) name of the individual or organization that presented the training; and
- (d) total hours or minutes of training.

(20[19] The provider shall ensure that at least one staff member with a current Red Cross, American Heart Association, or equivalent pediatric first aid and CPR certification is present when children are in care:

- (a) at the facility;
- (b) in each vehicle transporting children; and
- (c) at each offsite activity.

(2[4]0) The provider shall ensure that CPR certification includes hands-on testing.

(2[2]1) The provider shall ensure that the following records for each covered individual are ~~[kept]~~ on-site for review by the department:

- (a) the date of initial employment or association with the program;
- (b) a current pediatric first aid and CPR certification, if required in this rule; and
- (c) a six-week record of the times worked each day.

#### **R381-70-8. Background Checks.**

~~[(1) Before a new covered individual becomes involved with child care in the program, the provider shall use the CCL provider portal search to:~~

- ~~(a) verify that the individual is eligible; and~~
  - ~~(b) associate that individual with their facility if the covered individual appears in the search.]~~
- (1) Before a new covered individual becomes involved with child care, the provider shall use the CCL provider portal search to verify that the individual is eligible and:

- (a) associate that individual with their facility; or

(b) not associate the individual if the individual is associated with another CCL facility and the new individual will be at the facility for no more than one business day.

(2) Before a new covered individual who does not appear in the CCL provider portal search becomes involved with child care in the program, the provider shall:

(a) ~~[have]~~ require the individual to submit an online background check form and fingerprints for individuals age 18 years old and older;

(b) authorize the individual's background check through the CCL provider's portal;

(c) pay any required fees; and

(d) receive written notice from CCL that the individual is eligible.

(3) To keep their background check eligibility current, the provider shall require a covered individual to submit a new background check form, fingerprints, and fees if the covered individual has~~[also ensure that a new background check form and fingerprints are submitted and authorized and fees are paid for any covered individual who has]:~~

(a) resided outside of Utah since their last background check was completed;

(b) not been associated with an active, CCL approved child care facility within the past 180 days; or

(c) has turned 18 years old and has not previously submitted fingerprints for a CCL background check. If the 18-year-old has previously submitted fingerprints for a CCL background check, only a new background check form will be required.

(4) Within ten working days from when a child who resides in the facility turns 12 years old, the provider shall:

(a) ensure that an online background check form is submitted;

(b) authorize the child's background check through the CCL provider's portal; and

(c) pay any required fees.

(5) The provider shall ensure that fingerprints are prepared by a local law enforcement agency or an agency approved by local law enforcement.

(6) If a covered individual submits fingerprints ~~[are submitted]~~ electronically through live scan, the provider shall ensure that the agency taking the fingerprints is one that follows the department's guidelines.

(7) The department may consider a covered individual not eligible for any of the following reasons:

(a) LIS supported findings;

(b) the covered individual's name appears on the Utah or national sex offender registry;

(c) the covered individual refuses to consent to the criminal background check;

(d) the covered individual knowingly makes a false statement in connection with their background check;

(e) any felony convictions; or

(f) for any of the reasons listed under Subsection R381-70-8(8).

(8) The department may also consider a covered individual not eligible for any of the following convictions regardless of severity:

- (a) child pornography;
- (b) sexual enticing of a minor;
- (c) voyeurism;
- (d) a sexual exploitation act;
- (e) pornographic material or performance;

- (f) any crime against an individual;
- (g) providing dangerous weapons or fire~~[-]~~arms to a minor;

or

(h) driving under the influence ~~[(DUI)]~~while a child is present in the vehicle.

(9) The department shall consider a covered individual eligible if the only background finding is a conviction or plea of no contest to a nonviolent drug offense that occurred ten or more years before ~~[the] CCL conducted the background check [was conducted]~~.

(10) If the provider is ~~[considered]~~not eligible by CCL, the department may suspend or deny their license until the reason for the background check finding is resolved.

(11) If a covered individual is considered not eligible by CCL, including that the individual has been convicted, has pleaded no contest, or is currently subject to a plea in abeyance or diversion agreement for a felony or misdemeanor, the provider shall prohibit that individual from being employed by the child care program or residing at the facility until the reason for the background check finding is resolved.

(12) If ~~the department denies~~ a covered individual ~~[is denied]~~a license or employment by the provider based upon the criminal background check and disagrees with the information provided by the Department of Public Safety, the covered individual may appeal the information to the Department of Public Safety.

~~[(13) If a covered individual disagrees with a supported finding on the Department of Human Services LIS, the covered individual may appeal the finding to the Department of Human Services.]~~

(1[4]3) The provider and the covered individual shall notify the department within 48 hours of becoming aware of the covered individual's arrest warrant, felony or misdemeanor arrest, charge, conviction, or supported LIS finding. Failure to notify the department within 48 hours may result in disciplinary action, including revocation of the license.

(1[5]4) The Executive Director of the department or their designee may overturn a CCL background check decision if they ~~[Executive Director]~~determine[s] that the nature of the background finding or mitigating circumstances do not pose a risk to children.

### **R381-70-9. Facility.**

(1) The provider shall ensure that there is at least 35 square feet of indoor space for each child in the program, including the provider's and employees' children.

(2) The department may include floor space used for furniture, fixtures, or equipment as indoor space per child if the furniture, fixture, or equipment is used:

- (a) by children;
  - (b) for the use of children; or
  - (c) to store materials for children.
- (3) The department may not include the following areas when measuring indoor space for children's use:
- (a) bathrooms;
  - (b) closets and staff lockers;
  - (c) hallways;
  - (d) lobbies and entryways;
  - (e) kitchens; and
  - (f) staff offices.

~~[(4) The department may limit the maximum allowed capacity for a facility based on local ordinances.]~~

([5]4) The provider shall ensure that the number of children in care at any given time does not exceed the capacity identified on the license.

~~[(6]5)~~ The provider shall ensure that any building or play structure on the premises constructed before 1978 that has peeling, flaking, chalking, or failing paint undergoes a test ~~[is tested]~~for lead. If the provider or the department find lead-based paint~~[is found]~~, the provider shall contact their local health department within five working days and follow required procedures for remediation of the lead hazard.

~~[(7]6)~~ The provider shall ensure that each room and indoor area that ~~[is used by]~~children use is ventilated by mechanical ventilation, or by windows that open and have screens.

~~[(8]7)~~ The provider shall ensure that windows and glass doors within 36 inches from the floor or ground are made of safety or tempered glass, or have a protective guard.

~~[(9]8)~~ The provider shall ensure that rooms and areas have adequate light intensity for the safety of the children and the type of activity the provider is conducting.~~[being conducted.]~~

~~[(10]9)~~ The provider shall maintain the indoor temperature between 65 and 82 degrees Fahrenheit.

(1[4]0) The provider shall ensure that there is a working telephone at the facility, in each vehicle while transporting children, and during offsite activities.

(1[2]1) The provider shall ensure that there are at least two working toilets and two working handwashing sinks accessible to children in the center.

(1[3]2) The provider shall ensure that there is at least one additional working toilet and one additional handwashing sink for each additional group of one to 25 children.

(1[4]3) The provider shall ensure that there are bathrooms that provide privacy available for use by children.

(1[5]4) The provider shall ensure that there is an outdoor area that is safely accessible to children.

(1[6]5) The provider shall ensure that the outdoor area has at least 40 square feet of space for each child using the area at one time.

(1[7]6) The provider shall ensure that the total square footage of the outdoor area accommodates at least one-third of the approved capacity at one time or is at least 1,600 square feet.

(1[8]7) The provider shall ensure that a fence encloses the outdoor area~~[is enclosed within a fence]~~, wall, or solid natural barrier that is at least four feet high.

(1[9]8) The provider shall ensure that there is no gap five by five inches or greater in or under the fence or barrier.

~~[(20]19)~~ The provider shall ensure that children are in an enclosed area when children are outdoors, except during offsite activities.

(2[4]0) The provider shall ensure that there is shade available to protect the children from excessive sun and heat when children are in the outdoor area.

(2[2]1) If there is a swimming pool on the premises that the provider does ~~[is]~~not empty~~[ied]~~ after each use, the provider shall:

- (a) meet applicable state and local laws and ordinances related to the operation of a swimming pool;

- (b) maintain the pool in a safe manner; and

- (c) when not in use, cover the pool with a commercially-made safety enclosure that is installed according to the manufacturer's instructions, or enclose the pool within at least a four-foot-high fence or solid barrier that is kept locked and that separates the pool from any other areas on the premises.

(2[3]2) The provider shall maintain buildings and outdoor areas in good repair and safe condition including:

- (a) ceilings, walls, and floor coverings;

- (b) lighting, bathroom, and other fixtures;
- (c) draperies, blinds, and other window coverings;
- (d) indoor and outdoor play equipment;
- (e) furniture, toys, and materials accessible to the children;

and

(f) entrances, exits, steps, and walkways including keeping them free of ice, snow, and other hazards.

(2[4]3) The provider shall ensure that accessible raised decks or balconies that are five feet or higher, and open stairwells that are five feet or deeper have protective barriers that are at least three feet high.

(2[5]4) If the facility is subdivided, any part of the building is rented out, or any area of the facility is shared including the outdoor area, the department may inspect the entire facility and the provider shall ensure that covered individuals in the facility comply with the rules, except when~~[the following conditions are met]~~:

- (a) there is a separate entrance for the program;
- (b) there are no connecting interior doorways that can be used by unauthorized individuals; and
- (c) there is no shared access to the outdoor area used for the program.

#### **R381-70-10. Ratios and Group Size.**

(1) The provider shall maintain the staff-to-child ratio of at least one staff member for every 20 children.

(2) The provider may not exceed the maximum group size of 40 children per group.

(3) The provider shall ensure that there are at least two staff members present when there are more than eight children on the premises.

(4) The provider shall include the provider's and employees' children:

- (a) in the group size when the parent of the child is working at the facility; and
- (b) in the group size and the staff-to-child ratio when the parent of the child is not working at the facility.

(5) The provider may include caregivers, student interns who are registered in a high school or college child care course, and volunteers who are 16 or 17 years old in the caregiver-to-child ratio.

(6) The provider shall ensure that guests do not count in caregiver-to-child ratios.

#### **R381-70-11. Child Supervision and Security.**

(1) The provider shall ensure that staff provide and maintain active supervision of each child, including that staff:

- (a) can hear the children and are close enough to intervene;
- (b) know the number of children in their assigned group at any time;
- (c) focus attention on the children and not on the staff's personal interests;
- (d) are aware of the entire group of children even when interacting with a smaller group or an individual child; and
- (e) position themselves so each child in their assigned group is actively supervised.

(2) The provider shall ensure that staff and household members who are 16 or 17 years old only have unsupervised contact with any child in care, including during offsite activities and transportation when:

- (a) they are left unsupervised for no more than two consecutive hours per group;
- (b) the director or the director designee is physically present and available as needed; and

(c) they are not volunteers.

(3) The provider shall ~~[ensure that]~~not assign staff, volunteers, and household members who are younger than 16 years old ~~[are not assigned]~~ to care for or supervise any child in care.

(4) The provider shall ensure that student interns who are registered and participating in a high school or college child care course and guests do not have unsupervised contact with any child in care, including during offsite activities and transportation.

(5) The provider shall ensure that parents of children in care do not have unsupervised contact with any child in care, except with their own children.

(6) The provider shall ensure that parents have access to their child and the areas used to care for their child when their child is in care.

(7) To maintain security and supervision of children, the provider shall ensure that:

(a) each child is signed in and out in accordance with this section;

(b) only parents or individuals with written authorization from the parent may sign-out a child;

(c) photo identification is required if the individual signing the child out is unknown to the provider;

(d) individuals signing children in and out use identifiers, ~~[such as]~~including a signature, initials, or electronic code;

(e) the sign-in and sign-out records include the date and time each child arrives and leaves; and

(f) there is written permission from the child's parent if children sign themselves in or out.

(8) In an emergency, the provider shall accept the parent's verbal authorization to release a child if the provider can confirm the identity of:

- (a) the individual giving verbal authorization; and
- (b) the individual picking up the child.

(9) The provider shall ensure that a six-week record of each child's daily attendance, including sign-in and sign-out records, is kept on-site for review by the department.

#### **R381-70-12. Child Guidance and Interaction.**

(1) The provider shall ensure that no child is subjected to physical, emotional, or sexual abuse while in the program.

(2) The provider shall inform parents, children, and those who interact with the children of the center's behavioral expectations and how any misbehavior will be handled.

(3) The provider shall ensure that individuals who interact with the children guide children's behavior by using positive reinforcement, redirection, and by setting clear limits that promote children's ability to become self-disciplined.

(4) The provider shall ensure that staff use gentle, passive restraint with children only when it is needed to protect children from injuring themselves or others, or to stop them from destroying property.

(5) The provider shall ensure that interactions with the children do not include:

(a) any form of corporal punishment or any action that produces physical pain or discomfort ~~[such as]~~including hitting, spanking, shaking, biting, or pinching;

(b) restraining a child's movement by binding, tying, or any other form of restraint that exceeds gentle, passive restraint;

(c) shouting at children;

(d) any form of emotional abuse;

(e) forcing or withholding food, rest, or toileting; or

(f) confining a child in a closet, locked room, or other enclosure ~~[such as]~~ including a box, cupboard, or cage.

(6) Any individual who witnesses or suspects that a child has been subjected to abuse, neglect, or exploitation shall immediately notify Child Protective Services or law enforcement as required in ~~[state law]~~ Section 80-2-602.

### **R381-70-13. Child Safety and Injury Prevention.**

(1) The provider shall ensure ~~that children and staff use [that]~~ the building, outdoor area, toys, and equipment safely and as intended by the manufacturer to prevent injury to children ~~[are used in a safe manner and as intended by the manufacturer to prevent injury to children]~~.

(2) The provider shall ensure that poisonous and harmful plants are inaccessible to children.

(3) The provider shall ensure that razors and other similar blades are inaccessible to children.

(4) The provider shall ensure that strangulation hazards ~~[such as]~~ including ropes, cords, chains, and wires attached to a structure and long enough to encircle a child's neck are inaccessible to children.

(5) The provider shall ensure that tripping hazards ~~[such as]~~ including unsecured flooring, rugs with curled edges, or cords in walkways are inaccessible to children.

(6) The provider shall ensure that exits are free of any blocking objects.

(7) The provider shall ensure that standing water that measures two inches or deeper and five by five inches or greater in diameter is inaccessible to children.

(8) The provider shall ensure that toxic or hazardous chemicals ~~[such as]~~ including cleaners, insecticides, lawn products, and flammable, corrosive, and reactive materials are:

- (a) inaccessible to children;
- (b) used according to manufacturer instructions;
- (c) stored in containers labeled with the contents of the container; and
- (d) disposed of properly.

(9) The provider shall ensure that the following items are inaccessible to children:

- (a) matches or cigarette lighters;
- (b) open flames;
- (c) hot wax or other hot substances; and
- (d) when in use, portable space heaters, wood burning stoves, and fireplaces.

(10) The provider shall ensure that live electrical wires are inaccessible to children.

(11) Unless used and stored ~~[in compliance with the Utah Concealed Weapons Act or]~~ as [otherwise] allowed by any state or federal law, the provider shall ensure that firearms ~~[such as]~~ including guns, muzzleloaders, rifles, shotguns, hand guns, pistols, and automatic guns are:

- (a) locked in a cabinet or area using a key, combination lock, or fingerprint lock; and
- (b) stored unloaded and separate from ammunition.

(12) The provider shall ensure that weapons ~~[such as]~~ including paintball guns, BB guns, airsoft guns, sling shots, arrows, and mace are inaccessible to children.

(13) The provider shall ensure that alcohol, illegal substances, and sexually explicit material are inaccessible, and not used on the premises, during offsite activities, or in center vehicles any time a child is present.

(14) The provider shall ensure that an outdoor source of drinking water, ~~[such as]~~ including individually labeled water bottles, a pitcher of water and individual cups, or a working water fountain is available to each child when the outside temperature is 75 degrees or higher.

(15) The provider shall ensure that areas accessible to children are free of heavy or unstable objects that children could pull down on themselves, ~~[such as]~~ including furniture, unsecured televisions, and standing ladders.

(16) The provider shall ensure that hot water accessible to children does not exceed 120 degrees Fahrenheit.

(17) The provider shall ensure that tobacco, e-cigarettes, e-juice, e-liquids, and similar products are inaccessible and, in compliance with Title 26, Chapter 38, ~~[the]~~ Utah Indoor Clean Air Act, are not used:

- (a) in the facility or any other building when a child is present;
- (b) in any vehicle that is being used to transport children;
- (c) within 25 feet of any entrance to the facility or other building occupied by children; or
- (d) in any outdoor area or within 25 feet of any outdoor area occupied by children.

### **R381-70-14. Emergency Preparedness, Response, and Recovery.**

(1) The provider shall ~~[have]~~ develop and follow a written emergency preparedness, response, and recovery plan that:

- (a) includes procedures for evacuation, relocation, shelter in place, lockdown, communication with and reunification of families, and continuity of operations;
- (b) includes procedures for accommodations for children with disabilities and children with chronic medical conditions;
- (c) includes instructions to follow in case of an allergy or serious reaction to food or any other trigger that may affect the child's health;

~~(e)~~ d is available for review by parents, staff, and the department during business hours; and

~~(f)~~ e is followed if an emergency happens, unless otherwise instructed by emergency personnel.

(2) The provider shall post the center's street address and emergency numbers, including at least fire, police, and poison control, near each telephone in the center or in an area clearly visible to anyone needing the information.

(3) The provider shall keep first aid supplies in the center, including at least antiseptic, bandages, and tweezers.

(4) The provider shall conduct fire evacuation drills monthly and make sure drills include a complete exit of each child, staff, and volunteers from the building.

(5) The provider shall document each fire drill, including:

- (a) the date and time of the drill;
- (b) the number of children participating;
- (c) the name of the individual supervising the drill;
- (d) the total time to complete the evacuation; and
- (e) any problems encountered and remediation.

(6) The provider shall conduct drills for disasters other than fires at least once every six months.

(7) The provider shall document each disaster drill, including:

- (a) the type of disaster, ~~[such as]~~ including earthquake, flood, prolonged power or water outage, or tornado;
- (b) the date and time of the drill;
- (c) the number of children participating;

- (d) the name of the individual supervising the drill; and
- (e) any problems encountered and remediation.
- (8) The provider shall vary the days and times ~~on~~ ~~which~~ when fire and other disaster drills are held.
- (9) The provider shall keep documentation of the previous 12 months of fire and disaster drills on-site for review by the department.
- (10) The provider shall:
  - (a) give parents a written report on the day of occurrence of each incident, accident, or injury involving their child;
  - (b) ensure the report has the signatures of the staff involved, the center director or director designee, and the individual picking up the child; and
  - (c) if children sign themselves out of the center, send a copy of the report to the parent on the day following the occurrence.
- (11) If a child is injured and the injury appears serious but not life-threatening, the provider shall contact the child's parent immediately.
- (12) If a life-threatening injury to a child, or an injury that poses a threat of the loss of vision, hearing, or a limb happens, the provider shall:
  - (a) call emergency personnel immediately;
  - (b) contact the parent after emergency personnel are called; and
  - (c) if the parent cannot be reached, try to contact the child's emergency contact individual.
- (13) If a child is injured while in care and receives medical attention, or for a child fatality, the provider shall:
  - (a) submit a completed accident report form to the department within the next business day of the incident; or
  - (b) contact the department within the next business day and submit a completed accident report form within five business days of the incident.
- (14) The provider shall keep a six-week record of each incident, accident, and injury report on-site for review by the department.

#### **R381-70-15. Health and Infection Control.**

- (1) The provider shall keep the building, furnishings, equipment, and outdoor area clean and sanitary including:
  - (a) walls and flooring clean and free of spills, dirt, and grime;
  - (b) areas and equipment used for the storage, preparation, and service of food clean and sanitary;
  - (c) surfaces free of rotting food or a build-up of food;
  - (d) the building and grounds free of a build-up of litter, trash, and garbage;
  - (e) frequently touched surfaces, including doorknobs and light switches, cleaned and sanitized; and
  - (f) the facility free of animal feces.
- (2) The provider shall take safe and effective measures to prevent and eliminate the presence of insects, rodents, and other pests.
- (3) The provider shall clean and sanitize any toys and materials used by children:
  - (a) at least once a week or more often if needed; and
  - (b) after being contaminated by a body fluid.
- (4) The provider shall ensure that fabric toys and items ~~such as~~ including stuffed animals, cloth dolls, pillow covers, and dress-up clothes are machine washable and if used, washed at least each week or as needed.

- (5) The provider shall clean and sanitize water play tables or tubs daily if used by the children.
- (6) The provider shall clean and sanitize bathroom surfaces including toilets, sinks, faucets, toilet and sink handles, and counters each day the facility is open for business.
- (7) The provider shall keep toilet paper in a dispenser that is accessible to children.
- (8) The provider shall post handwashing procedures that are readily visible from each handwashing sink and shall ensure that each staff follow the procedures~~are followed~~.
- (9) The provider shall ensure that staff and volunteers wash their hands thoroughly with liquid soap and running water:
  - (a) upon arrival;
  - (b) before handling or preparing food;
  - (c) before and after eating meals and snacks or feeding a child;
  - (d) after using the toilet or helping a child use the toilet;
  - (e) after contact with a body fluid;
  - (f) when coming in from outdoors; and
  - (g) after cleaning up or taking out garbage.
- (10) The provider shall ensure that staff teach children how to wash their hands thoroughly and oversee handwashing when possible.
- (11) The provider shall ensure that children wash their hands thoroughly with liquid soap and running water:
  - (a) upon arrival;
  - (b) before and after eating meals and snacks;
  - (c) after using the toilet;
  - (d) after contact with a body fluid;
  - (e) before using a water play table or tub; and
  - (f) when coming in from outdoors.
- (12) The provider shall ensure that only single-use towels from a covered dispenser or an electric hand dryer is used to dry hands.
- (13) The provider shall store personal hygiene items, ~~such as~~ including toothbrushes, combs, and hair accessories separate, so they do not touch each other, and ensure they are not shared or they are sanitized between each use.
- (14) The provider shall ensure the ~~at~~ prompt change of a child's clothing ~~is promptly changed~~ if the child has a toileting accident.
- (15) The provider shall ensure that children's clothing that is wet or soiled from a body fluid is:
  - (a) not rinsed or washed at the center;
  - (b) placed in a leakproof container that is labeled with the child's name; and
  - (c) returned to the parent, or thrown away with parental consent.
- (16) The provider shall take precautions when cleaning floors, furniture, and other surfaces contaminated by blood, urine, feces, or vomit, and ensure that, except for diaper changes and toileting accidents, staff cleaning these bodily fluids:
  - (a) wear waterproof gloves;
  - (b) clean the surface using a detergent solution;
  - (c) rinse the surface with clean water;
  - (d) sanitize the surface;
  - (e) throw away in a leakproof plastic bag the disposable materials, ~~such as~~ including paper towels, that were used to clean up the body fluid;
  - (f) wash and sanitize any nondisposable materials used to clean up the body fluid, ~~such as~~ including cleaning cloths, mops, or reusable rubber gloves, before reusing them; and



(g) wash their hands after cleaning up the body fluid.

(17) The provider may not care for a child who is ill with an infectious disease at the center except when the child shows signs of illness after arriving at the center.

(18) If a child becomes ill while in care:

(a) the provider shall contact the child's parent or, if the parent cannot be reached, an individual listed as the emergency contact to immediately pick up the child; and

(b) if the child is ill with an infectious disease, the provider shall make the child comfortable in a safe, supervised area that is separated from the other children until the parent arrives.

(19) If any child or employee has an infectious disease, an unusual or serious illness, or a sudden onset of an illness, the provider shall notify the local health department on the day the provider discovers the illness~~[is discovered]~~.

(20) If any staff member or child has an infectious disease or parasite, the provider shall post a notice at the center that:

(a) does not disclose any personal identifiable information;

(b) is posted in a conspicuous place where it can be seen by parents;

(c) is posted and dated on the same day that the disease or parasite is discovered; and

(d) remains posted for at least five business days.

(21) To prevent contamination of food, the spread of foodborne illnesses, and other diseases, the provider shall ensure that:

(a) individuals who prepare food in the kitchen do not help in toileting children;

(b) caregivers who care for diapered children only prepare food for the children in their care, and they do not prepare food outside of the room used by the diapered children or prepare food for other children and adults in the facility; and

(c) individuals with an infectious disease or showing symptoms ~~[such as]~~ including diarrhea, fever, coughing, or vomiting do not prepare or serve foods.

#### **R381-70-16. Food and Nutrition.**

(1) The provider shall offer a meal or snack to each child at least once every three hours on days when services are provided for three or more hours.

(2) If the provider supplies food for children's meals or snacks~~[is supplied by the provider]~~, the provider shall ensure that:

(a) the meal service meets local health department food service rules;

(b) the foods that are served meet the nutritional requirements of the USDA Child and Adult Care Food Program (CACFP) whether or not the provider participates in the CACFP;

(c) the provider uses the CACFP meal pattern requirements, the standard department-approved menus, or menu approved by a registered dietitian, and that dietitian approval is noted and dated on the menus, and current within the past five years;

(d) the current week's menu is posted for review by parents and the department; and

(e) if not participating or in good standing with the CACFP, keep a six-week record of foods served at each meal and snack.

(3) The provider shall ensure that the individual who serves food to children:

(a) is aware of the children in their assigned group who have food allergies or sensitivities; and

(b) ensures that the children are not served the food or drink they are allergic or sensitive to.

(4) The provider may not place children's food on a bare table, and shall serve children's food on dishes, napkins, or sanitary

trays, except an individual finger food ~~[such as]~~ including a cracker, ~~[which]~~ may be placed directly in a child's hand.

(5) If parents bring food and drink for their child's use, the provider shall ensure that the food is:

(a) labeled with the child's name;

(b) refrigerated if needed; and

(c) consumed only by that child.

#### **R381-70-17. Medications.**

(1) The provider shall lock nonrefrigerated medications or store them at least 48 inches above the floor.

(2) The provider shall lock refrigerated medications or store them at least 36 inches above the floor and, if liquid, store them in a separate leakproof container.

(3) If parents supply any over-the-counter or prescription medications, the provider shall ensure those medications:~~[are:]~~

(a) are labeled with the child's full name;

(b) are stored~~[kept]~~ in the original or pharmacy container;

(c) have the original label; and

(d) have child safety caps.

(4) The provider shall have a written medication permission form completed and signed by the parent before administering any medication supplied by the parent for their child.

(5) The provider shall ensure that the medication permission form includes at least:

(a) the name of the child;

(b) the name of the medication;

(c) written instructions for administration; and

(d) the parent signature and the date signed.

(6) The provider shall ensure that instructions for administering the medication include at least:

(a) the dosage;

(b) how the medication will be given;

(c) the times and dates to administer the medication; and

(d) the disease or condition being treated.

(7) If the provider supplies an over-the-counter medication for children's use, the provider shall ensure that no staff administer the medication to any child ~~[is not administered to any child]~~ without previous parental consent for each instance it is given. The provider shall ensure that the consent is:

(a) written; or

(b) verbal, if the date and time of the consent is documented and signed by the parent upon picking up their child.

(8) The provider shall ensure that the staff administering the medication:

(a) washes their hands;

(b) check the medication label to confirm the child's name if the parent supplied the medication;

(c) checks the medication label or the package to ensure that a child is not given a dosage larger than that recommended by the health care professional or manufacturer; and

(d) administers the medication.

(9) The provider shall ensure that immediately after administering a medication, the staff giving the medication records the following information:

(a) the date, time, and dosage of the medication given;

(b) any error in administering the medication or adverse reactions; and

(c) their signature or initials.

(10) The provider shall report to the parent a child's adverse reaction to a medication or error in administration of the

medication immediately upon recognizing the reaction or error, or after notifying emergency personnel if the reaction is life-threatening.

(11) The provider shall notify the parent before the scheduled medication dosage~~[time a medication needs to be given]~~ to a child if the provider chooses not to administer medication as instructed by the parent.

(12) The provider shall keep a six-week record of medication permission and administration forms on-site for review by the department.

#### **R381-70-18. Activities.**

(1) The provider shall offer daily activities that support each child's healthy physical, social, emotional, cognitive, and language development.

(2) The provider shall ensure that daily activities include outdoor play as weather and air quality allow.

(3) The provider shall ensure that physical development activities include light, moderate, and vigorous physical activity for a daily total of at least 15 minutes for every two hours children spend in the program.

(4) The provider shall post a daily schedule that includes:

(a) activities that support children's healthy development; and

(b) the times activities occur including at least meal, snack, and outdoor play times.

(5) The provider shall ensure that toys, materials, and equipment needed to support children's healthy development are available to the children.

(6) Except for occasional special events, the provider shall ensure that the children's primary screen time activity on media ~~[such as]~~including television, cell phones, tablets, and computers is planned to address the needs of children.

(7) If the provider offers swimming activities ~~[are offered]~~ or if wading pools are used, the provider shall ensure that:

(a) the parent gives permission before their child in care uses the pool;

(b) staff stay at the pool supervising when a child is in the pool or has access to the pool, and when an accessible pool has water in it;

(c) if the pool is over four feet deep, there is a lifeguard on duty who is certified by the Red Cross or other approved certification program any time children have access to the pool; and

(d) lifeguards and pool personnel do not count toward the staff-to-child ratio.

(8) If the provider offers offsite activities~~[are offered]~~, the provider shall ensure that:

(a) the parent gives written consent before each activity;

(b) the required staff-to-child ratio and supervision are maintained during the entire activity;

(c) first aid supplies, including at least antiseptic, bandages, and tweezers are available;

(d) children wear or carry with them the name and phone number of the center;

(e) children's names are not used on nametags, t-shirts, or in other visible ways; and

(f) there is a way for staff and children to wash their hands with soap and water, or with wet wipes and hand sanitizer if there is no source of running water.

(9) The provider shall ensure that a staff member with the children takes the written emergency information and releases for each child in the group on each offsite activity, and that the information includes at least:

(a) the child's name;

(b) the parent's name and phone number;

(c) the name and phone number of an individual to notify if an emergency happens and the parent cannot be contacted;

(d) the names of people authorized by the parents to pick up the child; and

(e) current emergency medical treatment and emergency medical transportation releases.

#### **R381-70-19. Play Equipment.**

(1) The provider shall ensure that children using play equipment use it safely and ~~[in the manner]~~as intended by the manufacturer.

(2) The provider shall ensure that stationary play equipment has a surrounding use zone that extends from the outermost edge of the equipment and that, with the exception of swings, stationary play equipment has at least a six-foot use zone if any designated play surface is higher than 30 inches.

(3) The provider shall ensure that the use zone in the front and rear of a single-axis swing extends at least twice the distance of the swing pivot point to the ground.

(4) The provider shall ensure that the use zone for a multi-axis swing, ~~[such as]~~including a tire swing, extends at least the measurement of the suspending rope or chain plus six feet.

(5) The provider shall ensure that the use zone for a merry-go-round extends at least six feet in any direction from its outermost edge.

(6) The provider shall ensure that the use zone for a spring rocker extends:

(a) at least three feet from the outermost edge of the rocker when at rest; or

(b) at least six feet from the outermost edge of the rocker when at rest if the seat is higher than 20 inches.

(7) The provider shall ensure that the following use zones do not overlap the use zone of any other piece of play equipment:

(a) the use zone in front of a slide;

(b) the use zone in the front and rear of any single-axis swing, including a single-axis enclosed swing;

(c) the use zone of a multi-axis swing; and

(d) the use zone of a merry-go-round if the platform diameter measures 20 inches or more.

(8) Unless prohibited in Subsection R381-70-19(7), the provider shall ensure that the use zones of play equipment only overlap when there is at least six feet between the pieces of equipment if the designated play surface is 30 inches or lower, or there is at least nine feet between the pieces of equipment if the designated play surface is higher than 30 inches.

(9) The provider shall ensure that, when in use, stationary play equipment is not placed on a hard surface ~~[such as]~~including concrete, asphalt, dirt, or the bare floor.

(10) The provider shall ensure that protective cushioning covers the entire surface of each required use zone and that its depth or thickness is determined by the highest designated play surface of the equipment.

(11) If the provider uses sand, gravel, or shredded tires~~[are used]~~ as protective cushioning, the provider shall:

(a) ensure that the cushioning is periodically checked for compaction and loosened to the depth listed in Table 1 if compacted;

(b) if the material cannot be loosened due to extreme weather conditions, not allow children to play on the equipment until the material can be loosened to the required depth; and

(c) ensure that the depth of the material meets the guidelines in Table 1.

TABLE 1 Depths of Protective Cushioning Required for sand, Gravel, and Shredded Tires and Rubber Products					
Highest Designated Play Surface, Climbing Bar, or Swing Pivot Point	Fine sand	Coarse Sand	Fine Gravel	Medium Gravel	Shredded Tires and Rubber Products
Up to 5' high	6"	6"	6"	6"	6"
Over 5' up to 6'	6"	9"	6"	9"	6"
Over 6' up to 9'	9"	Not allowed	9"	Not allowed	6"
Over 9' up to 10'	Not allowed	Not allowed	9"	Not allowed	6"
Over 10' up to 12'	Not allowed	Not allowed	Not allowed	Not allowed	6"

(12) If the provider uses shredded wood products [are used] as protective cushioning, the provider shall:

(a) keep on-site for review by the department documentation from the manufacturer that the wood product is protective cushioning;

(b) ensure there is adequate drainage under the material; and

(c) ensure the depth of the shredded wood meets the guidelines in Table 2.

TABLE 2 Depths of Protective Cushioning Required for Shredded Wood Products			
Highest Designated Play Surface, Climbing Bar, or Swing Pivot Point	Engineered Wood fibers	Wood Chips	Double Shredded Bark Mulch
Up to 6' high	6"	6"	6"
Over 6' up to 7'	9"	6"	9"
Over 7' up to 11'	9"	9"	9"
Over 11'	9"	Not allowed	Not allowed

(13) If the provider uses a unitary cushioning [is used], the provider shall maintain on-site for review by the department documentation from the manufacturer that the material is cushioning for playgrounds.

(14) If a unitary cushioning [is used], the provider shall ensure that the cushioning material is securely installed, so that it cannot become displaced when children jump, run, walk, land, or move on it, or be moved by children picking it up.

(15) The provider shall ensure that a play equipment platform that is more than 48 inches above the floor or ground has a protective barrier that is at least 38 inches high.

(16) The provider shall ensure that there is no gap greater than 3-1/2 inches in or under a required protective barrier on a play equipment platform.

(17) The provider shall ensure that stationary play equipment is stable or securely anchored.

(18) The provider shall ensure that there are no trampolines on the premises that are accessible to any child in care.

(19) The provider shall ensure that there are no entrapment hazards on or within the use zone of any piece of stationary play equipment.

(20) The provider shall ensure that there are no strangulation hazards on or within the use zone of any piece of stationary play equipment.

(21) The provider shall ensure that there are no crush, shearing, or sharp edge hazards on or within the use zone of any piece of stationary play equipment.

(22) The provider shall ensure that there are no tripping hazards [such as] including concrete footings, tree stumps, tree roots, or rocks within the use zone of any piece of stationary play equipment.

#### **R381-70-20. Transportation.**

[~~\_\_\_\_\_ If transportation services are offered:\_\_\_\_\_~~]

(1) For each child that the licensee transports [being transported], the provider shall [have] obtain a transportation permission form:

- (a) signed by the parent; and
- (b) on-site for review by the department.

(2) The provider shall ensure that each vehicle used for transporting children:

- (a) is enclosed with a roof or top;
- (b) is equipped with safety restraints;
- (c) has a current vehicle registration;
- (d) is maintained in a safe and clean condition; and
- (e) contains first aid supplies, including at least antiseptic, bandages, and tweezers.

(3) The provider shall ensure that the safety restraints in each vehicle that transports children are:

- (a) appropriate for the age and size of each child who is transported, as required by Utah law;
- (b) properly installed; and
- (c) in safe condition and working order.

(4) The provider shall ensure that the driver of each vehicle who is transporting children:

- (a) is at least 18 years old;
- (b) has and carries with them a current, valid driver's license for the type of vehicle being driven;
- (c) has with them the [written] emergency contact information for each child being transported;

(d) ensures that each child being transported is in an individual safety restraint that is used according to Utah law;

(e) ensures that the inside vehicle temperature is between 60-85 degrees Fahrenheit;

(f) never leaves a child in the vehicle unattended by an adult;

(g) ensures that children stay seated while the vehicle is moving;

(h) never leaves the keys in the ignition when not in the driver's seat; and

- (i) ensures that the vehicle is locked during transport.

(5) If the provider walks or uses public transportation to transport children to or from the facility, the provider shall ensure that:

(a) each child being transported has a completed transportation permission form signed by their parent;

(b) a staff member goes with the children and actively supervises the children;

(c) the staff-to-child ratio is maintained; and  
 (d) a staff member with the children has ~~written~~ emergency contact information and releases for the children being transported.

- (6) The provider shall:  
 (a) have transport liability insurance; or  
 (b) inform parents in writing that the provider does not have transport liability insurance.  
 (7) Section R381-70-20 only applies to providers who offer transportation services.

#### **R381-70-21. Animals.**

- (1) The provider shall inform parents of the kinds of animals allowed at the facility.  
 (2) The provider shall ensure that there is no animal on the premises that:  
 (a) is naturally aggressive;  
 (b) has a history of dangerous, attacking, or aggressive behavior; or  
 (c) has a history of biting even one individual.  
 (3) The provider shall ensure that animals at the facility are clean and free of obvious disease or health problems that could adversely affect children.  
 (4) The provider shall ensure that there is no animal or animal equipment in food preparation or eating areas.  
 (5) If children help in the cleaning of animals or animal equipment, the provider shall ensure that the children wash their hands immediately after cleaning the animal or equipment.  
 (6) The provider shall ensure that children and staff wash their hands immediately after playing with or touching reptiles and amphibians.  
 (7) The provider shall ensure that dogs, cats, and ferrets that ~~are housed at~~ the facility houses have current rabies vaccinations.  
 (8) The provider shall keep current animal vaccination records on-site for review by the department.

**KEY: child care facilities, child care, child care centers, out of school time child care programs**

Date of Last Change: 2023~~June 1, 2022~~

Notice of Continuation: April 14, 2020

Authorizing, and Implemented or Interpreted Law: ~~26-39-203(1)(a)]~~26B-2-402

#### **NOTICE OF PROPOSED RULE**

**TYPE OF FILING:** Amendment

<b>Rule or Section Number:</b>	<b>R383-1</b>	<b>Filing ID:</b> <b>55700</b>
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#### **Agency Information**

<b>1. Department:</b>	Health and Human Services
<b>Agency:</b>	Center for Medical Cannabis
<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 144340

<b>City, state and zip:</b>	Salt Lake City, UT 84114-4340	
<b>Contact persons:</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Jeremiah Sniffin	801-538-6504	jsniffin@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:**

R383-1. Definitions

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

This proposed rule filing inserts and edits definitions pertaining to Title R383. The Office of Administrative Rules recommended that all definitions from Title R383 be moved to this rule. This move will help the reader locate all definitions applicable to medical cannabis rules in one rule instead of having to find them in various rules.

References to Title 26, Chapter 61a, are also changed due to its recodification under S.B. 40, which passed during the 2023 General Session.

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

Rule R383-1 is restructured to include definitions from other rules. These added definitions are cannabis waste, educational event, educational material, fundamentals of medical cannabis coursework, general medical cannabis coursework, institutional review board, law enforcement personnel, mail, medical cannabis law coursework, presiding officer, safeguard, state agency employee, recreational disposition, and substantive evidence.

The statute citation in Section R383-1-1 is updated. The Department of Health and Human Services (DHHS) Office of Legislative Affairs indicated that the new citation is the correct reference for citing rulemaking authority.

A summary of definitions removed from other Title R383 subsections in this subsection appears in the summaries of the proposed rule changes for those filings.

##### **Public hearing information:**

There will be a public hearing on 10/02/2023 at 9 AM MST at the MASOB at 195 N 1950 W, Salt Lake City, UT in Room 1020C.

Please click the link to join the webinar: <https://utah-gov.zoom.us/j/88410663769>

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

This proposed rule does not impact the state budget as it does not incur a financial impact because it moves definitions from other rules to this one and edits statutes due to re-coding.

**B) Local governments:**

This proposed rule does not impact the local governments as they will not incur a financial impact because it moves definitions from other rules to this one and edits statutes due to re-coding.

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

This proposed rule does not impact small businesses as it does not incur a financial impact from the relocation of definitions from other rules and edits statutes due to re-coding.

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

This proposed rule will not impact non-small businesses as it does not incur a financial impact from the relocation of definitions from other rules and edits statutes due to re-coding.

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

This proposed rule does not impact persons other than small businesses, non-small businesses, or state, or local government entities, as it does not incur a financial impact from the relocation of definitions from other rules and edits statutes due to re-coding.

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

This proposed rule does not result in compliance costs because it only relocates definitions from other rules and edits statutes due to re-coding.

**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:**

Subsection 26B-4-202(1)		
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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>		10/16/2023
<b>B) A public hearing (optional) will be held:</b>		
<b>Date:</b>	<b>Time:</b>	<b>Place</b> (physical address or URL):
10/02/2023	9 AM MST	See information in Box 4 above

<b>9. This rule change MAY become effective on:</b>	10/23/2023
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>	08/25/2023
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### R383. Health and Human Services, Center for Medical Cannabis.

#### R383-1. Definitions.

##### R383-1-1. Authority and Purpose.

Pursuant to Subsection ~~26B-1-213(4)~~ 26B-1-202(1), this rule defines terms used in Title R383.

##### R383-1-2. Definitions.

(1) The definitions in Section ~~26-61a-102~~ 26B-4-201 apply to this rule. In addition, the following applies to this rule.

(2) "Cannabis waste" means cannabis product that is damaged, deteriorated, mislabeled, expired, returned, subject to a recall, or enclosed within a container or package that has been opened or breached.

~~[(2)](3)~~ "Card" means any type of medical cannabis card or registration card, whichever applies, authorized under ~~[Title 26, Chapter 61a, Utah Medical Cannabis Act]~~ Title 26B, Chapter 4, Part 2 Cannabinoid Research and Medical Cannabis.

~~[(3)](4)~~ "Cardholder area" means the area of a medical cannabis pharmacy where a product is purchased that is restricted to a medical cannabis cardholder, a medical cannabis pharmacy employee, or another individual authorized by the medical cannabis pharmacy to enter the cardholder area.

~~[(4)](5)~~ "Courier agent" means a medical cannabis courier agent.

~~[(5)](6)~~ "Department" means the Utah Department of Health and Human Services.

~~[(6)](7)~~ "Direct supervision" means that a PMP is physically present at a medical cannabis pharmacy facility and immediately available for in-person face-to-face communication with the pharmacy agent.

(8) "Educational event" means an organized event:

(a) at which a medical cannabis pharmacy distributes, orally presents, or displays educational material; and

(b) that may be held either virtually or in-person.

(9) "Educational material" means material or content used, displayed, sold, or distributed for an educational purpose by a medical cannabis pharmacy in-person or online in a business or professional capacity. Educational material includes:

(a) live or recorded content of an educational event; or

(b) any printed educational material such as a placard, poster, fact sheet, book, pamphlet, flyer, or business card.

~~[(7)](10)~~ "EVS" means the electronic verification system.

(11) "Fundamentals of medical cannabis coursework" means a course, or combination of courses, with content that addresses the following subjects:

(a) the endocannabinoid system and phytocannabinoids;

(b) general guidance and recommendations for medical cannabis; and

(c) history of cannabis, dosing forms, considerations, drug interactions, adverse reactions, contraindications, such as breastfeeding and pregnancy, and toxicology.

(12) "General medical cannabis coursework" means a course or combination of courses with content that addresses medical cannabis, which may include medical cannabis law or fundamentals of medical cannabis coursework.

~~[(8)](13)~~ "ICS" means the inventory control system.

(14) "Institutional review board" or "IRB" means the same term as defined in Section 26B-4-201.

(15) "Law enforcement personnel" means law enforcement personnel with access to UCIJIS.

~~[(9)](16)~~ "Limited access area" means an area of a medical cannabis pharmacy where medical cannabis and medical cannabis devices shall be stored that is:

(a) a lockable cabinet in a medical cannabis pharmacy facility to which only a pharmacy agent or PMP has access; or

(b) an indoor area or room of a medical cannabis pharmacy facility that is separated from the cardholder and public areas of the medical cannabis pharmacy by a physical barrier with suitable locks and an electronic barrier to detect entry doors.

(17) "LMP" means a limited medical provider.

(18) "Mail" means to send through mail services, email, or hand-delivery.

(19) "Medical cannabis law coursework" means a course, or combination of courses, with content that addresses Title 26B, Chapter 4, Part 2 Cannabinoid Research and Medical Cannabis and other state and federal laws relating to medical cannabis; that includes, at a minimum, a review of the following:

(a) qualifying health conditions for which a patient may lawfully use medical cannabis for medicinal purposes in Utah;

(b) forms of medical cannabis that qualifying patients are allowed and prohibited under Utah law;

(c) limits of the quantities of unprocessed cannabis and cannabis products in a medicinal form that may be dispensed in Utah;

(d) requirements to initially register, and renew a registration, as a QMP;

(e) limits to the number of active medical cannabis recommendations that an RMP can make at any given time;

(f) description of what an RMP must document in a patient's record before recommending medical cannabis;

(g) information required from an RMP when writing a medical cannabis recommendation, and the option to make a recommendation without specifying a dosage form and dosing guidelines;

(h) a PMP's role in determining the appropriate medical cannabis dosage form and dosing guidelines when an RMP chooses to recommend without specifying a dosage form and dosing guidelines;

(i) limits on advertising by an RMP;

(j) types of medical cannabis cards;

(k) regulations controlling the distribution of products by medical cannabis pharmacies;



(l) partial fill orders;  
 (m) the role of the Compassionate Use Board;  
 (n) that all medical cannabis purchased at medical cannabis pharmacies in Utah shall be cultivated at cannabis cultivation facilities, processed at cannabis processing facilities, and that samples be tested at independent cannabis testing laboratories; that is licensed in Utah and operate within Utah's medical cannabis system;  
 (o) the conditions of legal possession of medical cannabis under Utah law;  
 (p) the legal status of medical and recreational marijuana in states surrounding Utah and under federal law;  
 (q) authority to change dosage parameters in a medical cannabis recommendation;  
 (r) home delivery of medical cannabis; and  
 (s) purpose of the state central patient portal.  
 [(40)](20) "Pharmacy agent" means a medical cannabis pharmacy agent.  
 [(44)](21) "PIC" means a pharmacist in charge who oversees the operation and generally supervises a medical cannabis pharmacy.  
 [(42)](22) "PMP" means a medical cannabis pharmacy medical provider.  
 [(43)](23) "Public waiting area" means an area of the medical cannabis pharmacy where the public waits for cardholders and cardholders wait for authorization to enter the cardholder area. Non-cardholders and non-employees may be present in this area of the medical cannabis [provider] pharmacy.  
 [(44)](24) "QMP" means a qualified medical provider.  
 (25) "Recreational disposition" means the following:  
 (a) slang words or phrasing associated with the recreational use of cannabis;  
 (b) an image of a celebrity or other person whose target audience is children or minors;  
 (c) content that encourages, promotes, or otherwise creates an impression that the recreational use of cannabis is legal or acceptable or that the recreational use of cannabis has potential health or therapeutic benefits;  
 (d) content that promotes excessive consumption;  
 (e) content that is obscene or indecent; and  
 (f) content that a reasonable person knows or should know appeals to children.  
 [(45)](26) "RMP" [-] means a recommending medical provider.  
 (27) "Safeguard" means to maintain the confidentiality of the information accessed and not use, release, publish, disclose, or otherwise make available to any other person not authorized to access the information; for any purpose other than those specifically authorized or permitted by applicable law.  
 (28) "State agency employee" means an employee of the Utah Department of Health and Human Services, Utah Department of Agriculture and Food, Division of Technology Services, and the Utah Department of Commerce, Division of Professional Licensing.  
 (29) "Substantial evidence" or "substantial clinical data" means evidence that two or more clinical studies support. The clinical studies shall meet the following criteria:  
 (a) were conducted under a study approved by an IRB;  
 (b) were conducted or approved by the federal government;  
 (c) are cited by the Department in educational materials posted on its website; or  
 (d) are of reasonable scientific rigor as determined by the Department.

[(46)](30) "UCIJS" means the Utah Criminal Justice Information System.

[(47)](31) "UDAF" means the Utah Department of Agriculture and Food.

[(48)](32) "Utah resident" means an individual who has established a domicile in Utah[-]

**KEY: medical cannabis, marijuana**

**Date of Last Change: 2023[December 27, 2022]**

**Authorizing, and Implemented or Interpreted Law: 26B-1-213(1); 26-61a; 63G-3**

#### NOTICE OF PROPOSED RULE

**TYPE OF FILING:** Amendment

<b>Rule or Section Number:</b>	<b>R383-2</b>	<b>Filing ID:</b> <b>55717</b>
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#### Agency Information

<b>1. Department:</b>	Health and Human Services		
<b>Agency:</b>	Center for Medical Cannabis		
<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 144340		
<b>City, state and zip:</b>	Salt Lake City, UT 84114-4340		
<b>Contact persons:</b>			
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>	
Jeremiah Sniffin	801-538-6504	jsniffin@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 or section catchline:

R383-2. Electronic Verification System and Inventory Control System

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

This proposed rule change aims to reformat the definitions section as it moves to Rule R383-1. References to statutes must be updated as Title 26, Chapter 61a, was re-coded during the 2023 General Session.

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

The statute citation in Subsection R383-2-1(1) is updated. The Department of Health and Human Services (DHHS)

Office of Legislative Affairs indicated that the new citation is the correct reference for citing rulemaking authority.

Statute reference is changed in Section R383-2-1 to its new statute reference.

Section R383-2-2 is deleted as these definitions are being moved to Rule R383-1.

There are small grammar updates throughout the amendment.

Subsection R383-2-4(3) is being removed because it is unnecessary per Subsection 63G-2-201(5)(b). This statute already covers GRAMA and the emergency release of private records.

(EDITOR'S NOTE: The proposed amendment to Rule R383-1 is under ID 55700 in this issue, September 15, 2023, of the Bulletin.)

Public hearing information:

There will be a public hearing on 10/02/2023 at 9 AM MST at the MASOB at 195 N 1950 W, Salt Lake City, UT in Room 1020C.

Please click the link to join the webinar: <https://utah-gov.zoom.us/j/88410663769>

## Fiscal Information

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

#### A) State budget:

This amendment will not impact the state budget as it will not incur a financial impact because this proposed rule moves definitions and updates statute references.

#### B) Local governments:

This amendment will not impact the local governments as they will not incur a financial impact because this proposed rule moves definitions and updates statute references.

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

This amendment will not impact small businesses as they will not incur a financial impact from the relocation of definitions and updated statute references.

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

This amendment will not impact non-small businesses as it will not incur a financial impact from the relocation of definitions and updated statute references.

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

This amendment will not impact persons other than small businesses, non-small businesses, or state, or local government entities, as it will not incur a financial impact from the relocation of definitions from other rules and updated statute references.

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

This amendment will not result in compliance costs because this proposed rule relocates definitions from other rules and updates statute references.

#### 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:**

Subsection 26B-4-202(1)	Subsection 26B-1-202(1)	
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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>		10/16/2023
<b>B) A public hearing (optional) will be held:</b>		
<b>Date:</b>	<b>Time:</b>	<b>Place</b> (physical address or URL):
10/02/2023	9 AM MST	See information in Box 4 above

<b>9. This rule change MAY become effective on:</b>	10/23/2023
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 Gruber, Executive Director	<b>Date:</b>	09/01/2023
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**R383. Health and Human Services, Center for Medical Cannabis.****R383-2. Electronic Verification System and Inventory Control System.****R383-2-1. Authority and Purpose.**

(1) Subsections ~~[26B-1-213(1) and 26-61a-103(4)]~~ 26B-1-202(1) and 26B-4-202(6) authorize this rule.

(2) This rule establishes EVS and ICS access limitations and standards and confidentiality requirements.

**[R383-2-2. Definitions.**

~~For purposes of this rule the following definitions apply:~~

~~(1) "Law enforcement personnel" means law enforcement personnel who have access to UCHIS.~~

~~(2) "Safeguard" means to maintain the confidentiality of the information accessed and not use, release, publish, disclose, or otherwise make available to any other person not authorized to access~~

~~the information; for any purpose other than those specifically authorized or permitted by applicable law.~~

~~(3) "State agency employee" means an employee of the Utah Department of Health and Human Services, Utah Department of Agriculture and Food, Utah Department of Technology Services, and the Utah Department of Commerce, Division of Professional Licensing.~~

~~(4) "UCHIS" means the Utah Criminal Justice Information System.]~~

**R383-2-[3]2. Access Limitations and Standards.**

(1) An individual shall request access to the data in the EVS and ICS by creating an account to begin an EVS or ICS application process.

(2) The following individual may access information in the EVS about themselves, or another cardholder for whom they are a guardian or caregiver, to the extent allowed in Title ~~[26, Chapter 61a]~~ 26B, Chapter 4, Part 2, [Utah Medical Cannabis Act] Cannabinoid Research and Medical Cannabis or Title 4, Chapter 41a, Utah Cannabis Production Establishments:

- (a) a medical cannabis patient cardholder;
- (b) a medical cannabis guardian cardholder; and
- (c) a medical cannabis caregiver cardholder.

(3) The Department shall grant EVS access to the extent allowed in Title ~~[26, Chapter 61a,]~~ 26B, Chapter 4, Part 2, [Utah Medical Cannabis Act] Cannabinoid Research and Medical Cannabis or Title 4, Chapter 41a, Utah Cannabis Productions Establishments, and this rule to the following individuals:

- (a) a QMP;
- (b) a PMP;
- (c) a pharmacy agent;
- (d) a courier agent;
- (e) a cannabis production establishment agent;
- (f) a state agency employee; or
- (g) law enforcement personnel.

(4) The type of EVS and ICS access granted by the Department shall depend on the type of card or license issued.

**R383-2-[4]3. Confidentiality Requirements.**

(1) A person authorized to access information in the EVS and the ICS shall access only the minimum amount of information necessary to perform an authorized function specified in ~~[Title 26, Chapter 61a, Utah Medical Cannabis Act,]~~ Chapter 26B, Chapter 4, Part 2 Cannabinoid Research and Medical Cannabis or Title 4, Chapter 41a, Utah Cannabis Productions Establishments, Rule R68-27, Cannabis Cultivation, and this rule.

(2) A person authorized to access information in the EVS and the ICS shall safeguard all information stored in those systems, including specific information about medical cannabis cardholders.

~~[(3) The Executive Director of the Department, or Executive Director's designee, shall determine if an emergency shall warrant the immediate release of medical cannabis cardholder information, to another state agency. The Department may release information to another governmental agency under Title 63 Chapter 2 Government Records Access Management Act or a Memorandum of Understanding, or data sharing agreement, between the Department and the requesting agency.]~~

~~[(4)](3)~~ A person authorized to access the EVS or ICS who fails to observe the confidentiality requirement of this rule may lose access to the EVS and ICS and may be subject to the penalties provided in Section ~~[26-61a-103]~~ 26B-4-202.

**KEY:** medical cannabis, medical cannabis pharmacy, inventory control system, electronic verification system  
**Date of Last Change:** ~~2023~~~~December 27, 2022~~  
**Authorizing, and Implemented or Interpreted Law:** 4-41A; 26-61a; 26-61a-103(4); 63G-3

## NOTICE OF PROPOSED RULE

**TYPE OF FILING:** Amendment

<b>Rule or Section Number:</b>	<b>R383-4</b>	<b>Filing ID:</b> <b>55714</b>
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### Agency Information

<b>1. Department:</b>	Health and Human Services	
<b>Agency:</b>	Center for Medical Cannabis	
<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 144340	
<b>City, state and zip:</b>	Salt Lake City, UT 84114-4340	
<b>Contact persons:</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Jeremiah Sniffin	801-538-6504	jsniffin@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>
R383-4. Qualified Medical Providers
<b>3. Purpose of the new rule or reason for the change:</b>
The purpose of this proposed amendment is to delete the definitions section, as all medical cannabis-related definitions are being moved to Rule R383-1.
This proposed rule replaces Title 26, Chapter 61a, references with Title 26B, Chapter 4. This update was prompted by the passing of S.B. 40 and the recodification of the Utah Health Code and Utah Human Services Code.
<b>4. Summary of the new rule or change:</b>
The statute citation in Subsection R383-4-1(1) is updated. The Department of Health and Human Services (DHHS) Office of Legislative Affairs indicated that the new citation is the correct reference for citing rulemaking authority.

Section R383-4-2 is deleted as these definitions are moved to Rule R383-1.

References to old statutory language are updated throughout. Rule sections are renumbered to reflect the deletion of Section R383-4-2.

(EDITOR'S NOTE: The proposed amendment to Rule R383-1 is under ID 55700 in this issue, September 15, 2023, of the Bulletin.)

Public hearing information:

There will be a public hearing on 10/02/2023 at 9 AM MST at the MASOB at 195 N 1950 W, Salt Lake City, UT in Room 1020C.

Please click the link to join the webinar: <https://utah.gov.zoom.us/j/88410663769>

### Fiscal Information

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

##### A) State budget:

This proposed amendment does not impact the state budget as these changes do not incur a financial impact from the relocation of definitions. The updated statute references do not have any financial impact as they are renumbered.

##### B) Local governments:

This proposed amendment does not impact the local governments as these changes do not incur a financial impact from the relocation of definitions. The updated statute references do not have any financial impact as they are renumbered.

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

This proposed amendment does not impact small businesses as these changes do not incur a financial impact from the relocation of definitions. The updated statute references do not have any financial impact as they are renumbered.

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

This proposed amendment does not impact non-small businesses as these changes will not incur a financial impact from the relocation of definitions. The updated statute references do not have any financial impact as they are renumbered.

##### E) Persons other than small businesses, non-small businesses, state, or local government entities ("person" means any individual, partnership, corporation,

association, governmental entity, or public or private organization of any character other than an **agency**):

This proposed amendment does not impact persons other than small businesses, non-small businesses, or state or local government entities. These changes do not incur a financial impact from the relocation of definitions. The updated statute references do not have any financial impact as they are renumbered.

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

This proposed amendment does not result in compliance costs because these changes do not incur a financial impact from the relocation of definitions. The updated statute references do not have any financial impact as they are renumbered.

**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:**

Subsection 26B-1-202(1)		
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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.)

**A) Comments will be accepted until:** 10/16/2023

**B) A public hearing (optional) will be held:**

Date:	Time:	Place (physical address or URL):
10/02/2023	9 AM MST	See information in Box 4 above

**9. This rule change MAY become effective on:** 10/23/2023

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 Gruber, Executive Director	<b>Date:</b>	08/31/2023
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**R383. Health and Human Services, Center for Medical Cannabis.**

**R383-4. Qualified Medical Providers.**

**R383-4-1. Authority and Purpose.**

(1) Subsection ~~[26B-1-213(1)]~~ 26B-1-202(1) authorizes this rule.

(2) This rule establishes ~~[wording of terms used in the rule and]~~ application procedures and continuing education requirements for QMPs.

~~[R383-4-2. Definitions.~~

~~For purposes of this rule, the following wording apply:~~

~~(1) "Fundamentals of medical cannabis coursework" means a course, or combination of courses, with content that addresses the following subjects:~~

~~(a) the endocannabinoid system and phytocannabinoids;~~  
~~(b) general guidance and recommendations for medical cannabis; and~~  
~~(c) history of cannabis, dosing forms, considerations, drug interactions, adverse reactions, contraindications, such as breastfeeding or pregnancy, and toxicology.~~  
~~(2) "General medical cannabis coursework" means a course or combination of courses with content that addresses medical cannabis which may include medical cannabis law or fundamentals of medical cannabis coursework.~~  
~~(3) "Medical cannabis law coursework" means a course, or combination of courses, with content that addresses Title 26, Chapter 61a, Utah Medical Cannabis Act, and other state and federal laws relating to medical cannabis; that includes, at a minimum, a review of the following:~~  
~~(a) qualifying health conditions for which a patient may lawfully use medical cannabis, for medicinal purposes in Utah;~~  
~~(b) forms of medical cannabis that qualifying patients are allowed, and prohibited, under Utah law;~~  
~~(c) limits of the quantities of unprocessed cannabis, and cannabis products in medicinal form, that may be dispensed in Utah;~~  
~~(d) requirements to initially register, and renew a registration, as a QMP;~~  
~~(e) limits to the number of active medical cannabis recommendations that an RMP can make at any given time;~~  
~~(f) description of what an RMP must document in a patient's record, before recommending medical cannabis;~~  
~~(g) information required from an RMP when writing a medical cannabis recommendation, and the option to make a recommendation without specifying a dosage form and dosing guidelines;~~  
~~(h) a PMP's role in determining the appropriate medical cannabis dosage form and dosing guidelines, when an RMP chooses to recommend without specifying a dosage form and dosing guidelines;~~  
~~(i) limits on advertising by an RMP;~~  
~~(j) types of medical cannabis cards;~~  
~~(k) regulations controlling the distribution of product by medical cannabis pharmacies;~~  
~~(l) partial fill orders;~~  
~~(m) the role of the Compassionate Use Board;~~  
~~(n) that all medical cannabis purchased at medical cannabis pharmacies in Utah shall be cultivated at cannabis cultivation facilities, processed at cannabis processing facilities, and that samples be tested at independent cannabis testing laboratories; that is licensed in Utah and operate within Utah's medical cannabis system;~~  
~~(o) the conditions of legal possession of medical cannabis under Utah law;~~  
~~(p) the legal status of medical and recreational marijuana in states surrounding Utah, and under federal law;~~  
~~(q) authority to change dosage parameters in a medical cannabis recommendation;~~  
~~(r) home delivery of medical cannabis; and~~  
~~(s) purpose of the state central patient portal.]~~

#### **R383-4-[3]2. Application Procedures.**

(1) The application procedures established in this section shall govern the application for the initial issuance of a QMP registration card under ~~[Title 26, Chapter 61a,] Title 26B, Chapter 4, Part 2, Cannabinoid Research and Medical Cannabis[Utah Medical Cannabis Act]~~.

(2) Each ~~[card]~~ applicant shall apply upon forms available in the EVS, from the Department.

(3) The Department may issue a QMP registration card, only if the Department determines that the applicant meets all requirements established under ~~[Title 26, Chapter 61a,] Title 26B, Chapter 4, Part 2, Cannabinoid Research and Medical Cannabis[Utah Medical Cannabis Act]~~, and by Department rule.

(4) The Department shall provide written notice of denial to an applicant who submits an incomplete application or if the Department determines that the applicant does not meet the ~~[card]~~ requirements.

(5)(a) The Department shall provide to the applicant a written notice of an incomplete application and that the application is ~~[closed]~~ denied.

(b) The Department shall not accept the application unless the applicant corrects the deficiencies within the time period specified in the notice~~;~~ and otherwise meets all ~~[card]~~ requirements.

(6) The Department shall provide written notices of denial or incomplete application to the applicant's last email address shown in the Department's EVS database unless the applicant has requested to be notified by regular mail.

(7)(a) Each applicant shall maintain a current email address with the Department.

(b) Notice to the last email address on file with the Department constitutes legal notice unless the applicant has requested to be notified by regular mail.

#### **R383-4-[4]3. Renewal Application Procedures.**

(1) Renewal application procedures established in this section shall govern applications to renew a QMP registration card.

(2) Each QMP registration card applicant shall apply upon renewal application forms, available from the Department.

(3) The Department may issue a QMP registration card to an applicant who submits a complete renewal application ~~[if]~~ and the Department determines that the applicant meets the ~~[card]~~ requirements.

(4) The Department shall provide written notice of denial to the applicant who submits an incomplete renewal application or if the Department determines that the applicant does not meet the ~~[card]~~ requirements.

(5) The Department shall provide the applicant a written notice of an incomplete application and that the renewal application will be ~~[closed]~~ denied, unless the applicant corrects the deficiencies within the time period specified in the notice, and otherwise meets all ~~[card]~~ requirements.

(6)(a) The Department shall send a renewal notice to each cardholder at least 30 days before the expiration date shown on the QMP's card.

(b) The notice shall include instructions on how to renew their QMP registration card in the EVS, via the Department's website.

(7) The Department shall send renewal notices to the cardholder's last email shown in the Department's EVS database unless the applicant has requested to be notified by regular mail.

(8)(a) Each cardholder shall maintain a current email address and mailing address with the Department.

(b) Emailing to the last email address on file with the Department constitutes legal notice unless the applicant requests to be notified by regular mail.

(9) Renewal notices shall advise each cardholder that a QMP registration card automatically expires on the expiration date, and is no longer valid.

(10) If an individual's QMP registration card expires, the individual may submit a QMP registration card renewal application at any time, regardless of the length of time passed since the expiration of the card.

#### **R383-4-[5]4. Continuing Education Requirement.**

(1)(a) ~~[Applicants for registration as a QMP]~~Applicants registering for a QMP registration card shall verify the completion of four hours of continuing education.

(b) Once registered as a QMP, an individual shall complete an additional four hours of continuing education every two years.~~;~~  
~~as a requirement for renewal.]~~

(2) ~~Requirements for renewal shall include:~~~~[To meet the continuing education requirement, all coursework shall include the following:]~~

(a) completion of continuing education coursework that shall:

(i) be approved by the Department; or

(ii) be provided by organizations accredited through the Accreditation Council for Continuing Medical Education, Accreditation Council for Pharmacy Education, American Academy of Physician Assistants, or the American Association of Nurse Practitioners;

~~[(a) approval by the Department; or~~

~~(b) be provided by organizations accredited through the Accreditation Council for Continuing Medical Education, Accreditation Council for Pharmacy Education, American Academy of Physician Assistants, or the American Association of Nurse Practitioners;]~~

~~[(c)](b)~~ [completion of] a completion test with a passing score, as determined by the course provider, to verify comprehension of course content; and

~~[(d)](c)~~ a certificate of completion.

(3) Initial registration as a QMP, requires at least four hours of continuing education, which shall include at a minimum:

(a) medical cannabis law coursework; and

(b) fundamentals of medical cannabis coursework.

(4) A QMP shall renew registration every two years, after completing at least four hours of continuing education in:

(a) medical cannabis law coursework; and

(b) general medical cannabis coursework.

(5)(a) The QMP shall submit their continuing education report along with their application for registration as a QMP, and shall include a certificate of completion for coursework completed after issuance of the most recent registration.

(b) An application that does not include the continuing education report will be considered incomplete, and the Department will not process an application until the report is complete.

**KEY:** medical cannabis, qualified medical provider, medical marijuana

**Date of Last Change:** 2023~~[December 27, 2022]~~

**Authorizing, and Implemented or Interpreted Law:** 63G-3; ~~26-61a; 26B-1-213(1); 26-61a-106(3)(b)]~~26B-1-202(1)

#### **NOTICE OF PROPOSED RULE**

**TYPE OF FILING:** Amendment

<b>Rule or Section Number:</b>	<b>R383-5</b>	<b>Filing ID:</b> <b>55694</b>
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#### **Agency Information**

<b>1. Department:</b>	Health and Human Services		
<b>Agency:</b>	Center for Medical Cannabis		
<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 144340		
<b>City, state and zip:</b>	Salt Lake City, UT 84114-4340		
<b>Contact persons:</b>			
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>	
Jeremiah Sniffin	801-538-6504	jsniffin@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 or section catchline:**

R383-5. Dosing Guidelines

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

Subsection R383-5-2(3) is to be removed. During the 2023 General Session, S.B. 137 repealed provisions of the Utah Medical Cannabis Act that were related to the state's central patient portal medical provider.

The repeal was made at the request of the Department of Health and Human Services (DHHS) because DHHS determined that it was unnecessary to employ a state central patient portal medical provider. These provisions can subsequently be removed from Subsection R383-5-2(3).

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

The statute citation in Subsection R383-5-1(1) is updated. The DHHS Office of Legislative Affairs indicated that the new citation is the correct reference for citing rulemaking authority.

Subsection R383-5-2(3) is stricken and removed in its entirety.

Public hearing information:

There will be a public hearing on 10/02/2023 at 9 AM MST at the MASOB at 195 N 1950 W, Salt Lake City, UT in Room 1020C.

Please click the link to join the webinar: <https://utah.gov.zoom.us/j/88410663769>



## Fiscal Information

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

#### A) State budget:

There is no fiscal impact on the state budget as the stricken language observes S.B. 137 (2023). The removal of this language in S.B. 137 (2023) has no fiscal impact on the state budget.

#### B) Local governments:

There is no fiscal impact on local governments as the stricken language observes S.B. 137 (2023). The removal of this language has no fiscal impact on local governments as they will not have to adjust any fiscal regulations pertaining to this rule.

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

There is no fiscal impact on small businesses as the stricken language observes S.B. 137 (2023). The removal of this verbiage has no fiscal impact on small businesses as the stricken language does not pertain to any financial regulations.

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

There is no fiscal impact on non-small businesses as the stricken language observes S.B. 137 (2023). The removal of this verbiage has no fiscal impact on non-small businesses, as the stricken language does not pertain to any financial regulations.

#### 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 fiscal impact on persons other than small businesses, non-small businesses, and state, or local governments, as the stricken language has no fiscal impact on non-small businesses. The stricken language does not pertain to any financial regulations.

#### 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 for affected persons. The striking of this language has no financial impact on medical cannabis patients or medical providers.

#### 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:

Subsection 26B-1-202(1)		
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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>	10/16/2023
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B) A public hearing (optional) will be held:		
Date:	Time:	Place (physical address or URL):
10/02/2023	9 AM MST	See information in Box 4 above

<b>9. This rule change MAY become effective on:</b>	10/23/2023
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>	08/25/2023
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**R383. Health and Human Services, Center for Medical Cannabis.**

**R383-5. Dosing Guidelines.**

**R383-5-1. Authority and Purpose.**

(1) Subsection ~~[26B-1-213(1)]~~ 26B-1-202(1) authorizes this rule.

(2) This rule establishes standards for dosing guidelines in a medical cannabis recommendation.

**R383-5-2. Dosing Guidelines in Medical Cannabis Recommendation.**

(1) An RMP may change the dosage form or dosing guidelines for their patient. A PMP ~~[shall not]~~ may not change the dosage form, or dosing guidelines, entered in the EVS by a patient's RMP without approval from the patient's RMP.

(2) If an RMP has not specified the dosage form, or dosing guidelines, for a patient, a PMP may specify the dosage form and dosing guidelines. If an RMP does not specify a dosage form, and dosing guidelines, for a patient, or specifies a dosage form and some or no dosing guidelines for a patient, a PMP may specify the remaining dosing guidelines.

~~[(3) A state central patient portal medical provider may specify dosage form and dosing guidelines for a patient recommendation in the EVS, only upon written or verbal consent from a medical cannabis cardholder; and if either the dosage form or dosing guidelines are not specified in the EVS by the patient's RMP. If an RMP specifies certain dosing guidelines for a patient, a state central patient portal medical provider may specify the remaining dosing guidelines, with the written or verbal consent of the medical cannabis cardholder.]~~

**KEY: medical cannabis, medical cannabis dosing guidelines, medical cannabis pharmacy**

**Date of Last Change: ~~[January 13,] 2023~~**

**Authorizing, and Implemented or Interpreted Law: ~~63G3; 26-61a; 26B-1-213(1)~~ 26B-1-202(1)**

**NOTICE OF PROPOSED RULE**

**TYPE OF FILING:** Amendment

<b>Rule or Section Number:</b>	<b>R383-6</b>	<b>Filing ID:</b> <b>55695</b>
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**Agency Information**

<b>1. Department:</b>	Health and Human Services		
<b>Agency:</b>	Center for Medical Cannabis		
<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 144340		
<b>City, state and zip:</b>	Salt Lake City, UT 84114-4340		
<b>Contact persons:</b>			
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>	
Jeremiah Sniffin	801-538-6504	jsniffin@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 or section catchline:**

R383-6. Pharmacy Medical Providers

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

The purpose of this proposed amendment is to delete the definitions section as they are being moved to Rule R383-1. This proposed rule replaces references to Title 26, Chapter 61a, with Title 26B, Chapter 4. This update was prompted by the passing of S.B. 40 and the recodification of the Utah Health Code and Utah Human Services Code.

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

The statute citation in Subsection R383-6-1(1) is updated. The Department of Health and Human Services (DHHS) Office of Legislative Affairs indicated that the new citation is the correct reference for citing rulemaking authority.

Section R383-6-2 is deleted as these definitions are moved to the proposed new Rule R383-1. References to old statutory language are updated throughout.

Subsection R383-6-3(9) is deleted and moved to the newly created Subsection R383-6-3(6)(b)(ii) so the renewal notice requirements are in one location.

(EDITOR'S NOTE: The proposed amendment to Rule R383-1 is under ID 55700 in this issue, September 15, 2023, of the Bulletin.)

**Public hearing information:**

There will be a public hearing on 10/02/2023 at 9 AM MST at the MASOB at 195 N 1950 W, Salt Lake City, UT in Room 1020C.

Please click the link to join the webinar: <https://utah-gov.zoom.us/j/88410663769>

**Fiscal Information**

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

**A) State budget:**

This proposed amendment will not impact the state budget as these changes will not incur a financial impact from the relocation of definitions. The updated statute references do not have any financial impact as they are just renumbered.

**B) Local governments:**

This proposed amendment will not impact the local governments as these changes will not incur a financial impact from the relocation of definitions. The updated statute references do not have any financial impact as they are just renumbered.

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

This proposed amendment will not impact small businesses as these changes will not incur a financial impact from the relocation of definitions. The updated statute references do not have any financial impact as they are just renumbered.

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

This proposed amendment will not impact non-small businesses as these changes will not incur a financial impact from the relocation of definitions. The updated statute references do not have any financial impact as they are just renumbered.

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

This proposed amendment will not impact persons other than small businesses, non-small businesses, or state or local government entities. These changes will not incur a financial impact from the relocation of definitions. The

updated statute references do not have any financial impact as they are just renumbered.

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

This proposed amendment will not result in compliance costs because these changes will not incur a financial impact from the relocation of definitions. The updated statute references do not have any financial impact as they are just renumbered.

**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:**

Subsection 26B-1-202(1)	Title 26B, Chapter 4, Part 2	
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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>		10/16/2023
<b>B) A public hearing (optional) will be held:</b>		
<b>Date:</b>	<b>Time:</b>	<b>Place</b> (physical address or URL):
10/02/2023	9 AM MST	See information in Box 4 above

**9. This rule change MAY become effective on:** 10/23/2023

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>	08/25/2023
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**R383. Health and Human Services, Center for Medical Cannabis.**

**R383-6. Pharmacy Medical Providers.**

**R383-6-1. Authority and Purpose.**

(1) Subsection~~[26B-1-213(1)]~~ 26B-1-202(1) authorizes this rule.

(2) This rule establishes ~~[Pharmacy Medical Provider]~~PMP application procedures~~[7]~~ and ~~[Pharmacy Medical Provider]~~PMP continuing education requirements.

**[R383-6-2. Definitions.**

~~As used in this section:~~

~~(1) "Fundamentals of medical cannabis coursework" means a course, or combination of courses, with content that addresses the following subjects:~~

~~(a) endocannabinoid system and phytocannabinoids;~~

~~(b) general guidance and recommendations for medical cannabis; and~~

~~(c) history of cannabis, dosing forms, considerations, drug interactions, adverse reactions, contraindications, such as breastfeeding and pregnancy, and toxicology.~~

~~(2) "General medical cannabis coursework" means a course, or combination of courses, with content that addresses medical cannabis; which may include medical cannabis law, or fundamentals of medical cannabis coursework.~~

~~(3) "Medical cannabis law coursework" means a course, or combination of courses, with content that addresses Title 26, Chapter 61a, Utah Medical Cannabis Act; and other state and federal laws relating to medical cannabis that include, at a minimum, a review of the following:~~

~~(a) qualifying health conditions for which a patient may lawfully use medical cannabis, for a medicinal purpose in Utah;~~

~~(b) forms of medical cannabis that a qualifying patient is allowed to purchase from a medical cannabis pharmacy under Utah law;~~

~~(c) the limit of the quantities of unprocessed cannabis, and cannabis products in medicinal form, that may be dispensed in Utah;~~

~~(d) the requirement to initially register and renew registration as a PMP;~~

~~(e) limit to the number of active medical cannabis recommendations that an RMP can make at any given time;~~

~~(f) a description of what an RMP must document in a patient's record, before recommending medical cannabis;~~

~~(g) information required from an RMP, when writing a medical cannabis recommendation, and the option to make a recommendation without specifying a dosage form and dosing guidelines;~~

~~(h) a PMP's role in determining the appropriate medical cannabis dosage form and dosing guidelines, when an RMP chooses to recommend without specifying a dosage form and dosing guidelines;~~

~~(i) limit on advertising by a QMP;~~

~~(j) type of medical cannabis cards;~~

~~(k) the regulation controlling the distribution of products, by a medical cannabis pharmacy;~~

~~(l) a partial fill order;~~

~~(m) the role of the Compassionate Use Board;~~

~~(n) the role of a cannabis cultivation facility, a cannabis processing facility, and an independent cannabis testing laboratory, that operate within Utah's medical cannabis system;~~

~~(o) the conditions of legal possession of medical cannabis under Utah law;~~

~~(p) the legal status of medical and recreational marijuana in states surrounding Utah, and under federal law;~~

~~(q) the authority to change dosage parameters in a medical cannabis recommendation;~~

~~(r) home delivery of medical cannabis; and~~

~~(s) the purpose of the state central patient portal.]~~

**R383-6-[3]2. Application Procedures.**

(1) The application procedures established in this section govern an application for initial issuance of a PMP registration card, under~~[Title 26, Chapter 61a,]~~ Title 26B, Chapter 4, Part 2, Cannabinoid Research and Medical Cannabis~~[Utah Medical Cannabis Act]~~, and by Department rule.

(2) Each ~~[card]~~applicant shall apply upon forms available in the EVS, from the Department.

(3) The Department may issue a PMP registration card only if an applicant meets the ~~[card]~~requirements, established under~~[Title 26, Chapter 61a,]~~ Title 26B, Chapter 4, Part 2, Cannabinoid Research and Medical Cannabis~~[Utah Medical Cannabis Act]~~, and by Department rule.

(4)~~(a)~~ The Department shall provide written notice of denial to an applicant who submits an incomplete application or if the Department determines that the applicant does not meet the ~~[card]~~ requirements.

(b) ~~[(5) The Department shall provide to an applicant a written notice of incomplete application that the application is closed.]~~ The Department shall not accept the application unless the applicant corrects the deficiencies within the time period specified in the notice~~;~~ and otherwise meets all~~[-card]~~ requirements.

(6) The Department shall provide written notices of denial, or incomplete application, to the applicant's last email address shown in the Department's EVS database unless the applicant has requested to be notified by regular mail.

(7) Each applicant shall maintain a current email address with the Department. Notice sent to the last email address on file with the Department constitutes legal notice unless the applicant has requested to be notified by regular mail.

### **R383-6-~~[4]~~3. Renewal Application Procedures for Pharmacy Medical Providers.**

(1) Renewal application procedures established in this rule, shall govern an application for a PMP registration card.

(2) Each PMP registration card applicant shall apply upon a renewal application form available from the Department.

(3) The Department may issue a PMP registration card to an applicant who submits a completed renewal application if the Department determines that the applicant meets the~~[-card]~~ requirements.

(4) The Department shall provide written notice of denial to an applicant who submits a ~~[complete]~~ renewal application ~~[if]~~ that the Department determines~~[-that the applicant]~~ does not meet the~~[-card]~~ requirements.

(5) The Department shall provide the applicant a written notice of an incomplete application and inform~~[-that]~~ the applicant that their application will be ~~[closed, -]~~ denied unless the applicant corrects the deficiencies within the time period specified in the notice~~;~~ and otherwise meets all~~[-card]~~ requirements.

(6)~~(a)~~ The Department shall send a renewal notice to each cardholder at least 30 days before the expiration date shown on the PMP ~~[cardholder's]~~ registration card.

(b) The notice shall include:

(i) directions for the PMP on how to renew their registration card, in the EVS [via] on the Department's website[-]; and

(ii) include information advising each cardholder that the PMP registration card automatically expires on the expired and is no longer valid.

(7) The Department shall send renewal notices to the cardholder's last email shown in the Department's EVS database.

(8) Each cardholder shall maintain a current email address and mailing address with the Department. Notice sent to the current email address on file with the Department constitutes legal notice, unless the applicant has requested to be notified by regular mail.

~~[(9) Renewal notices shall advise each cardholder that a card automatically expires on the expiration date and is no longer valid.]~~

(10) If an individual's PMP registration card expires, the individual may submit a~~[-card]~~ renewal application at any time, regardless of the length of time passed since the expiration of the card.

### **R383-6-~~[5]~~4. Continuing Education Requirement.**

(1) An applicant for registration as a PMP shall verify the completion of four hours of continuing education. Once registered as a PMP, an individual shall complete an additional four hours of continuing education every two years~~[-as a requirement for renewal.]~~

(2) To renew a PMP registration card, an individual shall:~~[To meet the continuing education requirement, all coursework shall include the following]:~~

(a) complete continuing medical education coursework:

(i) approved by the Department; or

(ii) provided by an organization accredited through the Accreditation Council for Continuing Medical Education, Accreditation Council for Pharmacy Education, or the American Association of Nurse Practitioners.

~~[(a) approval by the Department; or~~

~~[(b) be provided by an organization accredited through the Accreditation Council for Continuing Medical Education, Accreditation Council for Pharmacy Education, or the American Association of Nurse Practitioners;]~~

~~[(c)](b)~~ [completion of] pass a completion test with a passing score, as determined by the course provider, to verify comprehension of course content; and

~~[(d)](c)~~ earn a certificate of completion.

(3) Initial registration as a PMP shall require at least four hours of continuing education, ~~[which]~~ that shall include at a minimum:

(a) medical cannabis law coursework; and

(b) fundamentals of medical cannabis coursework.

(4) A PMP shall renew a registration every two years, after completing at least four hours of continuing education in:

(a) medical cannabis law coursework; and

(b) fundamentals of medical cannabis coursework.

(5) The PMP shall:

(a) submit a report of their continuing education coursework;

(b) an application for registering as a PMP; and

(c) a certificate of completion for coursework completed after issuance of the most recent PMP registration.

~~(6)(a) A PMP application that does not include the items described under Subsection (5) is considered incomplete.~~

~~(b) The Department may not process a PMP's application until the report is completed.[-report along with their application for registration as a PMP and shall include a certificate of completion for coursework completed after issuance of the most recent registration. An application that does not include the continuing education report is considered incomplete, and the Department shall not process an application until the report is complete.]~~

**KEY: medial cannabis, pharmacy medical providers, marijuana**

**Date of Last Change: 2023~~[December 27, 2022]~~**

**Authorizing, and Implemented or Interpreted Law: 63G-3; ~~[26-1-5(1); 26-61a-403(3)(b); 26-61a]~~26B-1-202(1)**

#### **NOTICE OF PROPOSED RULE**

**TYPE OF FILING:** Amendment

**Rule or Section Number:**

**R383-7**

**Filing ID:**  
**55698**

#### **Agency Information**

<b>1. Department:</b>	Health and Human Services
<b>Agency:</b>	Center for Medical Cannabis
<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 144340	
<b>City, state and zip:</b>	Salt Lake City, UT 84114-4340	
<b>Contact persons:</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Jeremiah Sniffin	801-538-6504	jsniffin@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>
R383-7. Medical Cannabis Pharmacy
<b>3. Purpose of the new rule or reason for the change:</b>
<p>The purpose of this proposed amendment is to reformat the definitions section as they are being moved to Rule R383-1.</p> <p>This proposed amendment also replaces references to Title 26, Chapter 61a, with Title 26B, Chapter 4. This update was prompted by the passing of S.B. 40 and the recodification of the Utah Health Code and Utah Human Services Code.</p> <p>Changes to Subsection R383-7-18(6) are made because of feedback from the industry. This change will make it easier for customers to understand the amount of tetrahydrocannabinol (THC) in medical cannabis products online.</p> <p>Subsection R383-7-3(8) is deleted as it conflicts with Section 26B-4-224.</p>
<b>4. Summary of the new rule or change:</b>
<p>The statute citation in Subsection R383-7-1(1) is updated. The Department of Health and Human Services (DHHS) Office of Legislative Affairs indicated that the new citation is the correct reference for citing rulemaking authority.</p> <p>Section R383-7-2 is deleted as these definitions are moved to Rule R383-1. The definitions for advertising and targeted marketing are being deleted as these definitions were added to Section 26B-4-201 under S.B. 137 during the 2023 General Session.</p> <p>Subsection R383-7-3(8) is deleted. Subsections R383-7-3(8) through R383-7-3(11) are renumbered due to the Subsection R383-7-3(8)'s deletion.</p>

Subsection R383-7-3(9) is deleted as this language already exists in Subsection 26B-4-224(11). Sections R383-7-3 through R383-7-21 are renumbered to reflect the deletion of Section R383-7-2.

Section R383-7-10 is updated to reflect the same verbiage in the statute concerning medical cannabis dosage forms.

Subsection R383-7-18(6) is amended to alter how a medical cannabis pharmacy shall promote the level of THC in a product online -- specifically, milligrams for concentrated cannabis and percentage for unprocessed cannabis.

The amendment replaces "valid form of identification" with "government-issued photo identification" throughout this rule.

Section R383-7-20 is entirely deleted due to these standards being in the statute.

Walk-up service has been added throughout the proposed amendment as this is an approved way for patients to access a medical cannabis pharmacy.

The definitions for advertise, advertising, and targeted marketing are being stricken entirely due to these being in the statute.

(EDITOR'S NOTE: The proposed amendment to Rule R383-1 is under ID 55700 in this issue, September 15, 2023, of the Bulletin.)

#### Public hearing information:

There will be a public hearing on 10/02/2023 at 9 AM MST at the MASOB at 195 N 1950 W, Salt Lake City, UT in Room 1020C.

Please click the link to join the webinar: <https://utah-gov.zoom.us/j/88410663769>

### Fiscal Information

<b>5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:</b>
<b>A) State budget:</b>
This proposed amendment does not result in a fiscal impact on the state budget because it only adds or clarifies language with no fiscal impact.
<b>B) Local governments:</b>
This proposed amendment does not result in a fiscal impact on local governments because local agencies require no regulatory requirements.

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

This proposed amendment does not result in a fiscal impact on small businesses because it only adds or clarifies language with no fiscal impact.

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

This proposed amendment does not result in a fiscal impact on a non-small business budget because this amendment does not establish requirements for non-small businesses.

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

This proposed amendment does not result in a fiscal impact on the budget of persons other than small businesses, non-small businesses, or state or local government entities because this amendment does not establish new requirements for these entities.

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

This proposed amendment does not result in a fiscal impact on compliance costs for affected persons because it only adds or clarifies language with no fiscal impact.

**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 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:**

Title 26B, Chapter 4	Section 26B-4-229	Section 26B-4-242
Section 26B-4-233	Section 26B-4-228	Subsection 26B-1-202(1)

#### 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>		10/16/2023
<b>B) A public hearing (optional) will be held:</b>		
<b>Date:</b>	<b>Time:</b>	<b>Place</b> (physical address or URL):
10/02/2023	9 AM MST	See information in Box 4 above

**9. This rule change MAY become effective on:** 10/23/2023

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>	08/25/2023
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### R383. Health and Human Services, Center For Medical Cannabis.

#### R383-7. Medical Cannabis Pharmacy.

##### R383-7-1. Authority and Purpose.

(1) Subsection~~[26B-1-213(4)]~~ 26B-1-202(1) and~~[Title 26, Chapter 61a,]~~ Title 26B, Chapter 4, Part 2, Cannabinoid Research and Medical Cannabis~~[Utah Medical Cannabis Act]~~, authorize this rule.

(2) This rule establishes operating and licensing standards and requirements applicable to medical cannabis pharmacies and their employees.

##### [R383-7-2. Definitions:

The definitions in Section R383-1-2 apply to this rule. In addition, the following definitions apply to this rule:

(1) "Advertise" or "advertising" means information that a medical cannabis pharmacy provides to the public that:

(a) does not restrict access to any person under the age of 18; and

(b) does not include a recreational disposition.

(2) "Cannabis waste" means cannabis product that is damaged, deteriorated, mislabeled, expired, returned, subject to a recall, or enclosed within a container or package that has been opened or breached.

(3) "Educational event" means an organized event:

(a) at which a medical cannabis pharmacy distributes, orally presents, or displays educational material; and

(b) that may be held either virtually or in person.

(4) "Educational material" means material or content used, displayed, sold, or distributed for an educational purpose by a medical cannabis pharmacy in person or online in a business or professional capacity. Educational material includes:

(a) live or recorded content of an actual educational event; or

(b) any printed educational material such as a placard, poster, fact sheet, book, pamphlet, flyer, or business card.

(5) "Institutional review board" or "IRB" means the same term as defined in Section 26-61-102.

(6) "Recreational disposition" means the following:

(a) slang words or phrasing associated with the recreational use of cannabis;

(b) an image of a celebrity or other person whose target audience is children or minors;

(c) content that encourages promotes, or otherwise creates an impression that the recreational use of cannabis is legal or acceptable, or that the recreational use of cannabis has potential health or therapeutic benefits;

(d) content that promotes excessive consumption;

(e) content that is obscene or indecent; and

(f) content that a reasonable person knows or should know appeals to children.

(7) "Substantial evidence" or "substantial clinical data" means evidence that two or more clinical studies support. The clinical studies shall meet the following criteria:

(a) were conducted under a study approved by an IRB;

(b) were conducted or approved by the federal government;

(c) are cited by the Department in educational materials posted on its website; or

(d) are of reasonable scientific rigor as determined by the Department.

(8) "Targeted marketing" means the promotion of a medical cannabis product, medical cannabis brand, or medical

cannabis device by a medical cannabis pharmacy using the following methods:

(a) ~~electronic communication that requires acknowledgment of the person receiving or accessing the communication that they are an adult age 18 or over;~~

(b) ~~an in-person marketing event that is held inside the cardholder-only area of a medical cannabis pharmacy; or~~

(c) ~~other marketing material that is physically available or digitally displayed in the cardholder-only area of a medical cannabis pharmacy.]~~

##### R383-7-[3]2. General Operating Standards.

(1) In addition to general operating standards established in~~[Title 26, Chapter 61a,]~~ Title 26B, Chapter 4, Part 2,~~[Utah Medical Cannabis Act,]~~ Cannabinoid Research and Medical Cannabis,

medical cannabis pharmacies shall comply with the operating standards established in this rule. Medical cannabis pharmacies shall:

(a) be well lit, well ventilated, clean, and sanitary;

(b) maintain a current list of employees working at the medical cannabis pharmacy;

(i) the list shall include employee name, Department registration license classification and license number, registration expiration date, and work schedule; and

(ii) ~~[the list shall be]~~is readily retrievable for inspection by the Department and may be maintained in paper or electronic form;

(c) have a counseling area to allow for confidential patient counseling; and

(d) have current and retrievable editions of the following reference publications, in print or electronic format, and readily available and retrievable to medical cannabis pharmacy personnel:

(i) ~~[Title 26, Chapter 61a,]~~ Title 26B, Chapter 4, Part 2, Cannabinoid Research and Medical Cannabis~~[Utah Medical Cannabis Act]~~; and

(ii) applicable administrative rules.

(2) A medical cannabis pharmacy ~~[shall]~~may not distribute medical cannabis products, or medical cannabis devices, to a medical cannabis cardholder, unless an employee who is a PMP is physically present and immediately available in the medical cannabis pharmacy.

(3) A medical cannabis pharmacy location ~~[shall be]~~is open for a cardholder to buy a medical cannabis product, and medical device, for a minimum of 35 hours a week, except as authorized by the Department.

(4) A medical cannabis pharmacy that closes during normal hours of operation, shall implement procedures to notify a cardholder when the medical cannabis pharmacy will resume normal hours of operation. Procedures may include telephone system messages and conspicuously posted signs.

(5)(a) A PMP or pharmacy agent shall supervise and be present for ~~[D]~~deliveries from a cannabis processing facility or another medical cannabis pharmacy.~~[shall be carried out under the direct supervision of a PMP or pharmacy agent, who shall be present to accept the delivery.]~~

(b) Upon delivery, the medical cannabis product or medical cannabis devices shall immediately be placed in a limited access area of the medical cannabis pharmacy.

(6) A medical cannabis pharmacy shall protect, at all times, confidential cardholder data and information stored in the EVS to ensure that access to and use of the data and information is limited to those individuals and purposes authorized under~~[Title 26, Chapter 61a,]~~ Title 26B, Chapter 4, Part 2, Cannabinoid Research and Medical Cannabis~~[Utah Medical Cannabis Act,]~~ and this rule.

(7) A medical cannabis pharmacy ~~[shall]~~may not dispense expired, damaged, deteriorated, misbranded, adulterated, or opened medical cannabis products or medical cannabis devices.

~~[(8) A medical cannabis pharmacy license cannot be assigned or transferred but a licensee may make changes to its ownership or company structure. Any changes to a pharmacy's ownership or company structure shall be reported to the Department no later than ten calendar days before the change is to take place. When making a change to its ownership, a licensee shall not:~~

~~\_\_\_\_\_ (a) make an ownership change by an interest of 2% or more without notification of the Department at least 10 days before the date of the change; and~~

~~\_\_\_\_\_ (b) make an ownership change by an interest of 50% or more without applying to the Department and receiving Department approval and payment of the fee authorized under Section 26-61a-109 that the Department sets in accordance with Section 63J-1-504.~~

~~\_\_\_\_\_ (9) When applying to the Department for approval of an ownership change of more than 50%, the medical cannabis pharmacy shall submit to the Department:~~

~~\_\_\_\_\_ (a) a complete application form provided by the Department;~~

~~\_\_\_\_\_ (b) payment of an application fee that covers the cost of the application review;~~

~~\_\_\_\_\_ (c) a description of how the medical cannabis pharmacy shall maintain its compliance with the minimum standards for licensure and operation of the medical cannabis pharmacy; and~~

~~\_\_\_\_\_ (d) the results of a formal investigation, charge, claim, or adverse action taken against the new owners or individuals with formal financial or management control who make up the new owners, during the past seven years, by any licensing jurisdiction, government agency, law enforcement agency, or court in any state.]~~

~~[(10)]~~(8) A medical cannabis pharmacy shall provide a copy of a certificate of analysis for a medical cannabis product to a medical cannabis cardholder or a recommending medical provider if:

~~\_\_\_\_\_ (a)]~~ it is requested in writing ~~[,] and~~

~~\_\_\_\_\_ (b) the requestor signs a non-disclosure agreement upon request by the medical cannabis pharmacy.~~

~~\_\_\_\_\_ [(11)]~~(9) A medical cannabis pharmacy may be located in the same building as a medical clinic that offers medical cannabis evaluations under the following conditions:

(a) the building owner ~~[shall]~~may not be the medical cannabis pharmacy or an owner, director, board member, employee, or agent of the medical cannabis pharmacy; and

(b) the two businesses cannot share an outdoor entrance unless the entrance leads to a common area shared by multiple tenants of the building where the two businesses have separate facility entrances to facility reception areas separated by walls and locked doors.

### **R383-7-[4]3. Operating Plan.**

(1) A medical cannabis pharmacy license application shall include an operating plan that includes, at a minimum the following:

(a) information requested in the application;

(b) the information listed in Section ~~[26-61a-301]~~ 26B-4-224;

(c) a plan to comply with applicable operating standards, statutes, and administrative rules, including:

(i) ~~[Title 26, Chapter 61a,]~~ Title 26B, Chapter 4, Part 2, Cannabinoid Research and Medical Cannabis[Utah Medical Cannabis Act]; and

(ii) applicable administrative rules.

(2) The Department may require the applicant for a medical cannabis pharmacy license to make a change to its operating plan before issuing a pharmacy license. The applicant shall submit a copy of its updated operating plan, with the required change, and receive Department approval of the plan before the Department awards the license.

(3) Once the Department issues a license, any change to a medical cannabis pharmacy's operating plan is subject to the approval of the Department. A medical cannabis pharmacy shall submit a notice, in a manner determined by the Department, at least 14 days before the date that it plans to implement any change to its operating plan.

### **R383-7-[5]4. Operating Standards -- Pharmacist-In-Charge.**

(1)(a) A medical cannabis pharmacy's pharmacist-in-charge (PIC) shall have the responsibility to oversee the medical cannabis pharmacy's operation.

~~\_\_\_\_\_ (b) The PIC shall [generally] supervise the medical cannabis pharmacy, though the PIC is not required to be on-site during business hours.~~

~~(2)~~(a) A PIC or responsible party shall create ~~[A]~~a unique email address ~~[shall be established by the PIC, or responsible party,]~~ for the medical cannabis pharmacy ~~[to be used]~~ to use for official notices, self-audits, or medical cannabis pharmacy alerts, initiated by the Department.

~~\_\_\_\_\_ (b) The PIC or responsible party shall notify the Department of the medical cannabis pharmacy's email address in the initial application for licensure.~~

(3) The duties of the PIC shall include:

(a) ensure that PMPs, and pharmacy agents, at the medical cannabis pharmacy appropriately interpret and distribute a recommendation from a recommending medical provider, in a suitable container, appropriately labeled for subsequent administration, or use by a patient;

(b) ensure that medical cannabis products and medical cannabis devices are distributed safely, and accurately, with correct dosing guidelines and directions of use as recommended by a recommend~~ed~~ing medical provider;

(c) ensure that medical cannabis products, and medical cannabis devices, are distributed with information and instruction as necessary for proper utilization;

(d) ensure that PMPs and pharmacy agents communicate to a cardholder, at their request, information concerning any medical cannabis product or medical cannabis devices distributed to the cardholder;

(e) ensure that a reasonable effort is made to get, protect, record, and maintain patient records;

(f) education and training of medical cannabis pharmacy personnel;

(g) establishment of policies for procurement of medical cannabis products, medical cannabis devices, and educational material sold at the facility;

(h) distribution and disposal of medical cannabis products and medical cannabis devices, from a medical cannabis pharmacy;

(i) appropriate storage of medical cannabis products and medical cannabis devices;

(j) maintain a complete and accurate record of transactions of the medical cannabis pharmacy necessary to maintain accurate control and accountability for materials required by applicable state laws;



(k) establish effective control against theft or diversion of medical cannabis products or medical cannabis devices, and record of the product;

(l) legal operation of the medical cannabis pharmacy, including inspections, and other requirements, of state laws governing the medical cannabis pharmacies;

(m) implementation of an ongoing quality assurance program, ~~that~~ which monitors the performance of the personnel at the medical cannabis pharmacy;

(n) ensure that the point-of-sale (POS) is in working order;

(o) ensure that relevant information is submitted to the state's ICS and EVS in a timely manner;

(p) ensure that medical cannabis pharmacy personnel have appropriate licensure and registration;

(q) ensure that no medical cannabis pharmacy operates with a ratio of PMPs to pharmacy agents that results in, or reasonably would be expected to result in, a reasonable risk of harm to public health, safety, and welfare;

(r) ensure that the PIC assigned to the medical cannabis pharmacy is recorded with the Department, and the Department is notified of a PIC change within 14 days of the change or within 24 hours of an immediate change in a PIC's employment status in case of sudden resignation, termination, or emergency leave; and

(s) in regard to the unique email address used for self-audits or medical cannabis pharmacy alerts, ensure that:

(i) the medical cannabis pharmacy uses a single email address; and

(ii) the medical cannabis pharmacy notifies the Department, on the form prescribed, of any change in the email address within seven calendar days of the change.

(4) A PMP cannot ~~be designated as~~ designate a PIC for more than two medical cannabis pharmacies at one time.

### **R383-7-[6]5. Operating Standards -- Supervision.**

(1) A medical cannabis pharmacy is ~~always under the full and actual~~ in charge of the medical cannabis pharmacy's PIC, but it ~~shall be~~ is under the direct supervision of at least one supervising PMP, who is physically present at all times when a medical cannabis pharmacy is open to the public.

(2) A medical cannabis pharmacy PIC is not required to be in the medical cannabis pharmacy at all times but ~~shall be~~ is available for contact within a reasonable period with the supervising PMP.

(3) A medical cannabis pharmacy shall never operate with a supervision ratio of PMP to pharmacy agent that results in, or reasonably would be expected to result in, an unreasonable risk of harm to public health, safety, and welfare.

### **R383-7-[7]6. Security Standards.**

(1) A medical cannabis pharmacy shall comply with security standards established in Section ~~26-61a-501~~ 26B-4-229 and this rule.

(2) A medical cannabis pharmacy shall have security equipment sufficient to deter and prevent unauthorized entrance into a limited access area of the medical cannabis pharmacy that includes equipment required in this section.

(3) A medical cannabis pharmacy shall have a system to detect unauthorized intrusion, which may include a signal system interconnected with a radio frequency method, such as cellular or private radio signals, or another mechanical or electronic device.

(4) A medical cannabis pharmacy shall ~~be equipped~~ equip their entrances with secure locks, ~~with a secure lock on any entrance to the medical cannabis pharmacy.~~

(5) A medical cannabis pharmacy shall have electronic monitoring including:

(a) at least one 19-inch or greater call-up monitor;

(b) a printer, capable of immediately producing a clear still photo from any video camera image;

(c) a video camera with a recording resolution of at least 640 x 470, or the equivalent, which provides coverage of entrances to and exits from limited access areas; and entrances to and exits from the building, and is capable of identifying any activity occurring in or adjacent to the building;

(d) a video camera shall either record continuously, 24 hours a day, ~~7~~ seven days a week or be motion activated;

(e) a video camera at each point-of-sale and product destruction or disposal location, which will allow for the identification of a medical cannabis cardholder, visitor, or pharmacy employee;

(f) a method for storing video recordings from the video camera for at least 45 calendar days;

(g) for locally stored footage, the surveillance system storage device ~~shall be~~ is secured in the facility in a lock box, cabinet, closet, or secured in another manner, to protect from employee tampering or criminal theft;

(h) access to footage stored on a remote server ~~shall be~~ is restricted to protect from employee tampering;

(i) a failure notification system that provides an audible, and visual, notification of failure in the electronic monitoring system;

(j) sufficient battery backup for a video camera and recording equipment, to support at least five minutes of recording in the event of a power outage;

(k) a date and time stamp embedded on video camera recordings, which ~~shall be~~ is set correctly; and

(l) a panic alarm in the interior of the facility, which is a silent security alarm system signal, generated by the manual activation of a device intended to signal a robbery in progress.

(6) Security measures implemented by a medical cannabis pharmacy to deter and prevent unauthorized entrance in areas containing products, theft of products, and to ensure the safety of employees and medical cannabis cardholders, shall include the following:

(a) store medical cannabis products and medical cannabis devices in a secure locked limited access area, in a manner as to prevent diversion, theft, and loss;

(b) notwithstanding Subsection (6)(a), a medical cannabis pharmacy may display, in a securely locked case, a sample of each product offered;

(i) the display case ~~shall be~~ is transparent;

(ii) an authorized PMP, or pharmacy agent, may remove an example of medical cannabis, or medical cannabis device, from the case, and provide it to a cardholder for inspection; provided:

(A) the patient does not consume or otherwise use the sample;

(B) the processor label from the original product container or an image showing the processor label is affixed to the sample's container with the unique identifying number that links the medical cannabis product to the ICS; and

(C) when destroying medical cannabis, the medical cannabis pharmacy ~~destruction of the medical cannabis product shall be done in compliance~~ shall comply with applicable laws and the pharmacy's standard operating procedures~~[-]; and~~

(iii) inside the medical cannabis pharmacy, medical cannabis product and medical cannabis devices, ~~[shall be]~~ are stored in a limited access area during non-business hours;

(c) keep safes, vaults, and any other equipment, or areas used for storage, including before disposal of the product, securely locked and protected from entry; except for the ~~[actual]~~ time required to remove or replace medical cannabis, a product, or medical cannabis devices;

(d) keep locks and security equipment in good working order, and shall test that equipment is functioning properly at least two times per calendar year;

(e) prohibit keys, if any, from being left in the locks, or stored or placed, in a location accessible to any person other than specifically authorized personnel;

(f) prohibit accessibility to security measures, such as combination numbers, passwords, or electronic, or biometric security systems, to any person other than specifically authorized personnel;

(g) ensure that the outside perimeter of the building is sufficiently lit, to facilitate surveillance;

(h) ensure that medical cannabis products and medical cannabis devices are kept out of plain sight, and are not visible from a public place, outside of the medical cannabis pharmacy;

(i) develop emergency policies and procedures for securing each product following any instance of diversion, theft, or loss of product, and conduct an assessment to determine whether additional safeguards are necessary;

(j) at a medical cannabis pharmacy where a cash transaction is conducted, establish a procedure for safe cash handling and cash transportation, to a financial institution to prevent theft, loss, and associated risk to the safety of employees, customers, and the general public;

(k) while inside the medical cannabis pharmacy, an employee shall wear an identification tag, or similar form of identification, to clearly identify them to the public;

~~including~~ that includes their position at the medical cannabis pharmacy, as a PMP or pharmacy agent; and

(l) prevent an individual from remaining on the premise of the medical cannabis pharmacy, if they are not engaging in activity expressly, or by necessary implication, permitted by ~~[Title 26, Chapter 61a,]~~ Title 26B, Chapter 4, Part 2 ~~[Utah Medical Cannabis Act]~~ Cannabinoid Research and Medical Cannabis.

(7) A medical cannabis pharmacy shall include the following areas of security:

(a) public waiting area;

(b) cardholder-only area; and

(c) limited access area.

(8) A medical cannabis pharmacy shall allow only a medical ~~[a]~~ cannabis cardholder, PMP, pharmacy agent, authorized vendor, contractor, and visitor, to have access to the cardholder area of the medical cannabis pharmacy.

(9) When ~~[An]~~ an outside vendor, contractor, ~~[and the visitor]~~ or visitor visits the pharmacy, the pharmacy shall:

(a) ~~[get]~~ ensure that they receive a visitor identification badge[;] before entering the cardholder-only, or limited access area of a medical cannabis pharmacy[;]. The pharmacy shall ensure that the visitor: ~~[to]~~

(i) ~~[be worn]~~ wears this badge at all times when on the premise of the medical cannabis pharmacy; ~~[and]~~

(ii) the visitor identification badge shall be visibly displayed at all times, while in the facility; and

(iii) the visitor identification badge is returned to the medical cannabis pharmacy upon exit.

(b) ~~[shall be escorted]~~ escort the visitor at all times by an employee authorized to enter the medical cannabis pharmacy; ~~[The visitor identification badge shall be visibly displayed at all times, while in the facility.]~~

(c) ensure that the ~~[A visitor must be]~~ visitor is logged in and out[;]; and

(d) that the log ~~[shall be]~~ is available for inspection by the Department at all times. ~~[The visitor identification badge shall be returned to the medical cannabis pharmacy upon exit.]~~

(10)(a) Product inside a medical cannabis pharmacy, ~~[shall be]~~ is kept in a limited access area, inaccessible to any person other than a PMP, pharmacy agent, state employee, or an individual authorized by the medical cannabis pharmacy's PIC.

(b) The limited access area ~~[shall be]~~ is identified by the posting of a sign, that ~~[shall be]~~ is a minimum of 12" x 12", and states: "Limited Access Area," in lettering no smaller than one inch in height.

(11) If a cabinet or drawer is used as a limited access area, it is not required to have a "Limited Access Area" sign on it.

(12) Only a PMP or a pharmacy agent, employed at the medical cannabis pharmacy shall have access to the medical cannabis pharmacy when the medical cannabis pharmacy is closed to the public.

(13)(a) The medical cannabis pharmacy, or parent company, shall maintain a record of not less than five years of the initials or identification codes that identify each PMP or pharmacy agent by name.

(b) The medical cannabis pharmacy shall ensure that the initial or identification code ~~[shall be]~~ is unique, to ensure that each PMP, or pharmacy agent, can be identified.

(c) An identical initial or identification code, ~~[shall]~~ may not be used for two or more PMPs, or pharmacy agents.

### **R383-7-~~[8]~~7. Operating Standards -- Inventory.**

(1) A medical cannabis pharmacy shall ~~[be equipped]~~ equip for orderly inventory, storage of medical cannabis products, and medical cannabis devices, in a manner to permit clear identification, separation, and easy retrieval of a product; and an environment necessary to maintain the integrity of the product inventory.

(2) A medical cannabis pharmacy shall use the state's ICS to establish a record of each transaction, sale, return, and disposal.

(3) A medical cannabis pharmacy shall input in the ICS information regarding the purchase of medical cannabis products, or medical cannabis devices, immediately after a transaction with a cardholder is closed, so reporting of purchases to the ICS across medical cannabis pharmacies is in real-time.

(4) A medical cannabis pharmacy shall establish and document daily and weekly inventory controls of a medical cannabis product and medical cannabis devices to help the pharmacy detect any diversion, theft, or loss of product in a timely matter.

(5) A PMP at each medical cannabis pharmacy shall conduct a monthly inventory which shall include a reconciliation of each medical cannabis product and medical cannabis device stored at the pharmacy with the pharmacy's inventory record in the ICS. Pharmacy agents may assist a PMP with the monthly inventory. A monthly inventory shall include:

(a) the time and date of completing the inventory;

(b) a summary of the inventory findings; and

(c) the name and signature or initials of the PMP who conducted the inventory.



(6) If a medical cannabis pharmacy employee identifies a reduction in the number of medical cannabis products or medical cannabis devices in the medical cannabis pharmacy's inventory is not due to documented causes, the medical cannabis pharmacy shall determine where the loss occurred, and immediately take and document corrective action. The medical cannabis pharmacy shall immediately inform the Department of the loss by telephone, and provide written notice of the loss, and the corrective action taken within two business days after the first discovery of the loss.

(7) If a reduction in the number of medical cannabis products, or medical cannabis devices, in the inventory, is due to criminal activity, or suspected criminal activity, the medical cannabis pharmacy shall immediately make a written report identifying the circumstances surrounding the reduction to the Department, and to law enforcement with jurisdiction where the suspected criminal acts occurred.

(8) If a medical cannabis pharmacy employee identifies an increase in the amount of medical cannabis products, or medical cannabis devices, in the medical cannabis pharmacy's inventory, not due to documented causes, the medical cannabis pharmacy shall determine where the increase occurred and take and document corrective action.

(9) The PIC shall conduct and complete an annual comprehensive inventory of products at a medical cannabis pharmacy within 72 hours or three working days of the pharmacy's first annual comprehensive inventory. The annual comprehensive inventory shall include:

- (a) the time and date of completing the inventory;
- (b) a summary of the inventory findings; and
- (c) the name and signature or initials of the PIC who conducted the inventory.

(10) Records of each monthly inventory, and comprehensive annual inventory, shall be kept by the medical cannabis pharmacy for a period of five years. The records may be electronic or physical. If physical records are kept, the physical records must be located at the medical cannabis pharmacy where the medical cannabis products and medical cannabis devices are located. A medical cannabis pharmacy intending to maintain such records at a location other than the medical cannabis pharmacy must first send a written request to the Department. The request shall contain the medical cannabis pharmacy name and license number, and the name and address of the alternate location. The Department shall send written notification to the medical cannabis pharmacy documenting the approval, or denial, of the request. A copy of the Department's approval shall be maintained. An alternate location shall be secured and accessible only to authorized medical cannabis pharmacy employees.

(11) A medical cannabis pharmacy shall provide documentation required to be maintained in this rule to the Department for review upon request.

### **R383-7-[9]8. Operating Standards -- Transportation.**

(1) Transport of medical cannabis from a medical cannabis pharmacy to another location shall occur only when:

- (a) a home delivery medical cannabis pharmacy is delivering shipments of medical cannabis, or medical cannabis devices, to a cardholder's home address or caregiver facility;
- (b) a medical cannabis pharmacy, or cannabis production establishment, is transporting medical cannabis, or a medical cannabis device, from a medical cannabis pharmacy facility to a cannabis production establishment facility, or waste disposal location to be disposed of; and

(c) a product recall is initiated and medical cannabis, or a medical cannabis device, must be returned from a medical cannabis pharmacy to the cannabis production establishment.

(2) Where a ~~[M]medical~~ cannabis product and medical cannabis devices ~~[to be returned]~~ is returned, ~~[to]~~ the cannabis production establishment shall ~~[be]~~:

- (a) log ~~[ged]~~ it into the ICS;
- (b) ~~[stored]~~ store it in a locked container with clear and bold lettering: "Return"; and
- (c) ~~[prepared for]~~ prepare the return in compliance with any guideline and protocol of the cannabis production establishment for collecting, storing, and labeling a returned product.

(3) A PMP or pharmacy agent accepting a shipment of medical cannabis, or medical cannabis device, at a medical cannabis pharmacy facility from a cannabis production establishment shall:

- (a) get a copy of the transport manifest and safeguard the manifest for recordkeeping;
- (b) not delete, void, or change information provided on the transport manifest, upon arrival at the medical cannabis pharmacy;
- (c) ensure that the medical cannabis product and medical cannabis devices received from a cannabis production establishment are as described in the transport manifest, and record the amount received into the ICS;

(d) clearly record on the manifest the unique initial or identification code of the medical cannabis pharmacy employee who compares the received inventory with the transport manifest, and the ~~[actual]~~ exact date and time of receipt of the medical cannabis product, or medical cannabis devices;

(e) if a difference between the quantity specified in the transport manifest and the quantity received occurs, document the difference in the ICS; and

(f) log in the ICS any change to medical cannabis product, or medical cannabis devices, that may have occurred while in transport.

### **R383-7-[40]9. Operating Standards -- Product Labeling and Packaging.**

(1) A medical cannabis pharmacy shall deliver a ~~[M]medical~~ cannabis product in the following dosage forms ~~[shall be delivered]~~ to a medical cannabis pharmacy, from a cannabis processing facility, or another medical cannabis pharmacy, in their final container according to Subsection 26B-4-201(38):

- (a) concentrated oil;
- (b) liquid suspension;
- (c) topical preparation;
- (d) transdermal preparation;
- (e) gelatinous cube~~[s]~~ including:
  - (i) a gelatinous rectangular cuboid shape; or
  - (ii) a lozenge in a cube or rectangular cuboid shape.
- (f) sublingual preparation;
- (g) resin or wax; and
- (h) aerosol.

(2) Medical cannabis product in the following dosage form may be delivered to a medical cannabis pharmacy from a cannabis processing facility, in either a final container or a bulk container, to later be separated into a final packaging before being dispensed to a cardholder:

- (a) tablet;
- (b) capsule; and
- (c) unprocessed cannabis flower.

**R383-7-[14]10. Operating Standards -- Cannabis Disposal and Waste.**

(1) A medical cannabis pharmacy's cannabis waste may be disposed of at either a medical cannabis pharmacy location or a location of a cannabis production establishment, licensed by the UDAF.

(2) In addition to complying with standards for cannabis disposal and waste established in Sections ~~[-26-61a-501]~~ 26B-4-229 and ~~[-26-61a-607]~~ 26B-4-242, a medical cannabis pharmacy shall ensure compliance with the following standards when handling cannabis waste:

(a) designate a location in the limited access area of the medical cannabis pharmacy where cannabis waste ~~[shall be]~~ is securely locked and stored;

(b) designate a lockable container, or containers, that are clearly and boldly labeled with the words "Not for Sale or Use";

(c) ensure logging of the medical cannabis product in the ICS at the time of disposal with appropriate information including:

(i) a description of and reason for the medical cannabis product being disposed of;

(ii) date of disposal;

(iii) method of disposal; and

(iv) name and registration identification number of the agent responsible for the disposal;

(d) wastewater generated during the cannabis waste disposal process ~~[shall be]~~ is disposed of in compliance with applicable state laws and rules;

(e) cannabis waste generated from the cannabis plant, trim, and leaves is not considered hazardous waste unless it has been treated or contaminated with a solvent or pesticide;

(f) cannabis waste disposed of ~~[shall be]~~ is made unusable;

(g) cannabis waste, which is not designated as hazardous, ~~[shall be]~~ is made unusable by grinding and incorporating the cannabis waste with other ground materials so the resulting mixture is at least 50% non-cannabis waste by volume or other methods approved by the Department;

(h) materials used to grind and incorporate with cannabis may be compostable or non-compostable;

(i) compostable waste is cannabis waste to be disposed of as compost or in another organic waste method mixed with:

(i) food waste;

(ii) yard waste; or

(iii) vegetable-based grease or oils; and

(j) compostable waste is cannabis waste to be disposed of in a landfill or another disposal method, such as incineration, mixed with:

(i) paper waste;

(ii) cardboard waste;

(iii) plastic waste; or

(iv) soil.

**R383-7-[14]11. Operating Standards -- Product Recall.**

(1) A recall may be initiated by a cannabis production establishment, a medical cannabis pharmacy, the Department, or UDAF.

(2) A medical cannabis pharmacy's recall plan shall include, at a minimum:

(a) a designation of at least one employee who shall serve as the recall coordinator;

(b) if the recall is initiated by a medical cannabis pharmacy, the pharmacy will provide immediate notification to the Department,

UDAF, and the cannabis production establishment from which it obtained the cannabis product in question~~[], and~~

~~----- (i) notification~~ shall occur within 24 hours upon becoming aware of a complaint about the medical cannabis product or medical cannabis device in question;

(c) a procedure for identifying and isolating recalled product to prevent or minimize distribution to patients;

(d) a procedure to retrieve and destroy recalled product; and

(e) a communication plan to notify those affected by the recall.

(3) The medical cannabis pharmacy shall track the total amount of affected medical cannabis product, and the amount of medical cannabis product returned to the medical cannabis pharmacy, as part of the recall.

(4) The medical cannabis pharmacy shall coordinate the destruction of the medical cannabis product with the Department and UDAF and allow UDAF to oversee the destruction of the final product.

(5) A medical cannabis pharmacy shall notify the Department before initiating a voluntary recall.

**R383-7-[14]12. Partial Filling.**

(1) A PMP or pharmacy agent who partially fills a recommendation for a medical cannabis cardholder shall specify in the ICS the following:

(a) date of partial fill;

(b) quantity supplied to the cardholder; and

(c) quantity remaining of the recommendation partially filled.

**R383-7-[14]13. Operating Standards -- Closing a Pharmacy.**

(1) At least 14 days before the closing of a medical cannabis pharmacy, the PIC shall:

(a) send written notice to the Department containing the following information:

(i) the name, address, and Department issued license number of the medical cannabis pharmacy;

(ii) surrender the license issued to the medical cannabis pharmacy; and

(iii) a statement attesting:

(A) a comprehensive inventory was conducted;

(B) the manner in which the medical cannabis product and medical cannabis devices will be transferred or disposed of;

(C) the anticipated date of closing;

(D) the name, address, and Department issued license number of the medical cannabis pharmacy, or cannabis production establishment, acquiring the medical cannabis and medical cannabis devices from the medical cannabis pharmacy that is closing;

(E) the date of transfer when the medical cannabis product and medical cannabis devices will occur; and

(F) the name and address of the medical cannabis pharmacy to which the orders, including any refill information, and patient records, will be transferred; and

(b) post a closing notice in a conspicuous place at the public entrance doors to the medical cannabis pharmacy which shall state the closing date.

(2) If the medical cannabis pharmacy closed suddenly due to fire, destruction, natural disaster, death, property seizure, eviction, bankruptcy, or emergency circumstances, and the PIC cannot provide notification 14 days before the closing, the PIC shall provide

notification to the Department of the closing, no later than 24 hours after the closing.

(3) If the PIC is not available to comply with the requirements of this section, the owner or legal representative ~~[shall be]~~ is responsible for compliance with this section.

(4) On the date of the closing, the PIC shall remove medical cannabis product, and medical cannabis devices, from the medical cannabis pharmacy by one or a combination of the following methods:

(a) transport them to a cannabis processing facility for credit or disposal; or

(b) transfer or sell them to a person who is legally entitled to have medical cannabis products and medical cannabis devices, such as another medical cannabis pharmacy in Utah.

(5) The PIC shall remove signs and notify the landlord of the property that it is unlawful to use the word "medical cannabis pharmacy," or any other word or combination of words of the same or similar meaning, or any graphic representation that would mislead, or tend to mislead the public that a medical cannabis pharmacy is located at this address.

### **R383-7-~~[15]~~14. Abandonment of a License.**

~~[(1) The following actions constitute abandonment of a medical cannabis pharmacy license:~~

~~— (a) a medical cannabis pharmacy's failure to begin operations within one year after the day on which the Department issues an intent to award a medical cannabis pharmacy license. [The Department shall consider a medical cannabis pharmacy license abandoned where the pharmacy fails to begin operations within one year after the day on which the Department issues an intent to award a medical cannabis pharmacy license.]~~

### **R383-7-~~[16]~~15. Operating Standards -- Walk-Up, Drive-Thru, and Curbside Service.**

(1) A medical cannabis cardholder may contact a medical cannabis pharmacy, either by phone or online, before the time of walk-up, drive-thru, or curbside service pick-up to make an order.

(2) A medical cannabis cardholder transaction may take place outside the medical cannabis pharmacy facility, but it shall still occur within the total property boundary of the licensed entity. Walk-up, [D]drive-thru, and curbside service transactions shall occur at a licensed location that is owned, leased, or rented by the licensed entity and [shall] may not occur on a public sidewalk or an adjacent parking lot.

(3) If a product is bought with cash, the cash must be taken into the medical cannabis pharmacy facility after each transaction. If a medical cannabis pharmacy obtains approval from the Division of Finance to accept customer payments through an electronic payment provider, a medical cannabis cardholder using walk-up, drive-thru, and curbside pick-up service may make payments using the approved electronic payment provider.

(4) Medical cannabis products and medical cannabis devices, including those that are awaiting pick-up, ~~[shall be]~~ are securely stored in the medical cannabis pharmacy facility until a medical cannabis cardholder arrives for pick-up. Under no circumstances may a medical cannabis product or medical cannabis device be stored outside of a medical cannabis pharmacy facility before a customer arrives to pick-up the product.

(5) A medical cannabis pharmacy's video surveillance shall:

(a) enable the video recording of each medical cannabis cardholder transaction which includes: [This includes] video surveillance of a cardholder[;];

(b) cardholder vehicle[;];

(c) the medical cannabis pharmacy employee verifying the cardholder's[valid form of] government-issued photo identification[;]; and

(d) the transfer and dispensing of an item bought by a cardholder.

(6) Video cameras shall record points of entry and exit of a parking lot and [shall be] are angled to ensure the capture of clear and certain identification of a cardholder and their vehicle's license plate.

~~[(6)](7)(a) The medical cannabis pharmacy shall ensure that [T]the individual receiving the delivery of a product from the medical cannabis pharmacy employee via walk-up, drive-thru, or curbside pick-up [shall be a] is a cardholder.~~

(b) When drive-thru service is used, the medical cannabis cardholder shall:

(i) [verifying] verify their ID to the medical cannabis pharmacy; and

(ii) the ID is[shall be] visible to cameras and to the medical cannabis pharmacy employee who is helping them.

~~[(7)](8) Children under age 18 may be present in a vehicle that arrives for drive-thru or curbside pick-up service.~~

~~[(8)](9) When a PMP's consultation with a medical cannabis cardholder is required, the consultation may be provided in-person, over the phone, or with another real-time communications device. It is the responsibility of the medical cannabis pharmacy to ensure the privacy of these consultations regardless of where or how the consultations happen.~~

~~[(9)](10) When a medical cannabis pharmacy employee transports a container of medical cannabis product to a medical cannabis cardholder via walk-up, drive-thru, or curbside service, the container [shall be] is contained within a box or an opaque bag.~~

~~[(10)](11) When drive-thru service is used, a medical cannabis pharmacy may use a secure drive-thru drawer or pneumatic tube to transport medical cannabis product, medical cannabis device, educational materials, valid photo identification, cash, and documents between a medical cannabis pharmacy employee and a medical cannabis cardholder.~~

### **R383-7-~~[17]~~16. Operating Standards -- Educational Material.**

(1) A medical cannabis pharmacy shall comply with the operating standards related to educational material established in this rule.

(2) Educational material related to the use of medical cannabis that makes a statement relating to side effects, consequences, contraindications, and effectiveness shall present a true statement of the information.

(3) Educational material is false, lacking fair balance, or otherwise misleading if it:

(a) contains a representation or suggestion that a cannabis strain, brand, or product is better, more effective, useful in a broader range of conditions or patients, or safer than other drugs or treatments including other cannabis strains or products, unless the claim has been demonstrated by substantial evidence or substantial clinical data;

(b) contains favorable information or opinions about a medical cannabis product previously regarded as valid but which have been made invalid by contrary and more credible recent information;

(c) uses a quote or paraphrase out of context or without citing conflicting information from the same source, to convey a false or misleading idea;

(d) uses a study on individuals without a qualifying medical condition without disclosing that the subjects were not suffering from a qualifying medical condition;

(e) uses data favorable to a medical cannabis product derived from patients treated with a different product or dosages different from those legal in Utah; and

(f) contains favorable information or conclusions from a study that is inadequate in design, scope, or conduct to furnish significant support for the information or conclusions.

(4) Educational material ~~[shall]~~ may not include:

(a) unsubstantiated health claims and other claims that are not supported by substantial evidence or substantial clinical data;

(b) claims that cannabis cures any medical condition; and

(c) any content with a recreational disposition.

(5) Notwithstanding the recreational disposition of some cannabis strains and medicinal dosage forms, a medical cannabis pharmacy may reference a cannabis strain or a medicinal dosage form in educational material.

### **R383-7-~~148~~17. Operating Standards -- Educational Events.**

(1) When hosting or participating in educational events, a medical cannabis pharmacy shall comply with educational event standards established in ~~[Title 26, Chapter 61a,]~~ Title 26B, Chapter 4, Part 2, Cannabinoid Research and Medical Cannabis ~~[Utah Medical Cannabis Act]~~, and this rule.

(2) To comply with educational event minimum age restrictions established in ~~[Title 26, Chapter 61a,]~~ Title 26B, Chapter 4, Part 2, Cannabinoid Research and Medical Cannabis ~~[Utah Medical Cannabis Act]~~, entry to an educational event in which a medical cannabis pharmacy participates requires verification of a:

(i) ~~[valid form of]~~ government-issued photo identification for individuals 21 years and older; or

(ii) a ~~[valid]~~ form of government-issued photo identification and a valid Utah medical cannabis card for individuals age 18 to 20.

(3) A medical cannabis pharmacy may give out educational material at an educational event but ~~[shall]~~ may not give out marketing merchandise such as t-shirts, hats, or pens. If a medical cannabis pharmacy notices that a third-party is giving out or selling merchandise that appears to advertise for a medical cannabis pharmacy, the medical cannabis pharmacy shall immediately contact the third-party and request that the third-party cease and desist from giving out or selling the merchandise at the educational event.

(4) An educational event hosted by a third-party or a medical cannabis pharmacy that a medical cannabis pharmacy participates in may include a food vendor where food is available for purchase. If food is provided at no cost to the attendees at an educational event that a medical cannabis pharmacy participates in, the food may be bought and provided by a third-party, but it can not be bought or provided by a medical cannabis pharmacy. Food bought by a medical cannabis pharmacy and provided at no cost to participants of an educational event that a medical cannabis pharmacy is participating in constitutes a gift item is prohibited under Section ~~[26-61a-505]~~ 26B-4-233.

(5) A medical cannabis pharmacy may get at cost or no cost, a sponsorship or booth at an educational event hosted by a third-party if the primary purpose of the event is educational.

(6) Signage and displays used by a medical cannabis pharmacy at an educational event shall comply with educational material standards established in Section R383-7-~~147~~16.

### **R383-7-~~149~~18. Targeted Marketing.**

(1) A medical cannabis pharmacy may engage in targeted marketing as it is defined in ~~[Subsection R383-7-2(8)]~~ Subsection 26B-4-201(55).

(2) Targeted marketing that makes a statement relating to side effects, consequences, contraindications, and effectiveness shall present a true statement of the information.

(3) Targeted marketing is false, lacking fair balance, or otherwise misleading if it:

(a) contains a representation or suggestion that a cannabis strain, brand, or product is better, more effective, useful in a broader range of conditions or patients or safer than other drugs or treatments including other cannabis strains or products, unless the claim has been demonstrated by substantial evidence or substantial clinical data;

(b) contains favorable information or opinions about a medical cannabis product previously regarded as valid but which have been made invalid by contrary and more credible recent information;

(c) uses a quote or paraphrase out of context or without citing conflicting information from the same source, to convey a false or misleading idea;

(d) uses a study on individuals without a qualifying medical condition without disclosing that the subjects were not suffering from a qualifying medical condition;

(e) uses data favorable to a medical cannabis product derived from patients treated with a different product or dosages different from those legal in Utah; and

(f) contains favorable information or conclusions from a study that is inadequate in design, scope, or conduct to furnish significant support for the information or conclusions.

(4) Targeted marketing ~~[shall]~~ may not include:

(a) unsubstantiated health claims and other claims that are not supported by substantial evidence or substantial clinical data;

(b) claims that cannabis cures any medical condition; and

(c) content that has a recreational disposition.

(5) Notwithstanding the recreational disposition of some cannabis strains and medicinal dosage forms, a medical cannabis pharmacy may reference a cannabis strain or a medicinal dosage form in targeted marketing.

(6) When posting promotional information about a medical cannabis product for sale online, a medical cannabis pharmacy shall:

(a) list the concentration of each cannabinoid as a percentage and the total contained amount of each cannabinoid content measured in milligrams;

(b) post information about an unprocessed medical cannabis product on a website, including the concentration of each cannabinoid as a percentage; and

(c) understand that posting the total amount of each cannabinoid measured in milligrams is not required. ~~[list online the total contained amount of each cannabinoid content measured in milligrams.]~~

### **~~[R383-7-20. Business Name and Logo Standards.~~**

~~(1) Pursuant to Subsection 26-61a-505(3)(b) and to ensure a medical cannabis pharmacy's name and logo have a medical rather than a recreational disposition, the name and logo of a medical cannabis pharmacy:~~

~~(a) may include terms and images associated with a medical disposition such as medical, medicinal, medicine, pharmacy, apothecary, wellness, therapeutic, health, care, cannabis, clinic, compassionate, relief, treatment, patient, and the plant form of cannabis, including leaf, flower, and bloom;~~

~~(b) shall not include any term, statement, design representation, picture, or illustration associated with a recreational disposition or that appeals to children; and~~

~~(c) shall not include an emphasis on a psychoactive ingredient or a specific cannabis strain.~~

~~(2) A medical cannabis pharmacy is prohibited from using a term associated with a recreational disposition in their name or logo including:~~

- ~~(a) weed;~~
- ~~(b) pot;~~
- ~~(c) reefer;~~
- ~~(d) grass;~~
- ~~(e) hash;~~
- ~~(f) ganja;~~
- ~~(g) Mary Jane;~~
- ~~(h) high;~~
- ~~(i) buzz;~~
- ~~(j) haze;~~
- ~~(k) stoned;~~
- ~~(l) joint;~~
- ~~(m) bud;~~
- ~~(n) smoke;~~
- ~~(o) euphoria;~~
- ~~(p) dank;~~
- ~~(q) doobie;~~
- ~~(r) kush;~~
- ~~(s) frost;~~
- ~~(t) cookies;~~
- ~~(u) ree;~~
- ~~(v) bake;~~
- ~~(w) blunt;~~
- ~~(x) eombust;~~
- ~~(y) bong;~~
- ~~(z) budtender;~~
- ~~(aa) dab;~~
- ~~(ab) blaze;~~
- ~~(ac) toke; and~~
- ~~(ad) 420.]~~

### **R383-7-[24]19. Criteria and Process for Issuance of Additional Licenses.**

(1) The Department may consider the following factors as criteria when determining if it issues additional medical cannabis pharmacy licenses~~[shall be issued]~~ pursuant to Subsection~~[26-61a-305]~~ 26B-4-228(1)(d):

(a) high potential for growth in the number of medical cannabis card holders located in one or more regions of the state;

(b) access to medical cannabis home delivery service in the state or in certain regions of the state;

(c) commuting patterns and economic activity in certain regions of the state;

(d) the driving distance for medical cannabis cardholders or potential medical cannabis cardholders residing in certain regions of the state from their home to the nearest medical cannabis pharmacy location; or

(e) the inadequate supply, quality, or variety of medical cannabis in the state or certain regions of the state.

(2) As the Department considers one or more factors described in Subsection (1), it shall consult with and consider input from the Utah Department of Agriculture and Food, the medical cannabis industry, and the public.

(3) The Department's process of consultation and consideration of input shall include meetings with stakeholders and holding of a public hearing during which it will accept public comment.

(4) If the Department determines that an additional medical cannabis pharmacy license should be issued, the Department shall accept applications for the license in accordance with Title 63G, Chapter 6a, Utah Procurement Code.

### **R383-7-[22]20. Operating Standards - Limited Medical Provider Recommendation Form.**

(1) A medical cannabis pharmacy may accept and process a completed "Limited Medical Provider Recommendation for Medical Cannabis" form. A pharmacy agent or a PMP employed by a medical cannabis pharmacy may perform a form verification but only a PMP may make changes or additions to a form after documenting verbal or written approval of changes or additions that are communicated by an LMP. An LMP recommendation cannot be entered into the EVS by a PMP or pharmacy agent without a complete Department-approved form that is hand-delivered, emailed, or faxed to the medical cannabis pharmacy. When verifying the validity of the form, a medical cannabis pharmacy shall verify:

(a) the form is complete and no information on the form appears to have been adulterated;

(b) the suffix of the state-issued professional license number matches specific numbers assigned to the provider's state-issued professional license type;

(c) there are nine digits in the Drug Enforcement Agency (DEA) license number;

(d) the clinic name, email address, mailing address, and telephone number appear to be legitimate; and

(e) with the clinic that an LMP at that clinic completed a form for the patient named in the form.

(2)(a) If the form fails any part of the verification, a PMP shall investigate any missing or incorrect information.

(b) If a PMP is initially unable to receive verification of the form from the clinic, the form cannot be processed and the PMP shall continue to contact the clinic to seek verification of the information on the form.

(3)(a) The pharmacy shall maintain a record of the pharmacy employee having received or not received verification of a valid form from the clinic.

(b) For hand-delivered and electronically delivered forms, the pharmacy shall upload the form to the patient's EVS account.

(c) The verification of the form ~~[shall be]~~ is recorded in the "Medical Cannabis Pharmacy Use Only" at the bottom of the form or in the patient's EVS profile.

(d) If a PMP corrected or added information on the form upon order of the LMP, a note documenting the change ~~[shall be]~~ is recorded.

(4) If a form is believed to be fraudulent, a medical cannabis pharmacy shall notify the Department in writing via email within 24 hours of the first receipt of the form.

**KEY: medical cannabis, medical cannabis pharmacy, marijuana**  
**Date of Last Change: 2023[January 13, 2023]**

**Authorizing, and Implemented or Interpreted Law: 63G-3; 26B-1-213(1);[26-61a; 26-61a-303(2); 26-61a-305(1); 26-61a-501; 26-**

~~61-501(12); 26-61a-501(13); 26-61a-503(3); 26-61a-505(3); 26-61a-505(4); 26-61a-505(5); 26-61a-605(5); 26B-4; 26B-4-226(2); 26B-4-228(1); 26B-4-229; 26B-4-229(12); 26B-4-229(13); 26B-4-231(3); 26B-4-231(4); 26B-4-231(5); 26B-4-240(5)~~

## NOTICE OF PROPOSED RULE

**TYPE OF FILING:** Amendment

<b>Rule or Section Number:</b>	<b>R383-8</b>	<b>Filing ID:</b> <b>55699</b>
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### Agency Information

<b>1. Department:</b>	Health and Human Services		
<b>Agency:</b>	Center for Medical Cannabis		
<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 144340		
<b>City, state and zip:</b>	Salt Lake City, UT 84114-4340		
<b>Contact persons:</b>			
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>	
Jeremiah Sniffin	801-538-6504	jsniffin@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>
R383-8. Medical Cannabis Pharmacy Agent
<b>3. Purpose of the new rule or reason for the change:</b>
The proposed amendment removes language that conflicts with the state statute. References to Title 26, Chapter 61a, are also changed due to its recodification under S.B. 40 during the 2023 General Session.
<b>4. Summary of the new rule or change:</b>
The statute citation in Subsection R383-8-1(1) is updated. The Department of Health and Human Services (DHHS) Office of Legislative Affairs indicated that the new citation is the correct reference for citing rulemaking authority.
This proposed amendment replaces references to Title 26, Chapter 61a, with Title 26B, Chapter 4, due to the recodification of the Utah Health Code and Utah Human Services Code under S.B. 40 (2023).

Subsection R383-8-4(10) is also amended due to S.B. 137 (2023). S.B. 137, lines 1629 to 1631, removed a provision allowing an applicant to reapply for a medical cannabis pharmacy agent card within one year after the applicant's previous agent card expires. This statutory amendment prompts the need to change the time frame within which an agent must renew their agent card established in Subsection R383-8-4(10) to avoid having to pay for a new fingerprint background check from one year to five days.

Language and formatting are updated to reflect standards established in the Rulewriting Manual for Utah.

#### Public hearing information:

There will be a public hearing on 10/02/2023 at 9 AM MST at the MASOB at 195 N 1950 W, Salt Lake City, UT in Room 1020C.

Please click the link to join the webinar: <https://utah.gov.zoom.us/j/88410663769>

### Fiscal Information

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

##### A) State budget:

Changing the time frame within which a medical cannabis pharmacy agent must renew their agent card established in Subsection R383-8-4(10) to avoid having to pay for a new fingerprint background check from one year to five days will have minimal impact on the DHHS' budget.

There are currently 558 active medical cannabis pharmacy agents, but only 10%, or 56, are estimated to renew their registration cards after the five-day grace period. It is \$50 for a standard renewal within the five-day renewal period but the fee increases to \$100 per renewal if an agent does not renew within five days of card expiration, as the cost for a background check must be included in this cost since the application must be considered a brand-new application.

Assuming 56 agents apply five days after card expiration, DHHS would receive \$2,800 in additional revenue.

##### B) Local governments:

This proposed amendment will not impact the local governments as these changes will not incur a financial impact from the relocation of definitions. The updated statute references do not have any financial impact as they are renumbered.

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

This proposed amendment will not impact small businesses as these changes will not incur a financial impact from the relocation of definitions. The updated

statute references do not have any financial impact as they are renumbered.

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

This proposed amendment will not impact non-small businesses as these changes will not incur a financial impact from the relocation of definitions. The updated statute references do not have any financial impact as they are renumbered.

**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**):

Changing the time frame within which a medical cannabis pharmacy agent must renew their agent card established in Subsection R383-8-4(10) to avoid having to pay for a new fingerprint background check from one year to five days will have minimal fiscal impact on some individuals reapplying for a medical cannabis pharmacy agent card.

There are currently 558 active medical cannabis pharmacy agents, but only 10%, or 56, are estimated to renew their registration cards after the five-day grace period. It is \$50 for a standard renewal within the five-day renewal period but the fee increases to \$100 per renewal if an agent does not renew within five days of card expiration, as the cost for a background check must be included in this cost since the application must be considered a brand-new application.

Assuming 56 agents apply five days after card expiration, the impacted agents together would pay an additional \$2,800 in fees to DHHS.

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

Changing the time frame within which a medical cannabis pharmacy agent must renew their agent card established in Subsection R383-8-4(10) to avoid having to pay for a new fingerprint background check from one year to five days will have minimal fiscal impact on some individuals reapplying for a medical cannabis pharmacy agent card.

There are currently 558 active medical cannabis pharmacy agents, but only 10%, or 56, are estimated to renew their registration cards after the five-day grace period. It is \$50 for a standard renewal within the five-day renewal period but the fee increases to \$100 per renewal if an agent does not renew within five days of card expiration, as the cost for a background check must be included in this cost since the application must be considered a brand-new application.

Assuming 56 agents apply five days after card expiration, the impacted agents together would pay an additional \$2,800 in fees to DHHS.

**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	\$2,800	\$2,800	\$2,800
<b>Total Fiscal Cost</b>	<b>\$2,800</b>	<b>\$2,800</b>	<b>\$2,800</b>
<b>Fiscal Benefits</b>	<b>FY2024</b>	<b>FY2025</b>	<b>FY2026</b>
State Government	\$5,600	\$5,600	\$5,600
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Benefits</b>	<b>\$2,800</b>	<b>\$2,800</b>	<b>\$2,800</b>
<b>Net Fiscal Benefits</b>	<b>\$2,800</b>	<b>\$2,800</b>	<b>\$2,800</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:**

Subsection 26B-1-202(1)		
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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>		10/16/2023
<b>B) A public hearing (optional) will be held:</b>		
<b>Date:</b>	<b>Time:</b>	<b>Place</b> (physical address or URL):
10/02/2023	9 AM MST	See information in Box 4 above

**9. This rule change MAY become effective on:** 10/23/2023

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>	08/28/2023
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### R383. Health and Human Services, Center for Medical Cannabis.

#### R383-8. Medical Cannabis Pharmacy Agent.

##### R383-8-1. Authority and Purpose.

(1) Subsection ~~[26B-1-213(1)]~~26B-1-202(1) authorizes this rule.

(2) This rule establishes medical cannabis pharmacy agent duties and responsibilities, application procedures, renewal application procedures, and certification standards.

##### R383-8-2. Duties and Responsibilities.

(1) A pharmacy agent may perform the following duties:

(a) within the dosing guidelines specified by an RMP or PMP, assist the cardholder with understanding available products, proper use of a medical device, medical cannabis strains, and methods of consumption or application;

(b) using the ICS, verify the status of an individual's medical cannabis card, and dosing guidelines in a patient recommendation;

(c) enter and retrieve information from the ICS;

(d) authorize entry of a cardholder into the cardholder counseling area;

(e) take a refill order from an RMP;

(f) provide pricing and product information;

(g) accurately process cardholder payment, including the issuance of receipt, refund, credit, and cash;

(h) prepare labeling for a product;

(i) retrieve medical cannabis, and medical cannabis device, from inventory;

(j) accept a new order of medical cannabis, or medical cannabis device, orders left on voicemail for a PMP to review;

(k) verbally offer to a cardholder, the opportunity for counseling with a PMP regarding medical cannabis, or a medical cannabis device;

(l) assist with dispensing of product to a cardholder;

(m) screen calls for a PMP;

(n) prepare an inventory of medical cannabis and medical cannabis device;

(o) transport medical cannabis, or medical cannabis device; and

(p) assist with maintaining a safe, clean, and professional environment.

(2) A pharmacy agent shall not perform the following duties:

(a) receive dosing guidelines for a patient's recommendation over the phone, or in person;

(c) determine, or modify, dosing guidelines in a patient's recommendation; or

(d) provide counseling, or consultation, regarding a patient's medical condition, or medical treatment.

##### R383-8-3. Application Procedures.

(1) The application procedures established in this section shall govern an application for the initial issuance of a pharmacy agent registration card, under~~[Title 26, Chapter 61a,]~~ Title 26B, Chapter 4, Part 2, Cannabinoid Research and Medical Cannabis[Utah Medical Cannabis Act].

(2) Each pharmacy agent registration card applicant shall apply upon forms available from the Department.

(3) The Department may issue a pharmacy agent registration card to an applicant who submits a complete application, and the Department determines that the applicant meets the~~[card]~~ requirements.

(4) The Department shall provide written notice of denial to an applicant who submits an incomplete application or if the Department determines that the applicant does not meet the~~[card]~~ requirements.

(5) ~~[The Department shall provide to the applicant a written notice of an incomplete application. It]~~ The Department will notify the pharmacy agent that their application is ~~[closed]~~ denied unless the applicant corrects the deficiency within the time period specified in the notice, and otherwise meets all~~[card]~~ requirements.

(6) A written notice of denial, and incomplete application, shall be sent to the applicant's last email address shown in the Department's EVS database.

(7)~~(a)~~ Each applicant shall maintain a current email address with the Department.

(b) Notice sent to the last email address on file with the Department constitutes legal notice.

##### R383-8-4. Renewal Application Procedures.

(1) Renewal application procedures established in the rule shall apply to applicants applying for renewal of a pharmacy agent registration card, under~~[Title 26, Chapter 61a,]~~ Title 26B, Chapter 4, Part 2, Cannabinoid Research and Medical Cannabis[Utah Medical Cannabis Act].

(2) Each pharmacy agent registration card applicant shall apply upon using the renewal application forms, available from the Department.

(3) The Department shall issue a card to an applicant who submits a complete renewal application if the Department determines that the applicant meets the card requirements.

(4) The Department shall provide written notice of denial to an applicant who submits an incomplete renewal application or if the Department determines that the applicant does not meet the card requirements.



(5) ~~The Department shall provide written notice of the incomplete application to an applicant who submits an incomplete application. The~~ A denial notice shall advise the applicant that the renewal application is incomplete and that their renewal application is ~~closed~~ denied unless the applicant corrects the deficiency within the time period specified in the notice~~s~~, and otherwise meets all card renewal requirements.

(6)(a) The Department shall send a renewal notice to each cardholder before the expiration date shown on the cardholder's registration card.

(b) The notice shall include directions for the cardholder to renew the card ~~via~~ on the Department's website.

(7) ~~The Department shall send~~ R renewal notices ~~shall be sent~~ by email~~, addressed~~ to the cardholder's last email address shown in the Department's EVS database.

(8)(a) Each cardholder shall maintain a current email address with the Department.

(b) Emailing a renewal notice to the pharmacy agent's last email address furnished to the Department constitutes legal notice.

(9) A renewal notice shall advise each cardholder that a card will automatically expire on the expiration date and will no longer be valid.

(10)(a) A pharmacy agent shall renew their pharmacy agent registration card with the Department within ~~one year~~ five days ~~of~~ after its expiration date.

(b) Failure to renew an expired pharmacy agent registration card within ~~one year~~ five days after its expiration date shall result in the applicant having to resubmit ~~a new online registration form for a pharmacy agent~~ their application for a pharmacy agent registration card and pay for a new fingerprint background check if they choose to obtain a card again in the future.

#### **R383-8-5. Continuing Education Requirements.**

The certification standard for initial or renewal registration of a pharmacy agent registration card will be the successful completion of a continuing education course regarding state medical cannabis law and patient privacy and federal health information privacy law~~s~~ that is offered or approved by the Department.

**KEY:** medical cannabis, medical cannabis pharmacy, medical cannabis pharmacy agent, marijuana

**Date of Last Change:** ~~March 1, 2023~~ 2023

**Authorizing, and Implemented or Interpreted Law:** 63G-3; 26B-1-213(1); ~~26-61a; 26-61a-401(5)~~ 26B-4; 26B-4-213(5)

#### **NOTICE OF PROPOSED RULE**

**TYPE OF FILING:** Amendment

<b>Rule or Section Number:</b>	<b>R383-9</b>	<b>Filing ID:</b> <b>55697</b>
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#### **Agency Information**

<b>1. Department:</b>	Health and Human Services
<b>Agency:</b>	Center for Medical Cannabis
<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 144340		
<b>City, state and zip:</b> Salt Lake City, UT 84114-4340		
<b>Contact persons:</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Jeremiah Sniffin	801-538-6504	jsniffin@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:**

R383-9. Home Delivery and Courier

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

The proposed amendment removes language that conflicts with state statutes. References to Title 26, Chapter 61, are also changed due to its recodification under S.B. 40 during the 2023 General Session.

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

The statute citation in Subsection R383-9-1(1) is updated. The Department of Health and Human Services (DHHS) Office of Legislative Affairs indicated that the new citation is the correct reference for citing rulemaking authority.

Changes are made throughout this rule to reference the new statute as the statute was re-codified during the 2023 General Session.

Subsection 26B-4-242 (3)(b) allows a courier to store a medical cannabis pharmacy's undelivered medical cannabis shipment for ten business days but Subsection R383-9-2(6) states that a courier cannot store medical cannabis, or a medical cannabis device, at its facility. The proposed amendment addresses this conflict between the state statute and rule by removing Subsection R383-9-2(6).

Subsection R383-9-5(11) is also amended due to S.B. 137 (2023). S.B. 137, lines 2366 to 2368, removed a provision allowing an applicant to reapply for a courier agent card within one year after the applicant's previous agent card expires. This statutory amendment prompts the need to change the time frame within which a courier agent must renew their agent card established in Subsection R383-9-5(11) to avoid having to pay for a new fingerprint background check from one year to five days.

Subsection R383-9-2(4)(f) is moved to Subsection R383-9-2(2) to be with similar requirements regarding what a home delivery service shall not do.

Public hearing information:

There will be a public hearing on 10/02/2023 at 9 AM MST at the MASOB at 195 N 1950 W, Salt Lake City, UT in Room 1020C.

Please click the link to join the webinar: <https://utah-gov.zoom.us/j/88410663769>

## Fiscal Information

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

#### A) State budget:

Changing the time frame within which a courier agent must renew their agent card established in Subsection R383-9-5(11) to avoid having to pay for a new fingerprint background check from one year to five days will have minimal impact on DHHS' budget.

There are currently 162 active courier agents, but only 10%, or 16, are estimated to renew their registration cards after the five-day grace period. It is \$50 for a standard renewal within the five-day renewal period but the fee increases to \$100 per renewal if an agent does not renew within five days of card expiration, as the cost for a background check must be included in this cost since the application must be considered a brand-new application.

Assuming 16 agents apply five days after card expiration, DHHS would receive \$800 in additional revenue.

#### B) Local governments:

This proposed amendment will not result in a fiscal impact on a local government because it place no regulatory requirements on local agencies.

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

This proposed amendment will not result in a fiscal impact on small businesses because it places no regulatory requirements on small businesses.

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

This proposed amendment will not result in a fiscal impact on non-small businesses because it does not apply to these entities.

#### 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**):

Changing the time frame within which a courier agent must renew their agent card established in Subsection R383-9-5(11) to avoid having to pay for a new fingerprint

background check from one year to five days will have minimal fiscal impact on some individuals reapplying for a courier agent card.

There are currently 162 active courier agents, but only 10%, or 16, are estimated to renew their registration cards after the five-day grace period. It is \$50 for a standard renewal within the five-day renewal period but the fee increases to \$100 per renewal if an agent does not renew within five days of card expiration, as the cost for a background check must be included in this cost since the application must be considered a brand-new application.

Assuming 16 agents apply five days after card expiration, the impacted agents together would pay an additional \$800 in fees to DHHS.

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

Changing the time frame within which a courier agent must renew their agent card established in Subsection R383-9-5(11) to avoid having to pay for a new fingerprint background check from one year to five days will have minimal fiscal impact on some individuals reapplying for a courier agent card.

There are currently 162 active courier agents, but only 10%, or 16, are estimated to renew their registration cards after the five-day grace period. It is \$50 for a standard renewal within the five-day renewal period but the fee increases to \$100 per renewal if an agent does not renew within five days of card expiration, as the cost for a background check must be included in this cost since the application must be considered a brand-new application.

Assuming 16 agents apply five days after card expiration, the impacted agents together would pay an additional \$800 in fees to DHHS.

**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	\$800	\$800	\$800

<b>Total Fiscal Cost</b>	<b>\$800</b>	<b>\$800</b>	<b>\$800</b>
<b>Fiscal Benefits</b>	<b>FY2024</b>	<b>FY2025</b>	<b>FY2026</b>
State Government	\$800	\$800	\$800
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>\$800</b>	<b>\$800</b>	<b>\$800</b>
<b>Net Fiscal Benefits</b>	<b>\$800</b>	<b>\$800</b>	<b>\$800</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>		
Subsection 26B-1-202(1)		

**Public Notice Information Public Notice Information**

<b>8. The public may submit written or oral comments to the agency identified in box 1.</b> (The public may also request a hearing by submitting a written request to the agency. See Section 63G-3-302 and Rule R15-1 for more information.)		
<b>A) Comments will be accepted until:</b>	10/16/2023	
<b>B) A public hearing (optional) will be held:</b>		
<b>Date:</b>	<b>Time:</b>	<b>Place</b> (physical address or URL):
10/02/2023	9 AM MST	See information in Box 4 above

<b>9. This rule change MAY become effective on:</b>	10/23/2023
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>	08/25/2023
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**R383. Health and Human Services, Center for Medical Cannabis.****R383-9. Home Delivery and Courier.****R383-9-1. Authority and Purpose.**

(1) Subsection ~~[26B-1-213(1)]~~ 26B-1-202(1) authorizes this rule.

(2) This rule establishes home delivery operating standards, home delivery agent operating standards, courier agent application procedures, courier agent renewal application procedures, and courier agent certification standards.

**R383-9-2. Home Delivery Service -- Operating Standards.**

(1) In addition to general operating standards established in Sections ~~[26-61a-605]~~ 26B-4-240 through ~~[26-61a-607]~~ 26B-4-242, home delivery medical cannabis pharmacies, pharmacy agents, and couriers shall comply with the operating standards established in this rule. The following operating standards apply to home, or caregiver facility delivery medical cannabis pharmacies and couriers:

(a) maintain an updated written operating plan for the home delivery service, describing a plan to comply with standards established in this section and meeting the requirements of Subsection ~~[26-61a-604]~~ 26B-4-239(14);

(b) ensure accurate record keeping of delivery information in the ICS;

(c) maintain a record of not less than five years of the initials, or identification codes that identify each pharmacy agent, or courier agent, by name. The initials, or identification codes, shall be unique to ensure that each pharmacy agent or courier age is identified. Identical initials, or identification codes, shall not be used for different pharmacy agents, or courier agents;

(d) lock medical cannabis, and medical cannabis devices that are transported in a fully enclosed box, container, or cage, that is secured inside a delivery vehicle. Ensure appropriate storage temperature throughout the delivery process to maintain the integrity of the product;

(e) maintain a current list, either paper or electronic, of any employee working for the home delivery medical cannabis pharmacy, or courier, who makes deliveries, that shall include employee name, Department registration license classification and license number, and registration expiration date;

(f) upon request, provide the Department with information regarding any vehicle used for the delivery service; including the vehicle's make, model, color, vehicle identification number, license plate number, insurance number, and Division of Motor Vehicle registration number;

(g) ensure that a manifest is not modified in any way, after a pharmacy agent, or courier agent, departs from a home delivery medical cannabis pharmacy facility with a shipment appearing on the manifest;

(h) ensure that no person, other than a pharmacy agent or courier agent, is in a delivery vehicle during delivery; or during the time medical cannabis, or a medical cannabis device, is in the vehicle; and

(i) ensure that trip log documentation showing a specific route of delivery exists for a route driven by a pharmacy agent, or courier agent, on a specific day is immediately available for review by the Department, upon request.

(2) When delivering medical cannabis, and a medical cannabis device, to a medical cannabis cardholder's home, or a caregiver facility, a pharmacy agent, or courier agent shall not:

(a) drop off medical cannabis, or a medical cannabis device, with anyone other than a medical cannabis cardholder, or a caregiver facility;

(b) perform a home delivery before 6 a.m or after 10 p.m;

(c) leave medical cannabis, or a medical cannabis device, unattended in a delivery vehicle, for more than one hour;

(d) make changes in dosage, or quantity, at the request of the medical cannabis cardholder, during delivery; and

(e) consume medical cannabis while delivering medical cannabis[;] and

(f) not transport medical cannabis, or a medical cannabis device, beyond what appears on a manifest; or what a pharmacy agent, or courier, has picked up from a medical cannabis cardholder, to be returned to the home delivery medical cannabis pharmacy.

(3) When delivering medical cannabis, and a medical cannabis device, a pharmacy agent, or courier agent, employed by the home delivery medical cannabis pharmacy, or courier, shall:

(a) wear an identification tag, or similar form of identification, that clearly identifies them to a medical cannabis cardholder; including their position as a pharmacy agent, or courier agent; and

(b) provide each cardholder, or caregiver facility, receiving a shipment, printed material that includes a home delivery medical cannabis pharmacy's contact information, and hours when a PMP at the home delivery medical cannabis pharmacy is available for counseling over the phone[;].

(4) Vehicles used for home delivery must meet the following standards:

(a) no marking, or other indication, on the exterior that may indicate what is being transported;

(b) cannot be an unmanned vehicle;

(c) have an active alarm system;

(d) have a global positioning system (GPS) monitoring device that is:

(i) not a mobile device that is easily removable;

(ii) attached to the vehicle at all times that the vehicle contains medical cannabis or a medical cannabis device; and

(iii) capable of storing and transmitting GPS data so it can be monitored by the home delivery medical cannabis pharmacy, during transport of medical cannabis, and a medical cannabis device; and

(e) be subject to inspection by the Department at any time.[; and]

[—(f) not transport medical cannabis, or a medical cannabis device, beyond what appears on a manifest; or what a pharmacy agent, or courier, has picked up from a medical cannabis cardholder, to be returned to the home delivery medical cannabis pharmacy.]

(5) In the case of medical cannabis, or a medical cannabis device, that goes missing during a home delivery route, the pharmacy agent, or courier agent, shall:

(a) notify the home delivery medical cannabis pharmacy's supervising PMP within 24 hours of when the pharmacy agent, or courier agent, first became aware of the missing product;[ and]

(b) provide information regarding the missing product to the Department and local law enforcement, and logged in to the ICS; and

(c) log the missing products into the ICS.[

—(6) A courier cannot store medical cannabis, or a medical cannabis device, at its facility. Medical cannabis and a medical

cannabis device, delivered by the courier must be picked up from a home delivery medical cannabis pharmacy facility, and either delivered to the medical cannabis cardholder's residence or returned to the home delivery medical cannabis pharmacy facility.]

### **R383-9-3. Home Delivery Agent -- Operating Standards.**

(1) In addition to operating standards established in Sections ~~[26-61a-605]~~ 26B-4-240 through ~~[26-61a-607]~~ 26B-4-242, a pharmacy agent and courier agent, shall comply with the operating standards established in this rule. The following operating standards apply to a pharmacy agent, and courier agent:

(a) ensure accurate record keeping of delivery information in the ICS;

(b) ensure locking of medical cannabis, and a medical cannabis device, that is transported in a fully enclosed box container or cage that is secured inside a delivery vehicle, ~~[that]~~ which ensures appropriate storage temperature throughout the delivery process, to maintain the integrity of the product;

(c) ensure that a manifest is not modified in any way after they depart from a home delivery medical cannabis pharmacy facility with the shipment appearing on the manifest; and

(d) ensure that no person, other than a pharmacy agent or courier agent, is in a delivery vehicle during delivery[;], or during the time medical cannabis[;] or a medical cannabis device[;] is in the vehicle.

(2) When delivering medical cannabis and a medical cannabis device to a cardholder's home, a pharmacy agent or courier agent shall not:

(a) drop off medical cannabis, or medical cannabis device, with anyone other than a medical cannabis cardholder or a caregiver facility employee;

(b) perform a home delivery before 6 a.m or after 10 p.m;

(c) leave medical cannabis, or a medical cannabis device, unattended in a delivery vehicle for more than ~~[60 minutes]~~ one hour unless the courier agent or pharmacy agent is staying overnight in the process of conducting a delivery;

(d) make a change in dosage or quantity, on the request of the cardholder during a delivery;

(e) consume medical cannabis while delivering medical cannabis; and

(f) transport medical cannabis, or a medical cannabis device, beyond what appears on a manifest.

(3) When delivering medical cannabis, and a medical cannabis device, a pharmacy agent or courier agent shall:

(a) wear an identification tag or similar form of identification to clearly identify them to a cardholder, including their position as a pharmacy agent or courier agent; and

(b) provide each cardholder, or facility caregiver, with printed material that includes a home delivery medical cannabis pharmacy's contact information, and hours for counseling over the phone with a PMP.

(4) In the case of medical cannabis, or a medical cannabis device, that goes missing during a home delivery route, the pharmacy agent, or courier agent, shall notify the home delivery medical cannabis pharmacy's supervising PMP within 24 hours of when the medical cannabis pharmacy agent first became aware of the missing product.

### **R383-9-4. Medical Cannabis Courier Agent -- Application Procedures.**

(1) The application procedures established in this section shall govern applications for the initial issuance of a courier agent

registration card under ~~[Title 26, Chapter 61a, Utah Medical Cannabis Act]~~ Title 26B, Chapter 4, Part 2, Cannabinoid Research and Medical Cannabis.

(2) Each courier agent registration card applicant shall apply upon forms available in the EVS from the Department.

(3) The Department may issue a courier agent registration card only if the applicant meets the ~~[card]~~ requirements, established under ~~[Title 26, Chapter 61a, Utah Medical Cannabis Act]~~ Title 26B, Chapter 4, Part 2, Cannabinoid Research and Medical Cannabis, and by Department rule.

(4)(a) The Department shall provide written notice of denial to an applicant who submits an incomplete application if the Department determines that the applicant does not meet the ~~[card]~~ requirements.

~~[(5)](b)~~ The Department shall provide to the applicant a written notice of incomplete application and that the application is ~~[closed]~~ denied unless the applicant corrects the deficiency within the time period specified in the notice, and otherwise meets all ~~[card]~~ requirements.

~~[(6)](c)~~ The Department shall send a written notice of denial and incomplete application to the applicant's last email address shown in the Department's EVS database unless the applicant has requested to be notified by regular mail.

~~[(7)](5)(a)~~ Each applicant shall maintain a current email and mailing address with the Department.

~~\_\_\_\_\_~~(b) Notice to the last email address on file with the Department constitutes legal notice unless the applicant has requested notification by regular mail.

### **R383-9-5. Medical Cannabis Courier Agent - Renewal Application Procedures.**

(1) Renewal application procedures established in this section shall govern applications to renew a courier agent registration card under ~~[Title 26, Chapter 61a, Utah Medical Cannabis Act]~~ Title 26B, Chapter 4, Part 2, Cannabinoid Research and Medical Cannabis.

(2) Each applicant renewing their registration card ~~[applicant]~~ shall apply upon renewal of application forms available from the Department.

(3) The Department shall issue a courier agent registration card to an applicant who submits a complete renewal application if the Department determines that the applicant meets the ~~[card]~~ requirements.

(4)(a) The Department shall provide written notice of denial to an applicant who submits an incomplete renewal application if the Department determines that the applicant does not meet the ~~[card]~~ requirements.

~~[(5)](b)~~ The Department shall provide to the applicant a written notice of an incomplete application and that the renewal application is ~~[closed]~~ denied unless the applicant corrects the deficiency within the time period specified in the notice ~~[and]~~ otherwise meets all card requirements.

~~[(6)](5)(a)~~ The Department shall send a renewal notice to each cardholder at least 60 days before the expiration date shown on the cardholder's card.

~~\_\_\_\_\_~~(b) The notice shall include instructions to renew the courier agent registration card via the Department's website.

~~[(7)](6)~~ The Department shall send a renewal notice to the cardholder's last email shown in the Department's EVS database unless the cardholder has requested to be notified by regular mail.

~~[(8)](7)(a)~~ Each cardholder shall maintain a current email address with the Department.

~~\_\_\_\_\_~~(b) Emailing to the last email address furnished to the Department constitutes legal notice unless the cardholder requests notification by regular mail.

~~[(9)](8)~~ It shall be the responsibility of each cardholder to maintain a current email address and mailing address with the Department.

~~[(10)](9)~~ A renewal notice shall advise each cardholder that their courier agent registration ~~[a]~~ card automatically expires on the expiration date and is no longer valid.

~~[(11)](10)(a)~~ A courier agent shall renew their courier agent registration card with the Department within ~~[one year]~~ five days ~~[of]~~ after the courier agent registration card's expiration date.

~~\_\_\_\_\_~~(b) Failure to renew an expired courier agent registration card within ~~[one year]~~ five days after its expiration date shall result in the applicant having to submit ~~[a new online registration form for a courier agent]~~ their application for a courier agent registration card and pay for a new fingerprint background check if they chose to obtain a card again in the future.

### **R383-9-6. Medical Cannabis Courier Agent - Continuing Education Requirement.**

The Department's certification standard for initial and renewal registration of a medical cannabis courier agent card is the successful completion of a one-hour continuing education course offered or approved by the Department regarding state medical cannabis law, patient privacy, and federal health information privacy laws, and other topics required in ~~[the Utah Medical Cannabis Act]~~ Title 26B, Chapter 4, Part 2 Cannabinoid Research and Medical Cannabis.

**KEY: medical cannabis, medical cannabis courier agent, medical cannabis home delivery, marijuana**

**Date of Last Change: ~~[March 1, 2023]~~ 2023**

**Authorizing, and Implemented or Interpreted Law: 63G-3; 26B-1-213(1); ~~26-61a; 26-61a-606; 26-61a-604(14); 26-61a-607~~ 26B-4; 26B-4-241; 26B-4-239(14); 26B-4-242**

#### **NOTICE OF PROPOSED RULE**

**TYPE OF FILING:** Repeal

<b>Rule or Section Number:</b>	<b>R383-11</b>	<b>Filing ID:</b> <b>55701</b>
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#### **Agency Information**

<b>1. Department:</b>	Health and Human Services
<b>Agency:</b>	Center for Medical Cannabis
<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 144340
<b>City, state and zip:</b>	Salt Lake City, UT 84114-4340



<b>Contact persons:</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Jeremiah Sniffin	801-538-6504	jsniffin@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>
R383-11. Agreement With a Tribe
<b>3. Purpose of the new rule or reason for the change:</b>
Section 26-61a-108, Agreement with a Tribe, was repealed in H.B. 72 during the 2023 General Session. This rule is subsequently no longer needed.
<b>4. Summary of the new rule or change:</b>
Rule R383-11 is repealed in its entirety.

Fiscal Information

<b>5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:</b>
<b>A) State budget:</b>
This proposed repeal will not result in a fiscal impact on the state budget because it is repealed.
<b>B) Local governments:</b>
This proposed repeal will not result in a fiscal impact on a local government because it is repealed in its entirety.
<b>C) Small businesses</b> ("small business" means a business employing 1-49 persons):
This proposed repeal will not result in a fiscal impact on small businesses because it is repealed in its entirety.
<b>D) Non-small businesses</b> ("non-small business" means a business employing 50 or more persons):
This proposed repeal will not result in a fiscal impact on non-small businesses because it is repealed in its entirety.
<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> ):
This proposed repeal will not result in a fiscal impact on persons other than small businesses, non-small

businesses, or state or local government entities because it is repealed.			
<b>F) Compliance costs for affected persons</b> (How much will it cost an impacted entity to adhere to this rule or its changes?):			
This proposed repeal will not result in a fiscal impact on compliance costs for affected persons because it is repealed.			
<b>G) Regulatory Impact Summary Table</b> (This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts will be included in narratives above.)			
<b>Regulatory Impact Table</b>			
<b>Fiscal Cost</b>	<b>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>
<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**

**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  
26B-1-202(1)

**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:** 10/16/2023

**9. This rule change MAY become effective on:** 10/23/2023

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**

**Agency head or designee and title:** Tracy S Gruber, Executive Director  
**Date:** 08/24/2023

**R383. Health and Human Services, Center for Medical Cannabis.**

~~**[R383-11. Agreement with a Tribe.**~~

~~**R383-11-1. Introduction and Authority.**~~

~~This rule defines and clarifies the requirements to enter into an agreement pursuant to Section 26-61a-108 to operate a medical cannabis pharmacy on a tribal land located within Utah boundaries. This rule is authorized under Section 26-61a-108.~~

~~**R383-11-2. Definitions.**~~

~~(1) "Agreement with a Tribe" means a formal compact, or Memorandum of Understanding, between this state and a Tribe.~~

~~(2) "Tribal governing body and authority" means the person, or persons, acting in an official capacity as specifically authorized by the Tribe to enter into the Agreement.~~

~~(3) "Tribal land" mean Indian Country as defined in 18 U.S. Code 1151, United States Code, Indians, Indian country defined.~~

~~(4) "Tribe" means Indian Tribe as defined in 25 U.S.C. Sec. 1603(14). The Bureau of Indian Affairs (BIA) Federal Register identifies the following tribes as federally recognized in Utah:~~

- ~~(a) Confederated Tribes of the Goshute Reservation;~~  
~~(b) Navajo Nation;~~  
~~(c) Northwestern Band of Shoshone Nation;~~  
~~(d) Paiute Indian Tribe of Utah;~~  
~~(e) San Juan Southern Paiute;~~  
~~(f) Skull Valley Band of Goshute;~~  
~~(g) Ute Indian Tribe; and~~  
~~(h) Ute Mountain Ute Tribe.]~~

~~**R383-11-3. Participating Tribes.**~~

~~Only a Tribe, as defined in federal law, can enter into an agreement with the Governor.~~

~~**R383-11-4. Agreement Requirements.**~~

~~An agreement shall address the following matters, as set out in federal law:~~

- ~~(1) tribal sovereignty;~~  
~~(2) tribal jurisdiction; and~~  
~~(3) tribal ordinance or resolution.~~

~~**KEY: medical cannabis, marijuana, tribe agreement, tribes**~~

~~**Date of Last Change: December 27, 2022**~~

~~**Authorizing, and Implemented or Interpreted Law: 26-61a; 26-61-108; 26 U.S.C. 1603(14); 18 U.S.C. 1151]**~~

**NOTICE OF PROPOSED RULE**

**TYPE OF FILING:** Repeal

**Rule or Section Number:** R383-12  
**Filing ID:** 55710

**Agency Information**

**1. Department:** Health and Human Services  
**Agency:** Center for Medical Cannabis  
**Building:** Multi-Agency State Office Building (MASOB)  
**Street address:** 195 N 1950 W  
**City, state and zip:** Salt Lake City, UT 84116  
**Mailing address:** PO Box 144340  
**City, state and zip:** Salt Lake City, UT 84114-4340

**Contact persons:**

Name:	Phone:	Email:
Jeremiah Sniffin	801-538-6504	jsniffin@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 or section catchline:**

R383-12. Administrative Hearing Procedures

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

This proposed repeal of Rule R383-12 is necessary because operating units in the newly created Department of Health and Human Services (DHHS) now rely on Rule R497-100 to establish administrative hearing procedures.

The assistant attorney general assigned to the Center for Medical Cannabis (CMC) agrees that the CMC does not need this rule because there are now DHHS-wide rules that address this topic.

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

The repeal of Rule R383-12 ensures that the CMC aligns with the DHHS rule. Notably, the time frame for an aggrieved party to appeal of Notice of Agency Action is now 15 days, and not 30. DHHS rule states, "When an agency commences an informal adjudicative proceeding if the statute or agency rule does not provide otherwise, a party may request a hearing within 15 calendar days of receipt of the notice of agency action."

The repeal of this rule is necessary because the DHHS-wide rule should apply.

Other sections in Rule R383-12 are unnecessary and should be repealed. Either DHHS rules or state statutes cover these topics covered in this rule. The processes or language in Rule R383-12 for administrative hearings conflicts with DHHS rules or statutes.

Following the DHHS rules or statutes will streamline the process for administrative hearings.

##### Public hearing information:

There will be a public hearing on 10/02/2023 at 9 AM MST at the MASOB at 195 N 1950 W, Salt Lake City, UT in Room 1020C.

Please click the link to join the webinar: <https://utah-gov.zoom.us/j/88410663769>

#### Fiscal Information

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

###### A) State budget:

There will be no effect on the state budget because the entire rule is being repealed. DHHS has an existing rule, Rule R497-100, that governs administrative hearing procedures for all agencies within DHHS.

As a result of repealing this rule, the Center for Medical Cannabis will automatically fall under Rule R497-100.

With regard to the change from a 30-day deadline to request a hearing, the respondent will only have 15 calendar days to request a hearing per Rule R497-100. There is no fiscal impact on the state budget in reducing the amount of time a respondent has to request a hearing after receiving a notice of agency action.

###### B) Local governments:

There will be no effect on local governments because the entire rule is being repealed. A local government will never be issued a notice of agency action because no local government operates within the program.

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

There will be no effect on small businesses because the entire rule is being repealed.

DHHS has an existing rule, Rule R497-100, that governs administrative hearing procedures for all agencies within DHHS. As a result of repealing this rule, the Center for Medical Cannabis will automatically fall under Rule R497-100.

With regard to the change from a 30-day deadline to request a hearing, the respondent will only have 15 calendar days to request a hearing per Rule R497-100.

There is no fiscal impact on small businesses in reducing the amount of time a respondent has to request a hearing after receiving a notice of agency action.

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

There will be no effect on non-small businesses because the entire rule is being repealed.

DHHS has an existing rule, Rule R497-100, that governs administrative hearing procedures for all agencies within DHHS. As a result of repealing this rule, the Center for Medical Cannabis will automatically fall under Rule R497-100.

With regard to the change from a 30-day deadline to request a hearing, the respondent will only have 15 calendar days to request a hearing per Rule R497-100.

There is no fiscal impact on non-small businesses in reducing the amount of time a respondent has to request a hearing after receiving a notice of agency action.

##### 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 will be no effect on persons other than small businesses, non-small businesses, and state or local government entities because the entire rule is being repealed.

DHHS has an existing rule, Rule R497-100, that governs administrative hearing procedures for all agencies within DHHS. As a result of repealing this rule, the Center for Medical Cannabis will automatically fall under Rule R497-100.

With regard to the change from a 30-day deadline to request a hearing, the respondent will only have 15 calendar days to request a hearing per Rule R497-100.



There is no fiscal impact on persons other than small businesses, non-businesses, or state, or local government entities in reducing the amount of time a respondent has to request a hearing after receiving a notice of agency action.

**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 results in compliance costs for affected persons because the entire rule is being repealed.

DHHS has an existing rule, Rule R497-100, that governs administrative hearing procedures for all agencies within DHHS. As a result of repealing this rule, the Center for Medical Cannabis will automatically fall under Rule R497-100.

With regard to the change from a 30-day deadline to request a hearing, the respondent will only have 15 calendar days to request a hearing per Rule R497-100.

There is no fiscal impact on compliance costs for affected persons in reducing the amount of time a respondent has to request a hearing after receiving a notice of agency action.

**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:**

Subsection 26B-1-202(1)		
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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.)

**A) Comments will be accepted until:** 10/16/2023

**B) A public hearing (optional) will be held:**

<b>Date:</b>	<b>Time:</b>	<b>Place</b> (physical address or URL):
10/02/2023	9 AM MST	See information in Box 4 above

**9. This rule change MAY become effective on:** 10/23/2023

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>	08/24/2023
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**R383. Health and Human Services, Center for Medical Cannabis.**

~~**R383-12. Administrative Hearing Procedures.**~~

~~**R383-12-1. Introduction and Authority.**~~

~~(1) This rule establishes the administrative hearing procedures for the Center for Medical Cannabis.~~

~~(2) This rule is authorized by Section 26-1-24 and Section 63G-4-102.~~

### **R383-12-2. Definitions.**

The definitions in Section R380-400-2 and Section 63G-4-103 apply to this rule.

(1) The following definitions also apply:

(a) "Action" means a denial, termination, suspension, reduction of a license, or card, or issued, pursuant to Title 26, Chapter 61a, Utah Medical Cannabis Act; or the imposition of a penalty, or fine, authorized under Title 26, Chapter 61a, Utah Medical Cannabis Act. An action does not include the issuance of a license to operate a medical cannabis pharmacy, pursuant to Title 63G, Chapter 6a, Utah Procurement Code.

(b) "Agency" means the Center for Medical Cannabis within the Utah Department of Health and Human Services.

(c) "Aggrieved person" means any person affected by the Agency's action.

(d) "Applicant" means any person who has applied for a medical cannabis card or registration, or license, other than a medical cannabis pharmacy license, pursuant to Title 26, Chapter 61a, Utah Medical Cannabis Act.

(e) "Ex Parte" communication means direct or indirect communication in connection with an issue of fact, or law, between the hearing officer and one party only.

(f) "Presiding Officer" means the Agency head, or designee, as approved by the Executive Director; to conduct an administrative hearing pursuant to this rule.

(g) "Medical record" means a record that contains medical data submitted by an applicant.

(h) "Order" means a ruling by a hearing officer that determines the legal rights, duties, privileges, immunities, or other legal interests of one or more specific persons.

### **R383-12-3. Administrative Adjudicative Procedures.**

(1) Except as provided in this rule, or as otherwise designated by rule, statute, or converted, pursuant to Subsection 63G-4-202(3), all adjudicative proceedings conducted pursuant to this rule are informal proceedings.

(2) The Agency head shall serve as the presiding officer for an informal hearing, except that the Agency head may designate a presiding officer, as approved by the executive director.

(3) Closure of an application submitted to the Agency, due to the applicant's failure to complete the application, or to provide the required information, is not an action under this rule.

(4) Any provision of this rule does not apply to an action that is governed by another statute that conflicts with the procedures in this rule.

### **R383-12-4. Commencement of Proceedings, Response.**

(1) If a person is aggrieved by an action of the Agency, the person may file a request for Agency action and hearing within the shortest of 30 calendar days, of either receiving the initial Agency determination, or the Agency's mailing, or electronic notification via email, of the initial Agency determination. The person shall request an Agency action, and hearing, by submitting the request on a form created by the Center.

(2) If the informal adjudicative proceeding is commenced by a notice of Agency action, each party in the action, except the Center, shall file a response to the allegations contained in the notice of Agency action, and state whether a hearing is requested.

(3) Pursuant to this rule and Section 63G-4-201, if the informal adjudicative proceeding is commenced by a request for Agency action, the Agency must consider the request, grant or deny it, or set the request for further proceedings.

(4) If a medical issue is in dispute, each request shall include supporting medical documentation. The Agency shall schedule a hearing only when it receives sufficient medical records, and may dismiss a request for Agency action, or strike the party's response, to a notice of Agency action if it does not receive supporting medical documentation in a timely manner.

(5) Notice of Agency Action:

(a) An Agency shall provide written notice of action to each aggrieved person. Such action include:

(i) denial of an application for a medical cannabis card, or a QMP, PMP, pharmacy agent, or courier agent registration card;

(ii) suspension, or revocation, of a medical cannabis card or a QMP, PMP, pharmacy agent, or courier agent registration card;

(iii) suspension, or revocation, of a medical cannabis pharmacy license, or a home delivery medical cannabis pharmacy license; and

(iv) imposition of a penalty, or fine, authorized under Title 26, Chapter 61a, Utah Medical Cannabis Act.

(b) The notice must include:

(i) a statement of the action the Agency intends to take;

(ii) the date the intended action becomes effective;

(iii) the reason for the intended action;

(iv) the specific regulation that supports the action, or the change in federal law, state law, or Department rule which requires the action;

(v) the right to submit a response, and request an administrative hearing;

(vi) the right to represent oneself, the right to legal counsel, or the right to use another representative at the hearing; and

(vii) if applicable, an explanation of the circumstance under which the license, or card, will continue, or may be reinstated, pursuant to this rule.

(c) The Agency shall mail the notice, or electronically notify the person at the email address on file with the EVS; at least ten calendar days before the date of the intended action.

(6) The Agency may issue an order on an emergency basis pursuant to Section 63G-4-502. The aggrieved party may request an administrative hearing, pursuant to this rule.

### **R383-12-5. Hearing and a Request for a Hearing.**

(1) The Center shall conduct an informal hearing for all issues, except those specifically designated as a formal hearing pursuant to this rule. The presiding officer may convert the proceeding to a formal hearing if an aggrieved person requests a hearing that meets the criteria pursuant to Section 63G-4-202. If a hearing under this rule is converted to a formal hearing, pursuant to Section 63G-4-202, the formal hearing shall be conducted pursuant to Title R383; except as otherwise provided in Sections 63G-4-204 through 63G-4-208, or other applicable statutes.

(2) An aggrieved person shall request a hearing by submitting the request on a Center "Request for Hearing/Agency Action" form and mailing it to the Center. The request must explain why the aggrieved person is seeking Agency relief.

(3) A Request for Hearing/Agency Action, or a Response, and Request for Hearing that response, which an aggrieved person sends via mail is deemed filed on the date of the postmark. If the postmark date is illegible, erroneous, or omitted, the request is deemed filed on the date that the Agency receives it; unless the sender can demonstrate through competent evidence of the mailing date.

(4) Failure to submit a timely response, and request for a hearing, constitutes a waiver of an individual's due process rights.

~~(5) The Agency shall conduct a hearing in connection with an Agency action if the aggrieved person requests a hearing and there is a disputed issue of fact. If there is no disputed issue of fact, the presiding officer may deny a request for a hearing, and issue a recommended decision without a hearing, based on the record. There is no disputed issue of fact if the aggrieved person submits facts that do not conflict with the facts that the Agency relies upon in taking action or seeking relief. In the recommended decision, the presiding officer shall specifically set out all material, and relevant facts, that are not in dispute.~~

~~(6) The Agency may dismiss a request for a hearing if the aggrieved person:~~

- ~~(a) withdraws the request in writing;~~
- ~~(b) verbally withdraws the hearing request at a Settlement conference or prehearing conference;~~
- ~~(c) fails to appear, or participate, in a scheduled proceeding without good cause;~~
- ~~(d) prolongs the hearing process without good cause;~~
- ~~(e) cannot be located, or Agency mail is returned without a forwarding address; or~~
- ~~(f) does not respond to any correspondence from the presiding officer, or fails to provide medical records that the Agency requests.~~

~~(7) If the aggrieved person objects to the hearing denial, the person may raise that objection as grounds for relief, in a request for reconsideration.~~

#### **R383-12-6. Notice of Hearing.**

~~The Agency shall notify the aggrieved person, or representative, in writing of the date, time, and place of the hearing, at least ten calendar days before the date of the hearing; unless each party agrees to an alternative time frame. Any aggrieved person must inform the Agency of a current address, email address, and telephone number.~~

#### **R383-12-7. Prehearing Procedures.**

~~(1) The Agency shall conduct a Settlement conference between the Agency, and the aggrieved party, within 30 calendar days from the date it receives a request for a hearing or Agency action. If a settlement cannot be reached, including a withdrawal, dismissal, or granting of the request for action, the Agency shall notify the presiding officer to set a date for the administrative hearing.~~

~~(2) The presiding officer may elect to conduct a preliminary conference to:~~

- ~~(a) formulate or simplify the issues;~~
- ~~(b) obtain admissions of fact, and documents that will avoid unnecessary proof;~~
- ~~(c) arrange for the exchange of proposed exhibits or prepared expert testimony;~~
- ~~(d) outline procedures for the hearing; or~~
- ~~(e) to agree to other matters that may expedite the orderly conduct of the hearing or settlement.~~

~~(3) The presiding officer may require each party to submit a prehearing position statement setting forth the position of the party.~~

~~(4) The party may enter into a written stipulation resolving all, or part, of the adjudicative action during the preliminary conference, or at any time during the process.~~

~~(5) Ex parte communication with the presiding officer is prohibited. If a party attempts ex parte communication, the presiding officer shall inform the offender that any communication that the hearing officer receives off the record, will become part of the record, and furnished to each party. Ex parte communication does not apply~~

~~to communication on the status of the hearing and uncontested procedural matters.~~

~~(6) The Agency shall allow the aggrieved person, or a representative, to examine each document and record relevant to the adjudicative proceeding; at least three days before the hearing.~~

~~(7) The presiding officer may require each party to file a signed prehearing disclosure form, at least ten calendar days before the scheduled hearing that identifies:~~

- ~~(a) any fact witness;~~
- ~~(b) any expert witness;~~
- ~~(c) any exhibit and report that each party intends to offer into evidence at the hearing.~~

~~(8) Each party shall supplement the disclosure form with information that shall become available after filing the original form.~~

#### **R383-12-8. Conduct of Hearing.**

~~(1) The Agency shall conduct a hearing pursuant to Section 63G-4-203 for an informal adjudicative proceeding.~~

~~(2) The Agency head shall appoint an impartial presiding officer to conduct a hearing. Previous involvement in the initial determination of the action precludes an officer from appointment.~~

~~(3) A telephonic hearing will be held at the discretion of the presiding officer.~~

~~(4) The presiding officer shall take testimony under oath or affirmation.~~

~~(5) Each party has the right to:~~

- ~~(a) present evidence, argue, respond, conduct cross-examination, and submit rebuttal evidence;~~
- ~~(b) introduce exhibits;~~
- ~~(c) impeach any witness, regardless of which party first called the witness to testify; and~~
- ~~(d) rebut the evidence against the party.~~

~~(6) Each party may admit any relevant evidence and use hearsay evidence to supplement, or explain other evidence, as may be required for full disclosure of each fact relevant to the disposition of the hearing. Hearsay, however, is not sufficient by itself to support a finding, unless admissible over objection in civil actions. The presiding officer shall give effect to the rules of privilege recognized by law, and may exclude irrelevant, immaterial, and unduly repetitious evidence.~~

~~(7) The presiding officer shall control the evidence, obtain full disclosure of the relevant facts, and safeguard the rights of each party. The presiding officer may determine the order in which they receive the evidence.~~

~~(8) The presiding officer shall maintain order and may recess the hearing to regain order if a person engages in disrespectful, disorderly, or disruptive conduct. The presiding officer may remove any person, including a participant, from the hearing to maintain order. If a person shows persistent disregard for order and procedure, the presiding officer may:~~

- ~~(a) restrict the person's participation in the hearing;~~
- ~~(b) strike pleadings or evidence; or~~
- ~~(c) issue an order of default.~~

~~(9) If a party desires to employ a court reporter to make a record of the hearing, it must file an original transcript of the hearing with the hearing officer, at no cost to the Agency.~~

~~(10) The party who initiates the hearing process through a request for Agency action, has the burden of proof as the moving party.~~

~~(11) When a party possesses but fails to introduce certain evidence, the presiding officer may infer that the evidence does not support the party's position.~~

~~(12) The presiding officer may issue an order of default against any party that fails to obey an order entered by the hearing officer.~~

#### **R383-12-9. Record.**

~~(1) The presiding officer shall make a complete record of each hearing. A hearing record is the sole property of the Department.~~

~~(2) Any proceedings other than a hearing may be recorded at the discretion of the hearing officer.~~

~~(3) If a party requests a copy of the recording of a hearing, that party may transcribe the recording at the party's sole cost.~~

#### **R383-12-10. Proposed Decision and Final Agency Review.**

~~(1) At the conclusion of the hearing, the presiding officer shall take the matter under advisement, and submit a recommended decision to the Agency head. The recommended decision is based on the testimony and evidence entered at the hearing, Agency policy and procedure, and legal precedent.~~

~~(2) The recommended decision must contain findings of fact and conclusions of law.~~

~~(3) The Agency or the director's designee may:~~

~~(a) adopt the recommended decision or any portion of the decision;~~

~~(b) reject the recommended decision, or any portion of the decision, and make an independent determination based upon the record; or~~

~~(c) remand the matter to the presiding officer to take additional evidence; and the presiding officer thereafter shall submit to the Agency director or the director's designee, a new recommended decision.~~

~~(4) The Agency head or their designee's decision constitutes final administrative action and is subject to judicial review.~~

~~(5) The Agency shall send a copy of the final administrative action to each party, or representative, and notify them of their right to judicial review.~~

~~(6) Each party shall comply with a final decision from the director reversing the Agency's decision, within ten calendar days.~~

#### **R383-12-11. Amending Administrative Orders.**

~~(1) The Agency may amend an order if the presiding officer determines that the order contains a clerical error.~~

~~(2) The Agency shall notify each party its intent to amend the order by serving a notice of Agency action signed by the hearing officer.~~

~~(3) The Agency Director shall review the amended order and the Agency Director or the Agency Director's designee shall issue a final Agency amended order.~~

~~(4) The Agency shall provide a copy of the final amended order to each party.~~

#### **R383-12-12. Reconsideration.**

~~A party to the proceeding may move for reconsideration of the final administrative order pursuant to Section 63G-4-301.~~

#### **R383-12-13. Judicial Review.**

~~A party to the proceeding may obtain judicial review pursuant to Section 63G-4-102, and Sections 63G-4-400 through 63G-4-400.~~

#### **R383-12-14. Declaratory Orders.**

~~(1) The Agency may issue a declaratory order pursuant to Rule R380-1.~~

~~(2) If the Agency does not issue a declaratory order within 60 days after receipt of the request, the petition is denied.~~

~~(3) The Agency may not issue a declaratory order if an adjudicative proceeding that involves each party and the same issue is pending before the Agency, or a federal, or state court.~~

**KEY:** ~~medical cannabis, medical cannabis hearing, marijuana~~

**Date of Last Change:** ~~December 27, 2022~~

**Authorizing, and Implemented or Interpreted Law:** ~~63G-3; 63G-4-102; 26-1-24; 26-61a]~~

#### **NOTICE OF PROPOSED RULE**

**TYPE OF FILING:** Repeal and Reenact

<b>Rule or Section Number:</b>	<b>R383-13</b>	<b>Filing ID:</b> <b>55716</b>
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#### **Agency Information**

<b>1. Department:</b>	Health and Human Services		
<b>Agency:</b>	Center for Medical Cannabis		
<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 144340		
<b>City, state and zip:</b>	Salt Lake City, UT 84114-4340		
<b>Contact persons:</b>			
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>	
Jeremiah Sniffin	801-538-6504	jsniffin@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 or section catchline:**

R383-13. Compassionate Use Board

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

Rule R383-13 is repealed and reenacted with new language due to the Department of Health and Human Services (DHHS) needing to clarify the expedited review process and what happens when DHHS denies a request for expedited review of a petition submitted to the Compassionate Use Board.

References to Title 26, Chapter 61a, are also changed due to its recodification under S.B. 40 during the 2023 General Session.

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

In Rule R383-13, the rule's name is changed from "Compassionate Use Board" to "Expedited Final Review of Compassionate Use Petitions".

The statute citation in Section R383-13-2 is updated. The DHHS Office of Legislative Affairs indicated that the new citation is the correct reference for citing rulemaking authority.

Rule R383-13 is repealed and reenacted with the new language. Section R383-13-1 explains the purpose and Section R383-13-2 explains the authority of this rule; Section R383-13-3 explains the availability of the expedited review; and Section R383-13-4 outlines the procedure for an expedited and explains what happens if DHHS denies a request for expedited review.

In these cases, the DHHS will send notice of the denial to the applicant and forward the petition for compassionate use to the board for consideration during its board meeting. The board will consider their petition for compassionate use even if an applicant fails to meet the criteria for expedited final review.

#### Public hearing information:

There will be a public hearing on 10/02/2023 at 9 AM MST at the MASOB at 195 N 1950 W, Salt Lake City, UT in Room 1020C.

Please click the link to join the webinar: <https://utah.gov.zoom.us/j/88410663769>

#### Fiscal Information

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

###### A) State budget:

The proposed repeal and reenact has no fiscal impact on the state budget because it only makes minor changes to existing processes.

###### B) Local governments:

The proposed repeal and reenact has no fiscal impact on local governments because it does not impact local governments.

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

The proposed repeal and reenact has no fiscal impact on small businesses because it does not impact small businesses.

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

The proposed repeal and reenact has no fiscal impact on non-small businesses because it does not impact non-small businesses.

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

The proposed repeal and reenact has no fiscal impact on persons other than small businesses, non-small businesses, and state, or local government entities because it does not impact these persons.

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

The proposed rule has no compliance costs for affected persons.

###### 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>
<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>		
Subsection 26B-1-202(1)	Section 26B-1-421	Section 63G-2-201
Section 63G-4-203		

#### Public Notice Information

<b>8. The public may submit written or oral comments to the agency identified in box 1.</b> (The public may also request a hearing by submitting a written request to the agency. See Section 63G-3-302 and Rule R15-1 for more information.)		
<b>A) Comments will be accepted until:</b>	10/16/2023	
<b>B) A public hearing (optional) will be held:</b>		
<b>Date:</b>	<b>Time:</b>	<b>Place</b> (physical address or URL):
10/02/2023	9 AM MST	See information in Box 4 above

<b>9. This rule change MAY become effective on:</b>	10/23/2023
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>	08/31/2023
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R383. Health and Human Services, Center for Medical Cannabis.

~~[R383-13. Compassionate Use Board.~~

~~R383-13-1. Authority and Purpose.~~

~~Pursuant to Subsections 26-1-5(1) and 26-61a-105(6), this rule establishes a process and criteria for a petition to the Board to qualify for expedited final review and approval or denial by the Department.~~

**R383-13-2. Expedited Review Criteria.**

~~To qualify for expedited review by the Department, an individual submitting the petition shall meet the following criteria:~~

~~(1) diagnosis with a terminal illness and a life expectancy of six months or less;~~

~~(2) present symptoms not adequately managed with standard therapies that may reasonably be expected to be alleviated by medical cannabis; and~~

~~(3) have a QMP recommending medical cannabis who is directly and regularly involved in the individual's medical care.~~

**R383-13-3. Expedited Review Process.**

~~(1) Each individual submitting a petition for expedited review by the Department shall complete a form available from the Department.~~

~~(2) Within five business days of receiving a complete petition for expedited review, the Department shall review the petition and either approve the petition and issue a medical cannabis card to the applicant or prepare the petition for Board review.]~~

**R383-13. Expedited Final Review of Compassionate Use Petitions.**

**R383-13-1. Purpose.**

~~This rule establishes the process for expedited final review of petitions to the Compassionate Use Board consistent with Subsection 26B-1-421(6).~~

**R383-13-2. Authority.**

~~Pursuant to Subsections 26B-1-202(1) and 26B-1-421(6), this rule establishes a process and criteria for a petition to the Board to qualify for expedited final review and approval or denial by the Department.~~

**R383-13-3. Availability of Expedited Review.**

~~(1) To qualify for expedited review by the Department, an individual submitting the petition shall meet the following criteria:~~

~~(a) be diagnosed with a terminal illness;~~

~~(b) have a life expectancy of six months or less;~~

~~(c) present symptoms not adequately managed with standard therapies that may reasonably be expected to be alleviated by medical cannabis; and~~

~~(d) have a recommendation from a QMP who is directly and regularly involved in the individual's medical care.~~

**R383-13-4. Expedited Review Procedure.**

~~(1) Each individual submitting a petition for expedited review by the Department shall complete a form available from the Department.~~

~~(2) The Compassionate Use Board shall not review a petition until the form is complete and any supporting documentation requested by the Board is received.~~

~~(3) Within five business days after receiving a complete petition for expedited review, the Department shall review the petition and either approve or deny the request for expedited review.~~

~~(4) If the Department approves the petition, it shall issue a medical cannabis card to the applicant.~~

~~(5) If the Department denies the petition for expedited review, it shall:~~

~~(a) Send notice of the denial to the applicant; and~~

~~(b) Send the petition for compassionate use to the board for review on its regular review schedule.~~



**KEY:** medical cannabis, compassionate use board, medical marijuana

**Date of Last Change:** ~~2023~~December 27, 2022

**Authorizing, and Implemented or Interpreted Law:** 63G-3; ~~26-61a; 26-1-5(1); 26-61a-105(6); 26-61a~~26B-1; 26B-1-213

#### NOTICE OF PROPOSED RULE

**TYPE OF FILING:** Amendment

<b>Rule or Section Number:</b>	<b>R383-14</b>	<b>Filing ID:</b> <b>55711</b>
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#### Agency Information

<b>1. Department:</b>	Health and Human Services	
<b>Agency:</b>	Center for Medical Cannabis	
<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 144340	
<b>City, state and zip:</b>	Salt Lake City, UT 84114-4340	
<b>Contact persons:</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Jeremiah Sniffin	801-538-6504	jsniffin@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>
R383-14. Administrative Penalties
<b>3. Purpose of the new rule or reason for the change:</b>
The purpose of this proposed amendment is to delete the definitions section, as all medical cannabis-related definitions are being moved to Rule R383-1.
References to Title 26, Chapter 61a, are also changed due to its recodification under S.B. 40 during the 2023 General Session.
<b>4. Summary of the new rule or change:</b>
The statute citation in Section R383-14-1 is updated. The Department of Health and Human Services (DHHS) Office of Legislative Affairs indicated that the new citation is the correct reference for citing rulemaking authority.

Section R383-14-2 is removed because it is the definitions section, and all medical cannabis-related definitions are being moved to Rule R383-1. References to Title 26, Chapter 61a, are also changed throughout the proposed amendment due to its recodification under S.B. 40 during the 2023 General Session.

(EDITOR'S NOTE: The proposed amendment to Rule R383-1 is under ID 55700 in this issue, September 15, 2023, of the Bulletin.)

#### Public hearing information:

There will be a public hearing on 10/02/2023 at 9 AM MST at the MASOB at 195 N 1950 W, Salt Lake City, UT in Room 1020C.

Please click the link to join the webinar: <https://utah-gov.zoom.us/j/88410663769>

#### Fiscal Information

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

##### A) State budget:

This proposed amendment will not result in a fiscal impact on the state budget because it only adds or clarifies language with no fiscal impact.

##### B) Local governments:

This proposed amendment will not result in a fiscal impact on local governments because it does not establish requirements for enforcement by local agencies.

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

This proposed amendment will not result in a fiscal impact on small businesses because it only adds or clarifies language with no fiscal impact.

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

This proposed amendment will not result in a fiscal impact on non-small businesses because this amendment does not establish requirements for non-small businesses.

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

This proposed amendment will not result in a fiscal impact on persons other than small businesses, non-small businesses, or state or local government entities because this proposed amendment does not establish new requirements for these entities.

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

This proposed amendment will not result in a fiscal impact on compliance costs for affected persons because it only adds or clarifies language with no fiscal impact.

**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:**

Subsection 26B-1-202(1)	Subsection 26B-4-221(3)	
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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.)

**A) Comments will be accepted until:** 10/16/2023

**B) A public hearing (optional) will be held:**

Date:	Time:	Place (physical address or URL):
10/02/2023	9 AM MST	See information in Box 4 above

**9. This rule change MAY become effective on:** 10/23/2023

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>	08/24/2023
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**R383. Health and Human Services, Center for Medical Cannabis.**

**R383-14. Administrative Penalties.**

**R383-14-1. Authority and Purpose.**

Pursuant to ~~[Section 26-1-5]~~ Subsection 26B-1-202(1) and Subsection ~~[26-61a-702]~~ 26B-4-221(3), this rule establishes a fine schedule for administrative penalties for violations of ~~[Title 26, Chapter 61a,] Title 26B, Chapter 4, Part 2, Cannabinoid Research and Medical Cannabis[Utah Medical Cannabis Act]~~ and applicable administrative rules.

~~**[R383-14-2. Definitions.**~~

~~The definitions in Section 26-61a-102 and Subsection R380-400(2) apply in this rule.~~

**R383-14-[3]2. Entities and Individuals Subject to Fine Schedule.**

This rule governs the fine schedule for which an administrative penalty is authorized pursuant to Section ~~[26-61a-702]~~ 26B-4-221.

**R383-14-[4]3. Fine Schedule.**

(1) Pursuant to Section ~~[26-61a-702]~~ 26B-4-221 the following fine schedule shall apply:

(a) for an initial violation of ~~[Title 26, Chapter 61a,] Title 26B, Chapter 4, Part 2, Cannabinoid Research and Medical Cannabis[Utah Medical Cannabis Act]~~ or Title R383 a fine of \$500-\$2,000 per violation; and

(b) for a subsequent violation of ~~[Title 26, Chapter 61a,] Title 26B, Chapter 4, Part 2, Cannabinoid Research and Medical Cannabis[Utah Medical Cannabis Act]~~



~~Cannabis~~ [Utah Medical Cannabis Act] or Title R383, a fine of up to \$5,000 per violation.

(2) For each violation, the Department shall determine the fine amount within the ranges specified in Subsection (1).

(3) The fine amount determined by the Department may be modified by the presiding officer following an adjudicative proceeding.

#### **R383-14-[5]4. Date of Payment.**

When the Department imposes a fine, it shall establish a date on which the payment is due. Failure of an entity or individual to pay on or before that date may result in additional penalties taken by the Department against a license or registration until payment is made.

#### **R383-14-[6]5. Aggravating and Mitigating Circumstances.**

(1) In determining the fine amount imposed, the Department may adjust fine amounts within the fine ranges based upon aggravating or mitigating circumstances~~[-]~~ as follows:

(a) mitigating circumstances include:

- (i) no earlier violation history;
- (ii) good faith effort to prevent a violation; and
- (iii) extraordinary cooperation in the violation investigation that shows the entity or individual accepts responsibility~~[-]~~; and

(b) aggravating circumstances include:

- (i) earlier warnings about compliance problems;
- (ii) earlier violation history;
- (iii) multiple violations during an investigation;
- (iv) efforts to hide a violation;
- (v) intentional nature of the violation;
- (vi) the violation involved a minor; and
- (vii) whether the violation resulted in injury to a patient.

#### **R383-14-[7]6. Additional Penalties.**

Nothing in this rule prevents the Department from suspending, revoking or refusing to renew a license or registration in addition to imposing a fine for violations of ~~Title 26, Chapter 61a,~~ Title 26B, Chapter 4, Part 2, Cannabinoid Research and Medical Cannabis~~[-]~~ [Utah Medical Cannabis Act], and applicable administrative rules.

#### **R383-14-[8]7. Cease and Desist Letter.**

In addition to, or in lieu of imposing a fine, the Department may issue a cease and desist letter to the entity or individual ordering them to cease and desist from the act that constitutes the violation. Failure to comply with the cease and desist letter may constitute grounds for additional penalties.

**KEY: administrative penalties, medical cannabis, marijuana**

**Date of Last Change:** ~~January 13,~~ 2023

**Authorizing, and Implemented or Interpreted Law:** 63G-3; 26-61a; 26-1-5(1); 26-61a-702(3)

#### **NOTICE OF PROPOSED RULE**

**TYPE OF FILING:** New

<b>Rule or Section Number:</b>	<b>R383-15</b>	<b>Filing ID:</b> <b>55715</b>
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#### **Agency Information**

<b>1. Department:</b>	Health and Human Services		
<b>Agency:</b>	Center for Medical Cannabis		
<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 44340		
<b>City, state and zip:</b>	Salt Lake City, UT 84114-4340		
<b>Contact persons:</b>			
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>	
Jeremiah Sniffin	801-538-6504	jsniffin@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 or section catchline:**

R383-15. Compassionate Use Board Administrative Hearing Procedure

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

This proposed new rule clarifies how the Compassionate Use Board (CUB) will operate when performing an administrative hearing. This proposed rule outlines how the CUB operates with administrative hearings.

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

This proposed new rule explains how an administrative hearing relating to petitions denied by the CUB will occur.

##### **Public hearing information:**

There will be a public hearing on 10/02/2023 at 9 AM MST at the MASOB at 195 N 1950 W, Salt Lake City, UT in Room 1020C.

Please click the link to join the webinar: <https://utah-gov.zoom.us/j/88410663769>

#### **Fiscal Information**

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

##### **A) State budget:**

This proposed new rule will not result in a fiscal impact on the state budget because the proposed new rule establishes a process that will not have a fiscal impact.

<b>B) Local governments:</b>			
This proposed new rule will not result in a fiscal impact on local governments because the proposed new rule creates language which does not increase or decrease what a local government must regulate.			
<b>C) Small businesses</b> ("small business" means a business employing 1-49 persons):			
This proposed new rule will not result in a fiscal impact on small businesses because the proposed new rule creates language which does not have a fiscal impact.			
<b>D) Non-small businesses</b> ("non-small business" means a business employing 50 or more persons):			
This proposed new rule will not result in a fiscal impact on non-small businesses because the proposed new rule creates language which does not have a fiscal impact.			
<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> ):			
This proposed new rule will not result in a fiscal impact on persons other than small businesses, non-small businesses, or state or local government entities because this rule does not establish new requirements for these entities.			
<b>F) Compliance costs for affected persons</b> (How much will it cost an impacted entity to adhere to this rule or its changes?):			
This proposed new rule will not add any compliance costs for affected persons because the proposed new rule creates language which does not have a fiscal impact.			
<b>G) Regulatory Impact Summary Table</b> (This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts will be included in narratives above.)			
<b>Regulatory Impact Table</b>			
<b>Fiscal Cost</b>	<b>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>
<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>		
Subsection 26B-1-202(1)	Subsection 26B-4-221(3)	

#### Public Notice Information

<b>8. The public may submit written or oral comments to the agency identified in box 1.</b> (The public may also request a hearing by submitting a written request to the agency. See Section 63G-3-302 and Rule R15-1 for more information.)		
<b>A) Comments will be accepted until:</b>	10/16/2023	
<b>B) A public hearing (optional) will be held:</b>		
<b>Date:</b>	<b>Time:</b>	<b>Place</b> (physical address or URL):
10/02/2023	9 AM MST	See information in Box 4 above
<b>9. This rule change MAY become effective on:</b>		10/23/2023
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>	08/24/2023
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**R383. Health and Human Services, Center for Medical Cannabis.****R383-15. Compassionate Use Board Administrative Hearing Procedure.****R383-15-1. Purpose.**

This rule governs administrative appeals from decisions made by the Compassionate Use Board.

**R383-15-2. Authority.**

The Department is given rulemaking authority pursuant to Subsection 26B-1-202(1).

**R383-15-3. Form of Proceeding.**

Adjudicative proceedings brought against the Board shall be informal adjudicative proceedings.

**R383-15-4. Availability of Hearing.**

(1) When the Board recommends denial of a petition pursuant to Subsection 26B-1-421(5), the petitioner may request a hearing within 15 calendar days of receipt of the notice of agency action.

(2) A party who fails to request a hearing within 15 calendar days of receipt of the notice of agency action shall have no right to an administrative hearing or judicial review of the agency action, unless the party can demonstrate, by a preponderance of the evidence, that it was virtually impossible or unreasonably burdensome to file the request within 15 calendar days.

**R383-15-5. Qualifications for Presiding Officer.**

The presiding officer for administrative hearings involving a decision of the Board shall be a physician under Title 58, Chapter 67, Utah Medical Practice Act, designated by the Department's executive director.

**R383-15-6. Settlement Agreements.**

Before issuing a final decision and order, the parties may enter into a settlement agreement resolving all, or part, of the adjudicative proceeding.

**KEY: medical cannabis, compassionate use board, medical marijuana**

**Date of Last Change: 2023**

**Authorizing, and Implemented or Interpreted Law: 26-1-202(1); 26B-4-221(3)**

**NOTICE OF PROPOSED RULE**

**TYPE OF FILING:** Amendment

<b>Rule or Section Number:</b>	<b>R398-2</b>	<b>Filing ID:</b> <b>55696</b>
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**Agency Information**

<b>1. Department:</b>	Health and Human Services
<b>Agency:</b>	Family Health, Children with Special Health Care Needs
<b>Room number:</b>	3032
<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 144610	
<b>City, state and zip:</b>	Salt Lake City, UT 84114-4610	
<b>Contact persons:</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Alexis Weight	801-273-2956	abweight@utah.gov
Stephanie McVicar	801-273-6600	smcvicar@utah.gov
<b>Please address questions regarding information on this notice to the persons listed above.</b>		

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

R398-2. Newborn Hearing Screening: Early Hearing Detection and Intervention (EHDI) Program

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

The purpose of this amendment is to update statute citations and titles associated with the recodifications related to the Department of Health and Human Services (DHHS) consolidation and the recodification of the DHHS' statute in the 2023 General Session.

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

Updates citations to the DHHS' statute, corrects references to the Department of Health, corrects titles of referenced statutes, and adds authority to DHHS to have a standing order for CMV and diagnostic testing to facilitate their timely completion.

**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 facilitate early detection, prompt referral, and early intervention of infants who are deaf or hard of hearing.

**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-4-319 | Section 26B-1-202 |

**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:** 10/16/2023

**9. This rule change MAY become effective on:** 10/23/2023

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>	08/25/2023
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**R398. Health and Human Services, Family Health[~~and Preparedness~~], Children with Special Health Care Needs.**

**R398-2. Newborn Hearing Screening: Early Hearing Detection and Intervention (EHDI) Program.**

**R398-2-1. Authority and Purpose.**

(1) Authority for this rule is found in Section 26B-1-202 and the rule is enacted in accordance with Section 26B-4-319.~~[26-10-6, Testing of newborn infants.]~~

(2) The purpose of this rule is to facilitate early detection, prompt referral, and early intervention of infants who are deaf or hard of hearing.

**R398-2-2. Definitions.**

(1) "Audiologist" means a state licensed person ~~[who is licensed by the state]~~ where services are provided and has expertise in infant and pediatric audiology.

(2) "Birth attendant" means the person or provider that assists with an infant's birth.

(3) "Deaf or Hard of Hearing" means a dysfunction of the auditory system of any type or degree that is sufficient to interfere with the acquisition and development of speech and language skills.

(4) "Department" means the Utah Department of Health and Human Services, Newborn Hearing Screening: Early Hearing Detection and Intervention (EHDI) program.

(5) "Diagnostic procedures" means audiometric and medical procedures required to diagnose an infant as deaf or hard of hearing.

(6) "Early intervention" means auditory habilitation, enrollment into a formal early intervention program or both.

(7) "Follow-up" means appropriate services and procedures relating to the confirmation of hearing status and appropriate referrals for infants with abnormal or inconclusive screening or diagnostic results.

(8) "Institution" means a facility licensed by this state for birthing or receiving babies after birth.

(9) "Lost to follow-up" means infants whom the program cannot identify through tracking, and who have not completed the screening, diagnostic, or early intervention referral processes.

(10) "Newborn hearing screening" means the completion of an objective, physiological test, or battery of tests administered to determine the infant's hearing status and the need for further diagnostic testing by an audiologist with expertise in infant and pediatric audiology or physician with the Department approved instrumentation, protocols, and pass-fail criteria. Newborn hearing screening includes both the initial screening and follow-up screening as required after a fail result, this would include outpatient rescreening if born in hospital.

(11) "Parent" means a natural biological parent, a stepparent, adoptive parent, legal guardian, or other legal custodian of a child.

(12) "Primary care provider" means the infant's primary medical caregiver.

(13) "Referral" means to direct an infant to an audiologist or physician for appropriate diagnostic procedures to diagnose, and determine hearing status, and for appropriate early intervention.

(14) "Tracking" means the use of information about the infant's newborn hearing screening status to ensure the infant receives timely and appropriate services to complete the screening, diagnostic, and early intervention referral processes.

### **R398-2-3. Implementation.**

Each newborn in this state shall submit to the newborn hearing screening testing, except as providing in Subsection 26B-4-319[26-10-6](1)[, Testing of newborn infants].

### **R398-2-4. Responsibility for Screening.**

(1) Each institution shall designate a person to be responsible for the newborn hearing screening program in that institution.

(2) A state licensed audiologist [who is licensed by the state] shall oversee each newborn hearing screening program. This audiologist may be full or part time, on or off site, an employee of the institution, or under contract or other arrangement that allows them to oversee the newborn hearing screening program. The audiologist shall advise the institution about each aspect of the newborn hearing screening program, including screening, tracking, follow-up, and referral for diagnosis.

(3) The institution must provide inpatient newborn hearing screening services as required by this rule before discharge, unless the infant is transferred to another institution before screening is completed. For infants who need additional procedures to complete the screening process due to a missed test, inconclusive results, or a failure to pass, the institution shall provide outpatient screening.

(4) If the institution transfers the infant [is transferred] to another institution before screening is completed, the receiving

institution must provide inpatient hearing screening services as required by this rule before discharge. For infants who need additional procedures to complete the screening process due to a missed test, inconclusive results, or a failure to pass, the institution shall provide outpatient screening.

(5) If the infant is born outside of an institution, the birth attendant must perform or arrange for the infant's hearing screening before ten days of age as required by this rule. This shall include follow-up screening as required after a fail result.

(6) If there is no birth attendant, a parent must have the infant's hearing screened, according to Department protocols, before the infant is ten days of age. This shall include follow-up screening as required after a fail result.

(7) [Newborn hearing screening shall be performed by a] A person who is appropriately trained and supervised, according to protocols as established by the Department with input from the Newborn Hearing Screening Committee, as described in S[ub]section 26B-1-432[26-10-6(5)], shall perform the newborn hearing screening.

### **R398-2-5. Information to Parents and Primary Care Providers.**

(1) Institutions or birth attendants shall provide information about newborn hearing screening to the infant's parents and primary care providers [of infants]. This shall include:

(a) information, [which shall be] available to parents at the time of birth, [about] explaining the purpose of newborn hearing screening, the procedures used for screening, and outlining the benefits of newborn hearing screening;

(b) confirmation of whether each live birth was screened before discharge from the institution;

(c) disclosure of the results of the completed newborn hearing screening;

(d) recommendations for [what] follow-up screening procedures, if [any] necessary, [are recommended and where those procedures can be obtained] and information on where to obtain those procedures; and

(e) recommendations for cytomegalovirus (CMV) testing, as described in Section 26B-7-105[26-10-10], when appropriate.

(2)(a) For infants who require additional procedures to complete the screening process after being discharged from the birthing institution, the institution shall provide parents and the primary care providers with written notice about:

(i) the availability and importance of the additional screening procedures; and [along with]

(ii) when to return to the institution for outpatient rescreening.

(b) For infants who do not complete additional hearing screening procedures, the institution shall send a second written notice to the parents and the primary care provider.

(3) For infants who fail the complete newborn hearing screening procedure, the institution or the provider who completes the newborn hearing screening procedure shall provide the parents and the primary care provider with written notice about the results of the screening, recommended diagnostic procedures, and where to obtain those procedures [can be obtained].

(4)(a) For infants who need additional procedures to complete the screening due to a missed test, inconclusive results, or a failure to pass, and who do not return for the needed newborn hearing screening procedures before ten days of age, or for infants who are lost to follow-up, the institution or birth attendant shall make reasonable efforts to locate the parents and inform them of the need for testing.



(b) The Department considers a reasonable effort to be:~~To be considered a reasonable effort;~~

(i) the institution or birth attendant possesses ~~[must have]~~ documentation of at least two attempts to contact the infant's parents~~;~~ and

(ii) at least one attempt to contact the infant's primary care provider.

(c) If necessary, the institution or birth attendant must use information available from its own records, adoption agencies, and the infant's primary care provider. The institution or birth attendant may ~~[E]contact [with]the parent [may be made-]~~by mail, email, telephone, text, primary care provider, or public health worker.

(5) To facilitate additional procedures for those who fail to pass the newborn hearing screening, a medical director employed by the Department may issue a standing order for CMV and Auditory Brainstem Response (ABR) testing.

#### **R398-2-6. Reporting to Utah Department of Health and Human Services.**

(1)(a) Each institution or birth attendant shall submit information to the Department about the newborn hearing screening procedures [being-]used, the results of the screening, and other information necessary to ensure timely referral [where]when necessary. Th[is]e institution or birth attendant shall provide this information [shall be provided-]to the Department at least weekly. This information shall include:

([a]b) The institution or birth attendant shall provide, for each live birth, the identifying information for the infant, last name, date of birth, newborn screening kit number, birth mother's first and last name and[or] other information as determined by the Department, and the hearing screening status, including passed, failed, inconclusive, refused, missed, transferred, deceased[;].

([b]c) The institution or birth attendant shall provide, for infants who did not pass the newborn hearing screening or who were not screened, this additional information[-is required]:

- (i) primary contact's first and last name[;];
- (ii) address[;];
- (iii) telephone number[;];[and]
- (iv) primary care provider's first and last name[;]; and[or]
- (v) other information as determined by the Department[;].

([e]d) The institution or birth attendant shall provide any information the institution or provider has about the results of follow-up screening, diagnostic procedures, and cytomegalovirus lab results[;] including whether the infant has been lost to follow-up.

(2) Each institution shall submit, [information-]to the Department, a summary of the procedures used by the institution or screening program to do newborn hearing screening, including the name of the program director, overseeing audiologist, equipment, screening protocols, pass-fail criteria, and parent education materials and other information as determined by the Department. The institution shall provide [F]this information [shall be provided-]to the Department bi-annually and within 30 days of any changes to the existing procedures.

(3) Persons who conduct any procedure necessary to complete an infant's hearing screening or audiological diagnostic assessment, shall report the results of these procedures to the institution where the infant was born and to the Department within seven days.

(4) The Department shall have access to infants' medical, diagnostic, amplification, implantation, and early intervention records to obtain information necessary to ensure the provision of timely and appropriate follow-up diagnostic and intervention

services, including CMV testing results and follow-up, congenital CMV sequelae, treatments, and anything else deemed necessary to determine long-term outcomes.

(5) Providers who diagnose an infant or child as deaf or hard of hearing shall refer the families to early intervention and family to family support services. To facilitate timely intervention services, the provider shall:

(a) [S]send each necessary diagnostic result and recommendation to the early intervention program; and

(b) [A]advise families on the benefits of early intervention services for any permanent atypical hearing levels or chronic middle ear effusion.

#### **R398-2-7. Confidentiality of Reported Information.**

(1) The Department shall maintain t[F]he confidentiality of personal information obtained under this rule [shall be maintained]pursuant to Title 26B, Chapter [3]8, Part 4, Health Statistics. The reports are confidential and are not open to public inspection.

(2) Pursuant to [Title]Section 26B-1-229[-, Chapter 25, Confidential Information Release,] persons who report information covered by this rule may not be held liable for reporting the information to the Department[-of Health].

#### **R398-2-8. Penalty for Violation of Rule.**

Any person who violates any provision of this rule may be assessed a penalty as provided in Section 26B-1-224~~[26-23-6]~~.

**KEY: newborn hearing screening**

**Date of Last Change: 2023**~~[February 14, 2022]~~

**Notice of Continuation: June 15, 2023**

**Authorizing, and Implemented or Interpreted Law: [26-10-6]**~~26B-1-202; 26B-4-319~~

#### **NOTICE OF PROPOSED RULE**

**TYPE OF FILING:** Amendment

**Rule or Section Number:**

**R398-5**

**Filing ID:**  
**55685**

#### **Agency Information**

<b>1. Department:</b>	Health and Human Services
<b>Agency:</b>	Family Health and Preparedness, Children with Special Health Care Needs
<b>Room number:</b>	3030
<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 144610
<b>City, state and zip:</b>	Salt Lake City, UT 84114-4610

Contact persons:		
Name:	Phone:	Email:
Amy Nance	385-377-2801	aenance@utah.gov
Alexis Weight	801-273-2956	abweight@utah.gov
Please address questions regarding information on this notice to the persons listed above.		

### General Information

<b>2. Rule or section catchline:</b>
R398-5. Birth Defects and Critical Congenital Heart Disease Reporting
<b>3. Purpose of the new rule or reason for the change:</b>
The purpose of this filing is to update statute citations and titles associated with the recodifications related to the Department of Health and Human Services (DHHS) consolidation and the recodification of DHHS' statute in the 2023 General Session.
<b>4. Summary of the new rule or change:</b>
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 DHHS' statute.

### 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 there are only minor changes and technical updates.
<b>B) Local governments:</b>
There is no impact on local governments as there are only minor changes and technical updates.
<b>C) Small businesses</b> ("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.
<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 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>
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 S. 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-1-202	Section 26B-4-318	
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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>	10/16/2023
--	------------

<b>9. This rule change MAY become effective on:</b>	10/23/2023
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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>	08/19/2023
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**R398. Health and Human Services, Family Health**~~and Preparedness~~, Children with Special Health Care Needs.

**R398-5. Birth Defects and Critical Congenital Heart Disease Reporting.**

**R398-5-1. Authority and Purpose.**

(1) Authority for ~~[F]this rule is~~ ~~authorized by~~ found in ~~S[ubs]ection[s] 26-1-30(5) through (9), (18), 26-1-30(22), 26-10-1(2), 26-10-6(1)(d), and Section 26-10-2.~~ 26B-1-202 and the rule is enacted in accordance with Section 26B-4-319.

(2) The purpose of this rule is to establish~~es~~ reporting requirements for birth defects, critical congenital heart disease, and stillbirths in Utah~~s~~ and for related test results.

**R398-5-2. Definitions.**

As used in this rule:

(1) "Birth defect" means any medical disorder of organ structure, function, or biochemistry that is of possible genetic or prenatal origin. This includes any congenital anomaly, indication of hypoxia or genetic metabolic disorder listed in the ICD-10, International Classification of Diseases, 10th Revision, established by the World Health Organization, with any of the following diagnostic codes: A92.5, E03, E25, from E70 to E90, from D55 to D58, H90.0 to H90.8, H90.A, H91.0 to H91.9, J96.00 to J96.91, P09, P35.1, P35.4, P96.1 to P96.2 and from Q00 to Q99.

(2) "Birthing center" means a birthing center licensed under Title 26B, Chapter 2[+], Health Care Facility Licensing and Inspection~~[-Act]~~.

(3) "CCHD" means critical congenital heart disease.

(4) "Clinic" means physician-owned or operated clinic that regularly provide services for the diagnosis or treatment of birth defects, genetic counseling, or prenatal diagnostic services.

(5) "CCHD Screening" means a non-invasive test using pulse oximetry measuring how much oxygen is in the blood and can

help to identify newborns affected with CCHD. Screening should begin after 24 hours of age or shortly before discharge if the baby is less than 24 hours of age.

(6) "Department" means the Utah Department of Health and Human Services, Utah Birth Defect Network and CCHD programs.

(7) "Emerging Health Threats" means a new health threat that may affect the pregnancy.

(8) "Hospital" means general acute hospital, children's specialty hospital, rural hospital licensed under Title 26B, Chapter 2[+], Health Care Facility Licensing and Inspection~~[-Act]~~.

(9) "Institution" means a hospital, alternate birthing facility, or midwife service providing maternity or nursery services or both.

(10) "SpO2" stands for peripheral capillary oxygen saturation, an estimate of the amount of oxygen in the blood.

(11) "Stillbirth" means a pregnancy resulting in a fetal death at 20 weeks gestation or later.

## R398-5-3. Birth Defects Reporting.

Each hospital, clinic, institution, or birthing center that admits a patient and detects or screens for a birth defect as a result of any outcome of pregnancy, or admits a child under 24 months of age with a birth defect, or is presented with the event of a stillbirth shall report or cause to report to the department within 40 days of discharge the following:

~~[(1) If live born, child's name:]~~  
~~[(a)1] if live born, the child's last name;[-and]~~  
~~[(b)2] if live born, the child's first name[-:];~~  
~~[(2)3] the c[E]hild's date of birth[-:];~~  
~~[(3)4] the c[E]hild's medical record number[-:];~~  
~~[(4)5] the c[E]hild's gender[-:];~~  
~~[(5)6] the m[M]other's last name;~~  
~~[(a)7] the mother's [last]first name;~~  
~~[(b) first name; and]~~  
~~[(e)8] the mother's maiden name[-:];~~  
~~[(6)9] the m[M]other's date of birth[-:];~~  
~~[(7)10] the m[M]other's medical record number[-:];~~  
~~[(8)11] the [D]elivery institution[-:];~~  
~~[(9)12] the ICD - 10 birth defect codes[-:];~~  
~~[(10)13] the [M]other's state of residency at delivery[-:];~~  
~~and~~  
~~[(14)14] the [M]other's zip code of residency at delivery.~~

## R398-5-4. Birth Defects Reporting by Laboratories.

Each laboratory operating in the state that identifies a human chromosomal or genetic abnormality or other evidence of a birth defect shall report the following on a calendar quarterly basis to the department within 40 days of the end of the preceding calendar quarter:

~~[(1) If live born, child's name:]~~  
~~[(a)1] if live born, the child's last name;[-and]~~  
~~[(b)2] if live born, the child's first name[-:];~~  
~~[(2)3] the c[E]hild's date of birth[-:];~~  
~~[(3) Mother's name:]~~  
~~[(a)4] the mother's last name;[-and]~~  
~~[(b)5] the mother's first name[-:];~~  
~~[(4)6] the m[M]other's date of birth[-:];~~  
~~[(5)7] the d[D]ate the laboratory[sample is] accepted[-by]~~  
~~the [laboratory]sample[-:];~~  
~~[(6)8] the [F]test conducted[-:];~~  
~~[(7)9] the [F]test result[-:]; and~~



([8]10) the m[M]other's state of residency at delivery.

### R398-5-5. Critical Congenital Heart Disease (CCHD) Screening Reporting.

The institution shall report or cause to report the CCHD Screening results [shall report or cause to report] to the department within 40 days of discharge, this includes the following:

(1) ~~Newborn's name:~~

([a]1) the newborn's last name;[and]

([b]2) the newborn's first name[-];

([2]3) the n[N]ewborn's date of birth[-];

([3]4) the n[N]ewborn's gender[-];

([4]5) the n[N]ewborn's gestational age[-];

([5]6) the n[N]ewborn's birth weight[-];

([6]7) the n[N]ewborn's medical record number[-];

([7]8) the n[N]ewborn's newborn screening kit number[-];

([8]9) the n[N]ewborn's delivery institution[-];

([9]10) the n[N]ewborn's discharge unit, if applicable[-];

([10]11) the n[N]ewborn's CCHD Screening result for

each attempt, this includes:

(a) date;

(b) time;

(c) probe location;

(d) SpO2 result; and

(e) outcome of attempt[-];

([11]12) the n[N]ewborn's first echocardiogram, if indicated:

(a) date; and

(b) time[-];

[~~(12) Mother's name:~~

([a]13) the mother's last name;

([b]14) the mother's first name;[and]

([e]15) the mother's maiden name[-];

([13]16) the m[M]other's date of birth[-]; and

([14]17) the m[M]other's medical record number.

### R398-5-6. Record Abstraction.

Hospitals, birthing centers, institutions, and clinics as well as community health care providers shall allow personnel from the department or its contractors to abstract information from the mother's and child's files on their demographic characteristics, family history of birth defects, prenatal and postnatal procedures, or treatments including diagnostics related to the birth defect, emerging health threats, or stillbirth, and outcomes of this and other pregnancies of the mother. Hospitals, birthing centers, institutions, and clinics as well as community health care providers shall allow personnel from the department or its contractors to abstract information from the affected child's files, throughout their lifespan.

### R398-5-7. Liability.

Pursuant to [Title 26, Chapter 25, Confidential Information Release]Section 26B-1-229, persons who report information covered by this rule may not be held liable for reporting the information to the [D]department.

### R398-5-8. Penalties.

Pursuant to Section [26-23-6]26B-1-224, any person [that]who willfully violates [any provision of]this rule may be assessed an administrative civil money penalty not to exceed \$1,000 upon an administrative finding of a first violation and up to \$3,000 for a subsequent similar violation within two years. A person may also be subject to penalties imposed by a civil or criminal court.

**KEY:** birth defects, birth defect reporting, critical congenital heart disease (CCHD), CCHD screening

Date of Last Change: 2023[February 14, 2022]

Notice of Continuation: July 12, 2019

Authorizing, and Implemented or Interpreted Law: [26-1-30(2)(e), (d), (e), (g), (p), (t); 26-10-1(2); 26-10-2; 26-25-1]26B-1-202; 26B-4-318; 26B-1-229

#### NOTICE OF PROPOSED RULE

TYPE OF FILING: Repeal

Rule or Section Number:

R398-20

Filing ID:  
55680

#### Agency Information

<b>1. Department:</b>	Health and Human Services	
<b>Agency:</b>	Family Health and Preparedness, Children with Special Health Care Needs	
<b>Room number:</b>	3032	
<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 144610	
<b>City, state and zip:</b>	Salt Lake City, UT 84114-4610	
<b>Contact persons:</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Lisa Davenport	801-273-2961	lisadavenport@utah.gov
Alexis Weight	801-273-2956	abweight@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>
R398-20. Early Intervention
<b>3. Purpose of the new rule or reason for the change:</b>
Following the consolidation and recodification of the Department of Health and Human Services' (Department) statute, this rule is being repealed from Title R398, and is simultaneously being proposed under Title R402.
<b>4. Summary of the new rule or change:</b>
This filing repeals Rule R398-20, Early Intervention, which is simultaneously being proposed under Title R402 as Rule R402-1, Early Intervention, due to the consolidation and recodification of the Department's statute.

(EDITOR'S NOTE: The proposed new Rule R402-1 is under ID 55688 in this issue, September 15, 2023, of the Bulletin.)

## Fiscal Information

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

#### A) State budget:

There is no anticipated impact on the state budget as this repeal only moves Rule R398-20, Early Intervention, under Title R402 as Rule R402-1.

#### B) Local governments:

There is no anticipated impact on local governments as this repeal only moves Rule R398-20, Early Intervention, under Title R402 as Rule R402-1.

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

There is no anticipated impact on small businesses as this repeal only moves Rule R398-20, Early Intervention, under Title R402 as Rule R402-1.

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

There is no anticipated impact on non-small businesses as this repeal only moves Rule R398-20, Early Intervention, under Title R402 as Rule R402-1.

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

There is no impact on other persons or entities as this repeal only moves Rule R398-20, Early Intervention, under Title R402 as Rule R402-1.

#### 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 this repeal only moves Rule R398-20, Early Intervention, under Title R402 as Rule R402-1.

#### 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>

#### 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:

34 CFR 303.521	Section 26B-1-202	
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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.)

**A) Comments will be accepted until:** 10/16/2023

**9. This rule change MAY become effective on:** 10/23/2023

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>	08/19/2023
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**R398. Health and Human Services, Family Health and Preparedness, Children with Special Health Care Needs.****[R398-20. Early Intervention.****R398-20-1. Authority and Purpose.**

(1) This rule is authorized by 34 CFR 303.521 and Section 26-1-5.

(2) This rule implements a family fee for the Baby Watch Early Intervention program under Part C of the Individuals with Disabilities Education Act (IDEA). The family fee was mandated by the Utah State Legislature in the 2003 General Session, and modified in the 2013 General Session.

**R398-20-2. Definitions.**

(1) "Department" means the Utah Department of Health, Baby Watch Early Intervention Program.

(2) "Early Intervention (EI) Program" means a local EI Program with whom the Department contracts to provide Part C services.

**R398-20-3. Fees.**

(1) The parent or legal guardian of an eligible child shall pay a family fee if their child is enrolled in a Baby Watch EI Program and receives fee eligible services. The family fee is applicable for any month in which at least one billable service is:

(a) provided to the child; or  
(b) not cancelled by the family by 9 a.m. the morning of the scheduled service.

(2) The family shall be charged based on a sliding fee schedule established by the Department annually. The sliding fee schedule shall begin at 185% of the most recently published federal poverty guidelines.

(3) The maximum family fee on the sliding fee schedule shall be \$200 per month.

(4) The family fee shall not be charged if the child or the child's family receives benefits under any of the following programs:

(a) Medicaid;  
(b) Temporary Assistance to Needy Families;  
(c) Family Employment Plan—Cash Assistance;  
(d) Women Infants and Young Children;  
(e) Early Head Start based on income;  
(f) Child is a ward of the state;  
(g) Primary Care Network; or  
(h) Children's Health Insurance Program.

**R398-20-4. Income Reporting and Fee Determination.**

(1) Each child's parent or legal guardian shall annually report the family income using the electronic Baby Watch Billing and Payment System to determine their monthly family fee.

(2) The parent or legal guardian must upload their most recent federal income tax filing to the Billing and Payment System or provide to the Department to verify family income as reported by the child's parent or legal guardian. If the federal income tax filing is unavailable, the parent or legal guardian may submit the prior three months' check stubs to extrapolate annual income.

(3) Completion of the Baby Watch Billing and Payment System registration is voluntary. If a child's parent or legal guardian chooses not to complete the Billing and Payment System registration, the family will be required to pay a monthly late fee, established by Baby Watch and defined within the Baby Watch System of Payment and Fees Policy.

**R398-20-5. Hardship, Extenuating Circumstances.**

(1) An eligible child shall not be denied service because of a family's inability to pay. The provider may waive all or part of the fee if there are extenuating family circumstances that affect a family's ability to pay, such as long-term hospitalization of a family member, casualty loss, moving expense, or other unusual expenses.

(2) If a family is able to pay, but chooses not to pay, the EI Program may withhold fee eligible services.

**R398-20-6. Services Not Subject to Fees.**

(1) In accordance with federal IDEA regulation, EI Programs may not charge a family fee for the following IDEA activities and services:

(a) implementation of child find, such as child developmental screening, or public awareness activities;

(b) evaluation and assessment;

(c) service coordination;

(d) activities to assist a child and the family to receive the authorized services;

(e) activities related to the development, review and evaluation of the Individualized Family Service Plan;

(f) activities related to child and family rights, including the administrative complaint process and mediation; or

(g) specialized services related to sensory loss provided through the Utah Schools for the Deaf and the Blind Parent Infant Programs, or Deaf Blind services.

**KEY: early intervention, education, disabilities**

**Date of Last Change: February 14, 2022**

**Notice of Continuation: June 26, 2023**

**Authorizing, and Implemented or Interpreted Law: 26-10-2]**

**NOTICE OF PROPOSED RULE**

**TYPE OF FILING:** New

**Rule or Section Number:**

**R402-1**

**Filing ID:**  
**55688**

**Agency Information**

<b>1. Department:</b>	Health and Human Services
<b>Agency:</b>	Family Health, Early Childhood
<b>Room number:</b>	3032
<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 144610
<b>City, state and zip:</b>	Salt Lake City, UT 84114-4610

Contact persons:		
Name:	Phone:	Email:
Lisa Davenport	801-273-2961	lisadavenport@utah.gov
Alexis Weight	801-273-2956	abweight@utah.gov
Please address questions regarding information on this notice to the persons listed above.		

General Information

<b>2. Rule or section catchline:</b>
R402-1. Early Intervention
<b>3. Purpose of the new rule or reason for the change:</b>
Following a five-year review and the consolidation and recodification of the Department of Health and Human Services' (Department) statute, this rule is being proposed under Title R402, and is simultaneously being repealed from Title R398.
<b>4. Summary of the new rule or change:</b>
This new rule moves Rule R398-20, Early Intervention, which is simultaneously being proposed for repeal under Title R402 as Rule R402-1, Early Intervention.
Additionally, this filing amends language that existed in Rule R398-20 to reflect the recent recodification of the Department statute.
(EDITOR'S NOTE: The proposed repeal of Rule R398-20 is under ID 55680 in this issue, September 15, 2023, of the Bulletin.)

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 there are only minor changes and technical updates.
<b>B) Local governments:</b>
There is no impact on local governments as there are only minor changes and technical updates.
<b>C) Small businesses</b> ("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.
<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 there are only minor changes and technical updates.			
<b>E) Persons other than small businesses, non-small businesses, state, or local government entities</b> ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an <b>agency</b> ):			
There is no impact to other persons or entities as there are only minor changes and technical updates.			
<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 are no compliance costs to a single person or entity as there are only minor changes and technical updates.			
<b>G) Regulatory Impact Summary Table</b> (This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts will be included in narratives above.)			
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:**

34 CFR 303.521	Section 26B-1-202
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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>	10/16/2023
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<b>9. This rule change MAY become effective on:</b>	10/23/2023
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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>	08/19/2023
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**R402. Health and Human Services, Family Health, Early Childhood.****R402-1. Early Intervention.****R402-1-1. Authority and Purpose.**

(1) This rule is authorized by 34 CFR 303.521 and Section 26B-1-202.

(2) This rule implements a family fee for the Baby Watch Early Intervention program under Part C of the Individuals with Disabilities Education Act (IDEA). The Utah State Legislature mandates the family fee. The Legislature annually reauthorizes the family fee as part of the state agency fees authorization and appropriations legislation.

**R402-1-2. Definitions.**

(1) "Department" means the Utah Department of Health and Human Services, Baby Watch Early Intervention Program.

(2) "Early Intervention (EI) Program" means a local EI program with whom the department contracts to provide Part C services.

**R402-1-3. Fees.**

(1) If the parent or legal guardian of an eligible child enrolls their child in a Baby Watch EI Program and receives fee eligible services the parent or legal guardian shall pay a family fee.

The family fee applies for any month in which at least one billable service is:

(a) provided to the child; or  
(b) not canceled by the family by 9 a.m. the morning of the scheduled service.

(2) The EI program shall charge the family based on a sliding fee schedule established by the department annually. The sliding fee schedule shall begin at 185% of the most recently published federal poverty guidelines.

(3) The maximum family fee on the sliding fee schedule shall be \$200 per month.

(4) The EI program may not charge the family fee if the child or the child's family receives benefits under any of the following programs:

(a) Medicaid;  
(b) Temporary Assistance to Needy Families;  
(c) Family Employment Plan - Cash Assistance;  
(d) Women Infants and Young Children;  
(e) Early Head Start based on income;  
(f) Child is a ward of the state;  
(g) Primary Care Network; or  
(h) Children's Health Insurance Program.

**R402-1-4. Income Reporting and Fee Determination.**

(1)(a) Each child's parent or legal guardian shall annually report the family income using the electronic Baby Watch Billing and Payment System to determine their monthly family fee.

(b) The parent or legal guardian must upload their most recent federal income tax filing to the Billing and Payment System or provide their most recent federal income tax filing to the department to verify family income as reported by the child's parent or legal guardian. If the federal income tax filing is unavailable, the parent or legal guardian may submit the prior three months' check stubs to extrapolate annual income.

(2) Completion of the Baby Watch Billing and Payment System registration is voluntary. If a child's parent or legal guardian chooses not to complete the Billing and Payment System registration, Baby Watch, in accordance with the Baby Watch System of Payment and Fees Policy, shall assess the family a monthly fee.

**R402-1-5. Hardship, Extenuating Circumstances.**

(1) The EI program may not deny services to an eligible child because of a family's inability to pay. The provider may waive all or part of the fee if there are extenuating family circumstances that affect a family's ability to pay, such as long-term hospitalization of a family member, casualty loss, moving expense, or other unusual expenses.

(2) If a family can pay, but chooses not to pay, the EI program may withhold fee eligible services.

**R402-1-6. Services Not Subject to Fees.**

In accordance with federal IDEA regulation, EI programs may not charge a family fee for the following IDEA activities and services:

(1) implementation of child find, such as child developmental screening, or public awareness activities;

(2) evaluation and assessment;

(3) service coordination;

(4) activities to assist a child and the family to receive the authorized services;

(5) activities related to the development, review and evaluation of the Individualized Family Service Plan;



(6) activities related to child and family rights, including the administrative complaint process and mediation; or  
(7) specialized services related to sensory loss provided through the Utah Schools for the Deaf and the Blind Parent Infant Programs, or Deaf Blind services.

**KEY: early intervention, education, disabilities**

**Date of Last Change: 2023**

**Authorizing, and Implemented or Interpreted Law: 26B-1-202**

## NOTICE OF PROPOSED RULE

**TYPE OF FILING:** Amendment

<b>Rule or Section Number:</b>	<b>R414-515</b>	<b>Filing ID:</b> <b>55693</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
Please address questions regarding information on this notice to the persons listed above.		

## General Information

<b>2. Rule or section catchline:</b>
R414-515. Long Term Acute Care
<b>3. Purpose of the new rule or reason for the change:</b>
The purpose of this change is to update and clarify policy for long-term acute care.
<b>4. Summary of the new rule or change:</b>
This amendment updates and clarifies eligibility, access, coverage, prior authorization, and reimbursement for long-term acute care. It also makes other technical changes.

## 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 these changes and updates do not affect current appropriations.

#### 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 these changes and updates do not affect current appropriations.

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

There is no impact on non-small businesses as these changes and updates do not affect current appropriations.

#### 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 these changes and updates do not affect current appropriations.

#### 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 these changes and updates do not affect current appropriations.

#### 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>

**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 S. Gruber, has reviewed and approved this fiscal analysis.

Businesses will see neither costs nor revenue as this amendment only clarifies current electronic visit verification (EVV) requirements, and is covered under previous appropriations for EVV compliance.

**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	
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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>	10/16/2023
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**9. This rule change MAY become effective on:**

10/23/2023

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>	08/25/2023
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**R414. Health and Human Services, Health Care Financing, Coverage and Reimbursement Policy.**

**R414-515. Long-Term Acute Care.**

**R414-515-1. ~~Introduction~~ Purpose and Authority.**

(1) This rule defines the scope of inpatient long-term acute care LTAC hospital ~~LTAC~~ services ~~that are~~ available to Medicaid members ~~for the treatment of~~ to treat disorders other than mental disease.

(2) This rule is authorized by Subsection 1886(d)(1)(B)(iv)(4) of the Social Security Act and Sections 26B-1-~~213~~, 26B-~~148~~3-~~24~~102, 26B-~~148~~3-~~23~~104, and 26B-~~148~~3-~~3~~108.

**R414-515-2. Definitions.**

(1) "Admission" means the acceptance of a Medicaid member for LTAC ~~care~~ and treatment when the member meets established evidence-based criteria for severity of illness and intensity of service and the required service cannot be provided in a lesser level-of-care setting.

(2) "Comprehensive documentation" means applicable, relevant information including a history and physical, operative reports, daily physician progress notes, vital signs, laboratory test results, medications administration records, respiratory therapy notes, wound care notes, nutrition notes, physical therapy notes, occupational therapy notes, speech therapy notes, and ~~any~~ other pertinent information the Division of Integrated Healthcare needs to ~~make a decision regarding the~~ decide on an LTAC request.

(3) "Continued stay review" means a periodic, supplemental, or interim review of clinical information for an LTAC member.

(4) "Inpatient" means an individual whose severity of illness and intensity of service meet the evidence-based criteria for an LTAC hospital stay.

(5) "Intensity of ~~S~~service" means the measure of the number, technical complexity, or attendant risk of services provided.

(6) ~~"Long-term acute care hospital" or "Long-term care hospital"~~ LTAC hospital means an inpatient transitional care hospital designed to treat members with multiple, serious medical conditions requiring intense, acute care as determined by a physician.

(7) "Retroactive review" means a review of clinical information for a patient who had previously been admitted to an LTAC hospital, but never received ~~a~~ prior authorization for the initial or continued stay due to retroactive eligibility approval.

(8) "Severity of ~~H~~illness" means the extent of a member's organ system derangement or physiologic decompensation ~~for a patient~~.

**R414-515-3. Client Eligibility Requirements.**

~~A patient must be eligible for Medicaid services~~ LTAC hospital services are available to categorically and medically needy individuals.

**R414-515-4. Program Access Requirements.**

(1)(a) A member must meet the severity of illness and intensity of service for LTAC hospital level-of-care as determined through an evidence-based criteria review process.

((a)b) The Department shall deny an LTAC request for reimbursement if the member does not meet the evidence-based criteria.

~~[(b) The evidence-based criteria subsets must be utilized correctly (e.g., the primary diagnosis may not additionally be used as a secondary diagnosis).]~~

(2) The Department may forward LTAC preadmissions, continued stays, and retroactive stays that do not meet the evidence-based criteria ~~[subsets may be forwarded]~~ for secondary medical review if:

(a) the LTAC provider requests the secondary medical review; or

(b) review of documentation shows that LTAC is the most appropriate level-of-care for the member.

#### **R414-515-5. Service Coverage.**

(1) A member must receive prior authorization for preadmission, continued stay, and retroactive reviews.

~~[(1)2]~~ An LTAC provider must submit to the Department a request for coverage that includes current and comprehensive documentation, or the Department will return the request as incomplete.

~~[(2)3]~~ The Department shall consider LTAC coverage upon the date it receives the request ~~[and]~~ with current, comprehensive documentation.

~~[(3)4]~~ The Department shall review the documentation to determine preadmission, continued stay, or retroactive stay within three business days of the request.

~~[(4)5]~~ An LTAC provider may not transfer ~~[P]~~ prior authorization ~~[is not transferable from one LTAC]~~ to another LTAC provider.

~~[(5)]~~ Prior authorization is required for preadmission, continued stay, and retroactive reviews.]

(6) If a member transfers from an LTAC hospital to an acute care hospital for any reason, and is away from the LTAC hospital for ~~[greater]~~ more than 24 hours, the LTAC provider shall submit a new preadmission review before transferring the member back to the LTAC hospital.

(7) The Department authorizes ~~[E]~~ each approved prior authorization ~~[is]~~ for ~~[a]~~ up to ~~[seven]~~ 28 days ~~[period].~~

#### **R414-515-6. Preadmission Review.**

An LTAC provider shall submit prior authorization requests to the Department at least 24 hours before ~~[the expected]~~ admission. If a member does not admit within 48 hours of approval, the LTAC provider must submit a new prior authorization.

#### **R414-515-7. Continued Stay Review.**

An LTAC provider shall submit ~~to the Department~~ continued stay prior authorization requests ~~[to the Department]~~ two days before the end of the approved period. The continued stay prior authorization request must include all pertinent medical record comprehensive documentation supporting the evidence-based LTAC continued stay review.

#### **R414-515-8. Reimbursement Methodology.**

The Department authorizes ~~[R]~~ reimbursement for LTAC providers ~~[is]~~ in accordance with the ~~[Utah]~~ Medicaid State Plan.

**KEY: Medicaid, long-term acute care, LTAC**

**Date of Last Change: 2023** ~~[March 21, 2019]~~

**Notice of Continuation: November 30, 2022**

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

### **NOTICE OF PROPOSED RULE**

**TYPE OF FILING:** Amendment

**Rule or Section Number:** **R426-10**

**Filing ID:** **55678**

#### **Agency Information**

<b>1. Department:</b>	Health and Human Services	
<b>Agency:</b>	Family Health and Preparedness, Emergency Medical Services	
<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>Contact persons:</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Dean Penovich	801-913-2621	dpenovich@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 or section catchline:**

R426-10. Air Ambulance Licensure and Operations

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

The Department of Health and Human Services (Department) is amending this rule to move some responsibilities from accreditation providers to the licensed air ambulance providers. These rule amendments are being made at the request of the Air Ambulance Committee and affected stakeholders.

It is also providing updated citations following the consolidation and recodification of the Department's statute.

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

The filing clarifies the responsibilities for accreditation and licensed providers.

Additionally, this updates the language in this rule to improve clarity and consistency with the Rulewriting Manual for Utah standards.

It is also providing new codification references.

#### **Fiscal Information**

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



**A) State budget:**

No fiscal impact. The amendments will move some of the reporting requirements currently required by accreditation providers to licensed air ambulance providers.

The state budget is not impacted by provider reporting requirements.

Other amendments are for clarity and consistency in the rule language.

**B) Local governments:**

No fiscal impact to local governments. Local governments do not own or operate licensed air ambulance services. They do not have a role the licensing, accreditation, or associated reporting for the provision of services.

Other amendments are for clarity and consistency in the rule language.

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

No fiscal impact to small businesses. There are no small businesses that own or operate a licensed air ambulance. A small business does provide accreditation; however, the impact will result in less responsibility for certain types of reporting.

Other amendments are for clarity and consistency in the rule language.

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

Non-small businesses will not have any significant fiscal impacts. New responsibilities for reporting only include notification to the Department for rare incidents that might occur during operations.

Other wording amendments are only for clarity and consistency in the language.

**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**):

No fiscal impact to other persons, since there the amendments only change responsibilities for limited reporting of incidents to the Department. Costs to stakeholders for compliance will not increase or decrease.

Other amendments are for clarity and consistency in the rule language.

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

No fiscal impact for affected persons, since there the amendments only change responsibilities for limited reporting of incidents to the Department. Costs to patients, insurance, providers, or other related persons for compliance will not increase or decrease.

Other amendments are for clarity and consistency in the rule language.

**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 S. 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-4-102

## 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:** 10/16/2023

**9. This rule change MAY become effective on:** 10/23/2023

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>	08/19/2023
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**R426. Health and Human Services, ~~[Family Health and Preparedness]~~ Population Health, Emergency Medical Services.**  
**R426-10. Air Ambulance Licensure and Operations.**

**R426-10-1[00]. Authority and Purpose.**

(1) ~~[This rule is established for the licensing requirements and operations for air ambulance providers.]~~ Section 26B-4-102 authorizes this rule.

(2) This rule provides department requirements for air ambulance provider licensure and operations.

### **R426-10-2. Definitions.**

For the purposes of this rule:

(1) "Air Ambulance Provider" means an entity providing air ambulance services.

(2) "Base Location" means the physical address where the crew, medical equipment, supplies, and the air ambulance are located.

(3) "Deemed Status" means an air ambulance provider has received accreditation from a department approved accreditation service.

(4) "Department" means the Utah Department of Health and Human Services.

(5) "PSAP" means the public safety answering point for 911 calls.

**R426-10-3[200]. Air Ambulance ~~[Service]~~ Provider Application and Licensure.**

(1) ~~[No person, either as owner, agent or otherwise, shall furnish, operate, conduct, maintain, advertise or otherwise be engaged in the provision of emergency medical care using an air ambulance unless currently licensed by the State of Utah Department of Health.]~~ A person in any capacity, including as an owner or agent, may furnish, operate, conduct, maintain, advertise, or otherwise be engaged in providing emergency medical care using an air ambulance

unless currently licensed by the department. The state retains the right to conduct air ambulance ~~[service]~~ provider investigations per state law.

(2)(a) To obtain or renew an air ambulance license, the applicant shall comply with the following requirements of Subsection (2). ~~[The following shall be complied with to obtain a State of Utah air ambulance license:]~~

((a)b) A person from another state ~~may~~ ~~[shall]~~ not provide emergency medical services aboard an air ambulance within the state unless that person complies with the requirements under this rule ~~[chapter]~~. This requirement applies to any person that provides patient care within the ~~[S]~~ ~~state of Utah~~.

((b)c) ~~An [A] applicant[s] desiring to obtain [be licensed] or to renew a [its] license for an air ambulance service shall submit the applicable fees and application on the [D] department-approved forms [prior to being issued a license to operate].~~

((e)d) ~~An [A] applicant[s] shall submit a copy of air ambulance service licenses [s] concurrently issued and on file with other states.~~

((d)e) ~~An [A] applicant[s] shall provide information about individual aircraft that will be used while providing medical care licensed under this [Chapter] rule to the state for physical inspection of medical compliance.~~

((e)f) ~~An [A] applicant[s] shall provide results to the [D] department from the prior 10 years of any investigations, disciplinary actions, or exclusions with the potential to impact the quality of medical care provided to patients. Such investigations, disciplinary actions, or exclusions that the applicant shall report, [be reported] apply to:~~

(i) all current and prior legal names of the entity;

(ii) ~~[and all] other names used by the entity to provide health care services: [ (see R426-10-600, Change of Ownership/Management) ] and~~

(iii) any person or entity who had direct or indirect ownership of at least 50% interest in the air ambulance service within the prior 10-year period.

((f)g) ~~An [A] applicant[s] shall identify an air ambulance service medical director pursuant to requirements found in Section R426-5-2400.~~

(h) The medical director shall be responsible for medical direction and oversight regarding credentialing air medical providers, clinical practice, and all patient care issues.

(i) ~~An applicant shall report a [P] personnel change[s] in the medical director position to the department within 30 days. [shall be reported to the Department within 30 days.]~~

~~[(g) Applicants shall submit all required fees, when applicable.~~

~~(h) When the name or ownership of the air ambulance service changes, an air ambulance service license application shall be submitted to the Department at least 30 days prior to the effective date of the change.]~~

((i)i) Air ambulance ~~[services]~~ providers shall provide emergency information about the service to the ~~[D]~~ department. ~~T[his information shall be used by t]he [D] department shall use this information to provide effective communications and resource management, in the event of a statewide or localized disaster or emergency situation. [The information is included in the initial and renewal application for certification of air ambulance services.]~~

((j)3) Air ambulance permits and licenses are not transferable.

((k)4) ~~[Duplicate]~~ Applicants may obtain replacement air ambulance permits and licenses ~~[can be obtained]~~ by submitting a

written request to the [D]department. The request shall include a letter signed by the applicant~~[licensee]~~ certifying that the original permit and license has been lost, destroyed, or ~~[rendered]~~made unusable.

([H]5) Each licensed air ambulance provider shall obtain a new air ambulance inspection and subsequent permit ~~[or certification]~~ from the [D]department before~~[prior to]~~ returning an air ambulance to service following a modification, change or any renovation that results in a change to the stretcher placement or seating in the air ambulance interior configuration to ensure the aircraft meets patient care requirements.

([M]6) The licensed air ambulance ~~[service]~~provider shall file an amended list of aircraft that are used to provide service within the state to the [D]department within 30 days after an air ambulance is added or removed permanently from service.

([H]7) The licensure period for a [H] licensed air ambulance ~~[services]~~provider shall be for [4]~~four~~ years.

([E]8) Licensure authorizes the air ambulance provider only to provide emergency medical care using an air ambulance, and does not constitute authority to provide air transportation.~~—Such authority shall be obtained from the Federal Aviation Administration and United States Department of Transportation.~~

([P]9) This rule~~[e following regulations]~~ may~~[shall]~~ not relieve the licensed air ambulance provider from compliance with other statutes, rules, or regulations in effect for medical personnel and emergency medical services, involving licensing and authorizations, insurance, prescribed, and proscribed acts and penalties.

#### **R426-10-4[300]. Exceptions to Air Ambulance [Service]Provider Application and Licensure.**

~~[(1)]~~—This rule does not apply to the following:

~~[(a)]~~1. ~~[A]~~An air ambulance or air ambulance ~~[service]~~provider operated by an agency of the United States government~~[;]~~;

~~[(b)]~~2. ~~[S]~~Services that provide rescue and evacuation equipment and aircraft owned and operated by a governmental entity whose primary role is not to transport patients by air ambulance, and who is not receiving payment for such services~~[;]~~ and

~~[(c)]~~3. ~~[E]~~Evacuation and rescue equipment used and owned by the department of public safety in air, ground, or water evacuation.

#### **R426-10-5[400]. Air Ambulance [Service]Provider Deemed Status.**

(1) The [D]department may grant deemed status~~[for state license]~~ to an air ambulance provider~~[that has received accreditation from a Department recognized accreditation service]~~. An air ambulance provider who has deemed status may receive a license if they meet ~~[all of]~~the requirements for application and licensure.

(2) ~~[To be recognized by t]~~The [D]department recognizes an organization as an approved accreditation organization for the purposes of this section if the organization meets the following minimum standards of this subsection.~~[as an approved accreditation organization for the purposes of this section, the accrediting organization shall meet the following minimum standards:]~~

~~—(a) Publish standards that are equivalent to or exceed the standards in this chapter.~~

~~—(b) Publish standards which address every component of a medical transport service that could potentially impact the quality of care and patient safety with respect to communications centers, pilots, drivers, maintenance, patient care providers, and administrative support.~~

~~—(c)]~~ The organization shall:

~~—(a) [P]provide evidence of timely reviews of applications from providers seeking accreditation;[-]~~

~~—(b) publish standards which address the components of medical transport which impact quality of patient care and provider safety;~~

~~—(d)](c)~~ outline [P]procedures for random site visits, audits, and other strategies utilized to ensure an accredited provider or a provider seeking accreditation is adhering to the accreditation standards~~[;]~~;

~~—(e)](d)~~ [P]publish policies for the

~~—(f)]~~ initial accreditation requirements, this includes~~[;]~~;

~~—(g)](i)~~ the tenure of accreditation, not to exceed three ~~[(3)]~~ years;

~~—(h)](ii)~~ the requirements for reaccreditation; and

~~—(i)](iii)~~ the accreditation decision~~[;]~~-making process~~[;]~~;

~~—(j)](c)~~ ~~[Uses trained accreditation personnel with experience in medical transport at the level of accreditation and license for the level of accreditation being sought.]~~ use trained personnel, including site surveyors, with experience in medical transport at the level of accreditation and license;

~~—(k)]~~ (f) utilize a formal training program that educates accreditation personnel, including site surveyors, in consistent interpretation of standards and policies of the accreditation provider;

~~—(l)]~~ (g) publish the required qualifications for accreditation personnel who conduct site surveys, such qualifications shall demonstrate an extensive depth of experience with and knowledge of the air ambulance industry;

~~—(m)]~~ (g) A formal training program that educates accreditation auditors in consistent interpretation of standards and policies of the accreditation agency.

~~—(n)]~~ (h) Publish the required qualifications for accreditation personnel who conduct site surveys. Such qualifications must demonstrate an extensive depth of experience with and knowledge of the air ambulance industry.

~~—(o)]~~ (i) Policies and standards that recognize the special circumstances of medical transport services that serve rural areas.

~~—(p)](h)~~ [D]demonstrate that accreditation standards are updated on a regular basis to stay current with ~~[changes]~~national standards in healthcare and air medical transportation~~[;]~~;

~~—(q)]~~ (k) Provide definition of all sentinel events including near misses. The accrediting agency shall outline the processes for notifying the Department of such events and the process for investigating and instituting corrective measures for such events.

~~—(r)]~~ (l) Provide information about the Board of Directors. Members of the Board of Directors shall have experience in the air medical transport industry. The Board of Directors shall include broad representation by members of relevant national organizations that are engaged in the development, training, and oversight of critical care and air medical patient transportation.

~~—(s)]~~ (i) have a multi-disciplinary board of directors representing medical transport organizations and include broad representation by members of relevant national or international organizations that are engaged in the development, training, and oversight of critical care and air medical patient transportation;

~~—(t)](j)~~ [C]clearly outline ~~[the Conflict of Interest Policy]~~ and enforce a conflict of interest policy that excludes [B]board members or other accreditation agency representatives from participating in accreditation decisions, site surveys, or other processes when a real or potential conflict of interest exists~~[;]~~;

~~—(u)](k)~~ [P]publish fees for providers seeking accreditation~~[;]~~;

~~[(c) Provide documentation of the process that allows and encourages input, suggestions, and review by outside individuals and agencies related to its standards, policies, and procedures.]~~

~~[(l) utilize and provide documentation of an open process that encourages and accepts comments on changes to its accreditation standards;~~

~~[(p) Explain the procedure for a corrective action plan when an audit uncovers areas that are out of compliance.]~~

~~[(m) explain the procedure for a corrective action plan which assures that air ambulance providers will implement corrective actions for any identified deficiencies;~~

~~[(q)(n) [D] demonstrate a continuous quality improvement process that reviews the application process, site surveys, accreditation decisions, and accreditation standards[-]; [-The process must include measures to achieve improvement, fairness, and transparency.]~~

~~[(+)(o) [M] maintain [insurance] and be able to present current certificates of insurance to the department, this includes:~~

~~[(i) [(f) General liability;[-] and~~

~~[(ii) Medical Professional Liability; and[-] Directors and Officers and Travel) and be able to present their current certificates of insurance to the state licensing agency.]~~

~~[(s) Comply with all applicable Health Insurance Portability and Accountability Act (HIPAA) regulations, including any necessary requirements of a Business Associate entity.]~~

~~[(+)(p) [A] allow a [D] department representative to be present during site surveys, investigations, and any other on-site visit.[- performed in the Utah.~~

~~[(u) Provide simultaneous notification to the Department of an air ambulance provider's accreditation decisions, corrective action, any changes in accreditation status, and sentinel event reports; and~~

~~[(v) List the accrediting agency's involvement in research to improve the air medical transportation industry.~~

~~[(3) A current list of recognized accreditation organizations is available on the Department's website.]~~

#### **R426-10-6[500]. Air Ambulance [Service]Provider Compliance with State Licensure Requirements.**

~~[(1) Deemed status recognition is intended to streamline the licensure process for air ambulance services by preventing duplicative documentation.]~~

~~[(2)1] The [D] department [reserves the right to] may verify and inspect [all] equipment and documentation [at any time] to ensure [that the air ambulance service maintains full] compliance.[- with requirements related to the air ambulance service licensure.]~~

~~[(2) A licensed air ambulance provider seeking deemed status by accreditation shall allow a department representative to be present during a site visit conducted by an accreditation organization.~~

#### **R426-10-7[600]. Licensed Air Ambulance Provider Change of Ownership and Management.**

(1) When a currently licensed air ambulance provider anticipates a change of ownership, the current licensed air ambulance provider shall notify the [D] department within 30 (thirty) | calendar days before the [a] change of ownership. ~~[-A licensed air ambulance provider who is seeking a new license, shall submit an application for change of ownership along with the requisite fees and documentation within thirty (30) calendar days.]~~

(2) The conversion of a licensed air ambulance provider's legal structure, or the legal structure of an entity that has a direct or indirect ownership interest in the licensed air ambulance provider is

not a change of ownership unless the conversion also includes a transfer of at least 50%~~[-percent]~~ of the licensed air ambulance provider's direct or indirect ownership interest to one or more new owners. ~~[-Specific instances of what does or does not constitute a change of ownership are set forth below in section (4).]~~

(3)(a) The [D] department shall consider the following criteria in determining whether there is a change of ownership of a licensed air ambulance provider that requires a new license.[-]

~~[(a) Sole proprietors:]~~

~~[(i)b) For sole proprietors, the department considers the [The] transfer of at least 50% [percent] of the ownership interest in a licensed air ambulance provider from a sole proprietor to another individual, whether or not the transaction affects the title to real property, a change of ownership, [-shall be considered a change of ownership].~~

~~[(ii)c) A [C] change of ownership does not include forming a corporation from the sole proprietorship with the proprietor as the sole shareholder.~~

~~[(b)d) [Partnerships:]~~

~~[(i) ]For partnerships, the department considers the [D] dissolution of the partnership and conversion into any other legal structure [-shall be considered] a change of ownership if the conversion also includes a transfer of at least 50% [percent] of the direct or indirect ownership to one or more new owners.~~

~~[(ii)c) A [C] change of ownership does not include dissolution of the partnership to form a corporation with the same persons retaining the same shares of ownership in the new corporation.~~

~~[(e)f) [Corporations:]~~

~~[(i) ]For corporations, the department considers the [C] consolidation of two or more corporations resulting in the creation of a new corporate entity [-shall be considered] a change of ownership if the consolidation includes a transfer of at least 50% [percent] of the direct or indirect ownership to one or more new owners.~~

~~[(ii)g) The department considers the [F] formation of a corporation from a partnership, a sole proprietorship or a limited liability company [-shall be considered] a change of ownership if the change includes a transfer of at least 50% [percent] of the direct or indirect ownership to one or more new owners.~~

~~[(iii)h) The department considers a change of ownership if [T]he transfer, purchase, or sale of shares in the corporation such that at least 50% [percent] of the direct or indirect ownership of the corporation [is shifted] shifts to one or more new owners [-shall be considered a change of ownership].~~

~~[(d)i) [Limited liability companies:]~~

~~[(i) ]For limited liability companies, the department considers [T]he transfer of at least 50% [percent] of the direct or indirect ownership interest in the company a change of ownership [-shall be considered a change of ownership].~~

~~[(ii)j) The department considers a change of ownership the termination or dissolution of the limited liability company and the conversion thereof into any other entity [-shall be considered a change of ownership] if the conversion also includes a transfer of at least 50% [percent] of the direct or indirect ownership to one or more new owners.~~

~~[(iii)k) A [C] change of ownership does not include transfers of ownership interest between existing members if the transaction does not involve the acquisition of ownership interest by a new member. For the purposes of this subsection, "member" means a person or entity with an ownership interest in the limited liability company.~~

(4) ~~[Management contracts, leases or other operational arrangements:~~

~~(a) ]For management contracts, leases, or other operational arrangements, if [H] the owner of an air ambulance [service] provider enters into a lease arrangement or management agreement whereby the owner retains no authority or responsibility for the operation and management of the licensed air ambulance provider, the department considers that action [shall be considered] a change of ownership that requires a new license.~~

(5)(a) Each applicant shall provide the information identified in Subsection (5) for a change of ownership.~~[shall provide the following information:]~~

([a]b) The legal name of the entity and all other names used by it to provide health care services. The applicant has a continuing duty to notify the [D]department of all name changes at least ~~[thirty]~~ (30) calendar days ~~before [prior to]~~ the effective date of the change.

([b]c) Contact information for the entity including mailing address, telephone and facsimile numbers, ~~e[-]~~mail address, and website address, as applicable.

([e]d) The identity of all persons and business entities with a controlling interest in the licensed air ambulance provider, including administrators, directors, managers, and management contractors, this includes[-].

(i) ~~[A]for a non-profit corporation, a [shall-]list of the governing body and officers[-];~~

(ii) ~~[A]for a for-profit corporation, a [shall-]list of the names of the officers and stockholders who directly or indirectly own or control [five]5% [percent-] or more of the shares of the corporation[-]; and~~

(iii) ~~[A]for a sole proprietor, [shall include] proof of lawful presence in the United States in compliance with Subsection 41-1a-202(1)(b)[24-76.5-103(4), C.R.S].~~

([d]e) The name, address, and business telephone number of every person identified in ~~this section [R426-10-600]~~ as ownership or management and the individual designated by the applicant as the chief executive officer of the entity. If the addresses and telephone numbers provided ~~[above]~~ are the same as the contact information for the entity itself, the applicant shall also provide an alternate address and telephone number for at least one individual for use in the event of an emergency or closure of the licensed air ambulance provider.

([e]f) Proof of professional liability insurance obtained and held in the name of the ~~[license-]applicant. The applicant [Such coverage-]shall [be-]maintain[ed] this coverage during [for the duration of] the license term and the [D]department shall be notified of any change in the amount, type, or provider of professional liability insurance coverage during the license term.~~

([f]g) The applicant shall retain [A]articles of incorporation, articles of organization, partnership agreement, or other organizing documents required by the secretary of state to conduct business in Utah.~~[-]~~

(h) ~~[and b]~~By-laws or equivalent documents that govern the rights, duties, and capital contributions of the business entity.

([g]i) The address of the entity's physical location and the name~~(s)~~ of the owner~~(s)~~ of each structure on the campus where licensed services are provided if different from those identified~~[in elsewhere in this section].~~

([h]j) A copy of any management agreement pertaining to operation of the entity that sets forth the financial and administrative responsibilities of each party.

([i]k) If an applicant leases one or more building~~(s)~~ to operate as a licensed air ambulance [service]provider, a copy of the lease shall be filed with the license application and show clearly in

its context which party ~~[to]~~in the agreement is to be held responsible for the physical condition of the property.

([j]l) A statement signed and dated contemporaneously with the application stating whether, within the previous ten ~~[(10)]~~ years, any of the new owners have been the subject of, or a party to, one of more of the following events, regardless of whether action has been stayed in a judicial appeal or otherwise settled between the parties. These events include:

(i) ~~[B]having been convicted of a felony or misdemeanor involving crimes as described in Section R426-5-32[1]00[under the laws of any state of the United States-];~~

(ii) ~~[Had]having a state license or federal certification denied, revoked, or suspended by another jurisdiction[-];~~

(iii) ~~[Had]having a civil judgment or a criminal conviction in a case brought by federal, state, or local authorities that resulted from the operation, management, or ownership of a health facility or other entity related to substandard patient care or health care fraud[-]; and~~

(iv) ~~[Certifies whether it is presently or has]having ever been, or presently is, debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in a [E]contract by any governmental department or agency, whether international, national, state, or local, and certifies it is in compliance with [Utah Code Ann.]Section 63G-6a-904[et seq.] and OMB guidelines at 2 C.F.R. 180 which implement Executive Order Nos. 12549 and 12689. Notification to the [D]department within [thirty] (30) days must occur if debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in any contract by any governmental entity during the tenure of the license.~~

([k]m) Any statement regarding the information requested in this section of rule, if applicable, shall include~~[the following, if applicable:]~~

(i) [H]if the event is an action by federal, state, or local authorities,~~[-]~~ the full name of the authority, its jurisdiction, the case name, and the docket, proceeding or case number by which the event is designated, and a copy of the consent decree, order or decision~~[-];~~

(ii) [H]if the event is a felony or misdemeanor conviction involving moral turpitude, the court, its jurisdiction, the case name, the case number, a description of the matter or a copy of the indictment or charges, and any plea or verdict entered by the court~~[-]; and~~

(iii) [H]if the event involves a civil action or arbitration proceeding, the court or arbiter, the jurisdiction, the case name, the case number, a description of the matter or a copy of the complaint, and a copy of the verdict, the court or arbitration decision.

(6) The existing [licensee]applicant shall be responsible for correcting all rule violations and deficiencies in any current plan of correction before the change of ownership becomes effective. ~~[If the event that]If the applicant cannot accomplish such corrections[ cannot be accomplished]~~ in the time frame specified, the prospective [licensee]applicant shall be responsible for all uncorrected rule violations and deficiencies including any current plan of correction submitted by the previous licensee unless the prospective licensee submits a revised plan of correction, approved by the [D]department, before the change of ownership becomes effective.

(7) If the [D]department issues a license to the new owner, the previous owner shall return its license to the [D]department within five~~[-(5)]~~ calendar days of the new owner's receipt of its license.

**R426-10-8[700]. Air Ambulance [Service]Provider Insurance Requirements.**

(1) ~~[Applicants for licensure]~~An applicant shall demonstrate liability coverage for injuries to persons and for loss or property damages resulting from negligence by the service or medical crew. A licensed air ambulance provider~~[-holder]~~ shall immediately notify the ~~[D]~~department and cease operations if the coverage required by this section is cancelled or suspended.

(2) The ~~[D]~~department ~~may~~shall not issue an air ambulance license to an applicant~~[air ambulance provider]~~ unless the applicant~~[-for a license or the licensee]~~ has evidence of medical professional liability insurance that requires the insurer to compensate for injuries to persons or unintentional damage to property.

~~([a])~~(3) An applicant[s] shall provide a copy of the current certificate[s] of insurance demonstrating coverage for each air ambulance medical crew member that ~~[demonstrates]~~state, at a minimum, aggregate limits of \$1,000,000 per claim made and a total of \$3,000,000 for all claims made against the provider during the policy year.

~~([3])~~(4) An applicant shall provide proof of ~~[W]~~worker's compensation coverage ~~[is]~~as required by law~~[as defined by the State of Utah regulating bodies]~~.

**R426-10-9[800]. Base Locations.**

(1) ~~[A base location is the physical address where the crew, medical equipment and supplies, and the air ambulance are located.]~~The licensed air ambulance provider shall provide the location of the base location.~~[-This will be designated by where the licensee operates and maintains or makes readily available records of operations.]~~

(2) The ~~[D]~~department may conduct announced and unannounced inspections at any location[s] where a licensed air ambulance provider operates. An inspection may occur at any time, including nights or weekends to determine compliance with this rule~~[these rules and regulations].~~

(3) Each base location shall have and maintain~~[have readily available at all times the following]~~:

(a) security measures that protect medical supplies, including pharmaceuticals, and equipment onboard the air ambulance from tampering and unauthorized access, this includes:

(i) direct visual monitoring or closed circuit television;  
(ii) the air ambulance must be in a secured location with locked perimeter fencing or hangar;

~~[-(i) Security measures in place that protects medical supplies and equipment onboard the air ambulance from tampering and unauthorized access, including pharmaceuticals. This would include direct visual monitoring or closed circuit television or the air ambulance must be in a secured location with locked perimeter fencing or hangar.]~~

(iii) [S]the state license or certificate of operation prominently displayed within the building;[-]

~~([iii])~~(iv) ~~[E]~~evidence of medical professional liability insurance;[-]

([i])(v) prominently displayed Drug Enforcement Agency Registration~~[-shall be prominently displayed]~~ within those buildings that store controlled substances;[-]

(vi) Current Post-Accident Incident Plan;[-] and

(vii) [D]documentation showing the professional certifications and licenses of all flight crew members.

(4) The facility shall be clean and free of debris at all times and shall be compliant with all state and local building and fire codes.

**R426-10-10[900]. Number and Type of Air Ambulances.**

~~([4])~~Air ambulance providers shall provide a list of all air ambulances to be licensed and inspected for medical compliance by the ~~[D]~~department, including tail number, the ~~[N-Number,]~~ and designation of ~~[C]rotor or fixed wing~~[-] capabilities.

**R426-10-11[000]. Capabilities of Medical Communications.**

(1) A licensed air ambulance provider shall have a communications network available consisting of reliable equipment designed to afford clear communications related to the number and condition of patients among all stakeholders within the system.

(2) The communication center shall demonstrate and maintain voice communications linkage with the radios and other allowable communication devices used in the air ambulance for the declared service area.

(3) Licensed air ambulance providers shall have two-way communications equipment available that allows for or has the following:

(a) ~~[R]~~real-time patient tracking that shall be maintained and documented every 15 minutes including the time the air ambulance returns to service following transport;[-]

(b) ~~[A]~~appropriate wireless communications capabilities with dispatch centers, local first responders, to include fire, EMS, and law enforcement;[-]

(c) ~~[E]~~communications with medical referral and receiving facilities to exchange patient information and consult with medical control that shall be capable of communications exclusive of the air traffic control system;[-] and

(d) ~~[A]~~a dedicated telephone number for the air ambulance service dispatch center.

(4) The licensed air ambulance provider base station shall use~~[or]~~ a communications network ~~[shall be manned]~~ during all phases of patient treatment and transport.

~~(5) [An emergency plan for communications during power outages and in disaster situations shall be established.]~~The licensed air ambulance provider shall establish an emergency plan for communications during power outages and in disaster situations.

(6) The licensed air ambulance provider shall establish ~~[A]~~a policy for delineating methods for maintaining medical communications during power outages and in disaster situations.

**R426-10-12[400]. Coordination of Medical Communications.**

(1) ~~[A]~~A licensed air ambulance provider[s] shall have flights coordinated by designated medical dispatchers or communications specialists.

~~([3])~~(2) Communication specialists are required for processing requests, initiating responses, telecommunications, and assessing the capability for utilizing emergency medical dispatch protocols approved by the ~~[D]~~department.

~~([4])~~(3) Air ambulance communications specialists shall have training commensurate with the scope of responsibility given them by the particular licensed air ambulance provider.

~~([5])~~(4) ~~[The following requirements shall apply to all a]~~Air ambulance communications centers shall:

(a) ~~[E]~~establish and maintain policies and procedures based on state or nationally accepted emergency medical dispatch standards and state or nationally accepted EMS clinical guidelines to aid in directing the daily operation of the air ambulance communications center;[-]

(b) ~~[C]~~coordinate air ambulance deployment activities and communications with primary 911 PSAP call centers and appropriate medical facilities;[-] and

(c) ~~[R]~~require its communications specialists to satisfy performance standards that are based on state or nationally accepted emergency medical dispatch standards and state or nationally accepted EMS clinical guidelines.

~~[(6)5]~~ At a minimum, the air ambulance communications center's performance standards shall measure a communication specialist's ability to:

(a) ~~[D]~~deploy the appropriate medical resources within the prescribed timeframe established by the communications center's standard operating procedures; ~~[-]~~

(b) ~~[P]~~provide pertinent information to the appropriate 911 PSAP call center and receive updated information about the incident from the responding units or medical facilities; ~~[-]~~ and

(c) ~~[E]~~establish a quality assurance review process that is executed with consistency and objectivity in accordance with internal standards developed by the licensed air ambulance provider.

#### **R426-10-13[200]. Communications Specialists Personnel Qualifications.**

~~[(1)]~~Communication specialists shall have appropriate training pertaining to EMS and medical transportation communications related to the provision of health care and receive certification within one~~[(4)]~~ year.

#### **R426-10-14[300]. Pre-arrival and Hand-Off Communications to Hospitals or Emergency Patient Receiving Facilities.**

(1) ~~[A]~~[H] licensed air ambulance provider[s] shall have a plan in place to ~~[transmit]~~send significant clinical data to hospital or emergency patient receiving facility medical personnel ~~[prior to]~~before arrival.

(2) A ~~[L]~~ licensed air ambulance provider[s] shall start the process for transferring responsibility of patient care during patient transport to reduce the communication load on patient arrival to the facility as early as possible. Transfer of care documentation shall be part of the EMS record.

(3) Information ~~[transmitted]~~sent to the hospital or the emergency patient receiving facility ~~[prior to]~~before arrival shall include:

- (a) patient information;
- (b) chief complaint;
- (c) brief patient history;
- (d) condition of patient;
- (e) treatment provided; and
- (f) estimated time of arrival.

(4) Information at the time of patient hand-off shall include a copy of the patient care report to the hospital or emergency patient receiving facility within 24 hours after the end of the patient transport. The licensed air ambulance provider should provide~~[H]~~ a completed patient care report. If the licensed air ambulance provider cannot provide a completed patient care report,~~[be left] an [at the facility at the end of the patient transfer to the hospital or emergency patient receiving facility, an]~~ abbreviated patient encounter form containing information essential to continued patient care shall be provided.

(5) Abbreviated Patient Encounter form shall include:

- (a) patient information;
- (b) chief complaint;
- (c) brief patient history;
- (d) allergies, ~~[(c)]~~[if known];
- (e) time and date of onset of symptoms;
- (f) pertinent physical findings;
- (g) patient medications, ~~[(c)]~~[if known];

(h) vital signs;

(i) air medical treatment, including medications administered, IV fluids, procedures performed, and oxygen delivery; and

(j) transfer of care, this includes the name of the air medical crew member legibly included in the documentation~~[-(name of air medical crew member to the receiving healthcare professional legibly included in documentation)]~~.

#### **R426-10-15[400]. Data Collection, Submission, and Call Volume.**

(1) A~~[H]~~ licensed air ambulance provider[s] shall have a system in place to collect, submit, monitor, and track all flight requests. The~~[is]~~ provider shall submit this information ~~[shall be submitted]~~ to the ~~[D]~~department.

(2) A~~[H]~~ licensed air ambulance provider[s] shall:

(a) ~~[R]~~report the specified state minimum data set, as required by the ~~[D]~~department for every request that results in the dispatch of an air ambulance, whether emergency prehospital, inter-hospital transport, aborted flight, cancellation of requested service, death on scene~~[-(non-transport)]~~, or refusal of care as requested by the ~~[D]~~department~~[-]~~; and

(b) ~~[P]~~provide a yearly call volume report or EMS agency status report documenting the number of flights made within that calendar year. This report shall contain the following totals:

(i) ~~[the number of]~~ flights organized by emergency prehospital~~[-]~~;

(ii) inter-hospital transports~~[-]~~;

(iii) aborted flights~~[-]~~;

(iv) cancellation of requested services~~[-]~~;

(v) death on scene~~[-]~~;

(vi) non-transport~~[-]~~; and

(vii) ~~[or]~~ the refusal of care to assist efforts related to evaluating patient care and the improvement of the EMS system.

#### **R426-10-16[500]. Temporary Air Ambulance Use.**

(1) A licensed air ambulance provider shall notify the ~~[D]~~department when it temporarily removes a permitted air ambulance from service, or replaces it with a substitute air ambulance.

(2) Upon receipt of notification, the ~~[D]~~department may issue a temporary permit for the operation of said air ambulance, as required by the ~~[D]~~department.

#### **R426-10-17[600]. Medical Operations Policies and Procedures.**

(1) A detailed manual of policies and procedures shall be available for reference in the flight coordination office and available for inspection by the ~~[D]~~department to assist with EMS system planning and resource coordination efforts.

(2) Personnel shall be familiar and comply with policies contained within the manual, which shall include~~[-all of the following]~~:

(a) procedures for acceptance of requests, referrals, and~~[-or]~~ denial of service for medically related reasons;

(b) a written description of the geographical boundaries and features for the service area, and a copy of the service area map;

(c) scheduled hours of operation;

(d) criteria for the medical conditions and indications or medical contraindications for flight;

(e) medical communication procedures, including~~[-but not limited to]~~:

(i) medically-related dispatch protocol~~[-]~~;

(ii) call verification~~[-]~~; and



~~\_\_\_\_\_~~ (iii) ~~and~~ advisories to the requesting party, to include procedures for informing requesting party of flight procedures, anticipated time of aircraft patient arrival, or cancellation of flight;

(f) criteria regarding acceptable destinations based upon medical needs of the patient;

(g) non-aviation safety procedures for medical crew assignments and notification, including rosters of medical personnel;

(h) written policy that ensures that air medical personnel ~~may~~shall not be assigned or assume cockpit duties concurrent with patient care duties and responsibilities;

(i) written policy that directs air ambulance personnel to honor a patient request for a specific service or destination when the circumstances will not jeopardize patient safety;

(j) medical communications procedures;

(k) flight cancellation and referral procedures;

(l) mutual aid procedures;

(m) a written plan that addresses the actions to be taken in the event of an emergency, diversion, or patient crisis during transport operations;

(n) patient tracking procedures that shall assure air ~~air~~and ground position reports at intervals not to exceed ~~fifteen~~15 minutes ~~inflight~~in flight and ~~forty-five~~45 minutes while landed on the ground;

(o) policy for delineating methods of maintaining medical communications during power outages and in disaster situations; and

(p) written procedures governing the licensed air ambulance provider's medical complaint resolution process and protocols.

(3)(a) At a minimum, the licensed air ambulance provider shall designate personnel responsible for its dispute resolution process and provide the protocols it shall follow when investigation, tracking, documenting, reviewing, and resolving the complaint.

(b) The licensed air ambulance provider's complaint resolution procedures shall emphasize resolution of complaints and problems within a specified period~~of time~~.

#### **R426-10-18~~700~~. Medical Transport Plans.**

~~(1)~~(1) To ensure proper patient care and the effective coordination of statewide emergency medical and trauma services, ~~a~~a licensed air ambulance provider~~s~~s shall have an integrated medical transport plan for each air ambulance permitted by the ~~D~~D department that describes~~the following~~:

~~(a)~~(1) base location;

~~(b)~~(2) hours of operation;

~~(c)~~(3) emergency ~~dispatch~~dispatch and non-emergency ~~business~~contact information;

~~(d)~~(4) description of primary and secondary service areas;

~~(e)~~(5) medical criteria for utilization;

~~(f)~~(6) description of medical capabilities, ~~including~~including availability of specialized medical transport equipment~~in~~;

~~(g)~~(7) communications capabilities including ~~but not limited to~~ radio frequencies and talk groups;

~~(h)~~(8) procedures for communicating with the air medical crew; and

~~(i)~~(9) mutual aid or backup procedures when the service is not available.

#### **R426-10-19~~800~~. Coordination with Regional and State Disaster Preparedness Plans.**

~~(1)~~(1) To ensure coordinated response to local, regional, or statewide disaster, ~~a~~a licensed air ambulance provider~~s~~s shall participate in regional and state disaster preparedness advisory

groups, including preparedness planning meetings and scheduled exercises.

#### **R426-10-~~19~~20. Medically Related Dispatch Protocols.**

~~(1)~~(1) When air ambulance transport is indicated, requests shall be coordinated through the local ~~Public Safety Answering Point~~(PSAP) or 911 call center as part of an integrated response, when~~ever~~ possible in order for the PSAP to be able to coordinate communications among all entities involved in the response.

#### **R426-10-21~~000~~. Ethical Practices and Conduct.**

(1) ~~A~~A licensed air ambulance providers shall have and follow a written code of conduct that demonstrates ethical practices including business, clinical operations, marketing, and professional conduct.

(2) Licensed air ambulance providers are subject to disciplinary action~~or~~ and may be denied licensure for unethical practices or conduct which includes~~but shall not be limited to the following~~:

(a) misrepresentation of the availability or level of medical or patient related services offered or provided; and

(b) failing to take appropriate action in safeguarding the patient from incompetent or inappropriate health care practices of emergency medical services personnel.

#### **R426-10-22~~100~~. Continuous Quality Improvement~~(QI)~~ Program.**

(1) ~~A~~A licensed air ambulance provider~~s~~s shall establish a quality management team and a program. The program ~~implemented by this team to~~ shall assess and improve the quality and appropriateness of patient care provided by the licensed air ambulance ~~services~~provider.

(2) The program under Subsection (1) shall include:

(a) a development of protocols, standing orders, training, policies and procedures;

(b) approval of medications and techniques ~~permitted~~for field use by service personnel~~in accordance with regulations of the Department~~;

(c) direct observation, field instruction, in-service training, or other means available to assess the quality of field performance; and

(d) ~~P~~P participation in local and regional performance improvement activities.

(3) ~~A~~A licensed air ambulance provider~~s~~s shall have a written policy that outlines a process to identify, document, and analyze sentinel events, adverse medical events, or potentially adverse events with specific goals to improve patient medical safety and~~or~~ the quality of patient care.

(4) Policies and procedures shall include~~the following~~:

(a) a review of events ~~should address~~for the effectiveness and efficiency of the organization, its support systems, ~~as well as that of~~and individuals within the organization;

(b) ~~when a sentinel event is identified,~~ a method of information gathering ~~shall be~~developed for when a sentinel event is identified, and ~~shall~~include outcome studies, chart review, case discussion, or other methodology;

(c) a utilization review process;

~~(e)~~(d) findings, conclusions, recommendations, ~~and~~ actions, and follow-up ~~shall be~~made and recorded~~including follow up which also shall be determined, recorded, and performed~~; and

([d]e) training and education needs, individual performance evaluations, equipment or resource acquisition, patient medical safety, and risk management issues. ~~shall be integrated with the continuous quality improvement process.~~

(5) A licensed air ambulance provider shall notify the department within 72 hours of the identification of any sentinel event, a change in accreditation status, an incident, an accident, or an outside investigation for patient care, patient safety, or provider safety.

~~[(5) All licensed air ambulance providers shall have a written policy outlining a utilization review process.]~~

#### **R426-10-23[200]. Staffing and Medical Personnel Requirements.**

([4]-) At a minimum a licensed air ambulance provider shall have the following medical personnel:

([a]1) ~~[(M)]~~medically qualified Utah licensed, or certified, individuals appropriate to the scope and mission of the licensed air ambulance provider, or EMS personnel recognized under an interstate compact of which Utah is a member. ~~these [A] acceptable medical personnel include: [but are not limited to]~~

- ~~(a) physicians (MD/DO);~~
- ~~(b) paramedics;~~
- ~~(c) registered nurses (RN);~~
- ~~(d) registered nurse practitioners [(RN-P)];~~
- ~~(e) advanced practice nurses;~~
- ~~(f) physician assistants (PA);~~
- ~~(g) respiratory therapists (RRT);~~ or
- ~~(h) other allied health professionals;~~

([b]2) ~~[(O)]~~one medical attendant who is a licensed PA, RN, or MD/DO. ~~[T]his attendant shall be the primary medical attendant. [The] and~~

~~(3) a second medical attendant [shall be] who is a paramedic, PA, [R]respiratory [T]therapist, RN, or MD/DO.~~

#### **R426-10-24[300]. Air Ambulance Staffing and Personnel Qualifications.**

~~[(1) Each patient transport by a licensed air ambulance provider requires a minimum of two (2) medically qualified staff who are licensed or certified according to Utah or providers recognized under an interstate compact, REPLICA, who provide direct patient care, plus a vehicle operator.]~~

([2]1) The licensed air ambulance provider may modify composition of the medical team ~~[may be amended]~~ for specialty missions upon approval and credentialing by the licensed air ambulance provider's medical director. ~~]~~

([a]2) The licensed nurse shall have appropriate specialty certification within two ~~[(2)]~~ years of hire and must have pre-hire experience in the medications and interventions necessary for the service's scope of care. The licensed nurse also shall have three ~~[(3)]~~ years critical care experience, which is no less than 4,000 hours experience in an ICU or emergency department.

([b]3) The paramedic shall have a FP-C or CCP-C within ~~[(2)]~~ two years of hire in addition to at least ~~[(3)]~~ three years, a [c]minimum of 4,000 hours, [3] of advanced life support experience.

([c]4) The RRT shall have a minimum of 4,000 hours of emergency department or ICU experience and appropriate specialty certification within two ~~[(2)]~~ years of hire.

([3]5) Medical personnel shall have cognitive, affective, and psychomotor abilities sufficient to meet the clinical needs for the type of patient missions served.

([4]6) A licensed air ambulance provider shall have a plan to assess and document the competency and proficiency of the personnel who provide medical services.

#### **R426-10-25[400]. Air Ambulance Personnel Training Requirements.**

(1) A ~~[(H)]~~ licensed air ambulance provider ~~[s]~~ shall have a documented, structured educational program required for all air ambulance personnel, including the medical director.

(2) The educational program under Subsection (1) shall at a minimum contain program orientation; initial and recurrent training ~~[which] that~~ adheres to the services scope of care, patient population, mission statement and medical direction.

(3) Each medical crew member shall complete and document training in mission specific procedures related to patient care as established by the licensed air ambulance provider's medical director and such federal, state, or local agencies with authority to regulate licensed air ambulance providers. For license renewal the department may require [D] documentation showing completion of all initial and recurrent training ~~[may be required by the Department for license renewal].~~

(4) Clinical experiences shall include ~~[but are not limited to the following]:~~

(a) experiences specific to the mission statement and scope of care of the medical transport service;

(b) measurable objectives developed and documented ~~[for each experience listed below]~~ reflecting hands-on experience versus observation only;

(c) care of patients in the air medical environment including the impact of altitude and other stressors;

(d) advanced airway management;

(e) applicable medical device specific training, this includes: [(Automatic Implantable Cardioverter Defibrillator (AICD), Extracorporeal Membrane Oxygenation (ECMO), Intra-Aortic Balloon Pump (IABP), Left Ventricular Assist Device (LVAD), medication pumps, ventilators, etc.);]

(i) Automatic Implantable Cardioverter Defibrillator;

(ii) Extracorporeal Membrane Oxygenation;

(iii) Intra-Aortic Balloon Pump;

(iv) Left Ventricular Assist Device;

(v) medication pumps; and

(vi) ventilators;

(f) cardiology;

(g) mechanical ventilation and respiratory physiology for adult, pediatric, and neonatal patients as it relates to the mission statement and scope of care of the medical transport service specific to the equipment;

(h) high risk obstetric emergencies;

(i) basic care for pediatrics, neonatal and obstetrics;

(j) emergency ~~[4] and~~ critical care for all patient populations to include special needs population;

(k) hazardous materials recognition and response;

(l) management of disaster and mass casualty events;

(m) infection control and prevention; and

(n) ethical and legal issues.

#### **R426-10-26[500]. Medical Staff and Patient Safety Welfare.**

(1) Medical personnel scheduling and individual work schedules shall demonstrate strategies to minimize duty-time fatigue, length of shift, number of shifts per week, and day-to-night rotation.

(2) On-site scheduled shifts for a period to exceed ~~[twenty-four (24)]~~ hours are not acceptable under most circumstances.

(3) The following criteria shall be met for shifts scheduled more than ~~twelve (12)~~ hours:

(a) medical personnel are not required to routinely perform any duties beyond those associated with the transport services;

(b) medical personnel are provided with access to and permission for uninterrupted rest after daily medical personnel duties are met;

(c) the physical base of operations includes an appropriate place for uninterrupted rest;

(d) medical personnel shall have the right to call "time out" and be granted a reasonable rest period if the team member, ~~(f) or fellow team member(s)~~, determines that ~~he or she~~ the team member is unfit or unsafe to continue duty, no matter the shift length;

(e) there shall be no adverse personnel action or undue pressure to continue in a "time-out" circumstance;

(f) licensed air ambulance management shall monitor transport volumes and personnel's use of a "time out" policy;

(g) licensed air ambulance providers shall utilize a fatigue risk management tool that is widely recognized in the industry; and

(h) shifts extended over several days may be scheduled to address long commutes at programs with low volumes.

(4) The licensed air ambulance provider shall clearly demonstrate and document it meets ~~this above~~ criteria listed in R426-10-26(3) for shifts over ~~twelve (12)~~ hours.

(5) Provide at least ~~(4) 10~~ hours of rest in each ~~twenty-four (24)~~ hour period.

(6) If the base location ~~of the base~~ is remote and one-way commutes are more than ~~two (2)~~ hours, transportation time shall be considered.

(7) Licensed air ambulance providers shall utilize a fatigue risk management tool that is widely recognized in the industry.

(8) The licensed air ambulance provider shall evaluate the ~~(S) scheduling of on-call shifts (shall be evaluated)~~ to address fatigue in a written policy based on monitoring of duty times by managers, quality management tracking, and fatigue risk management.

(9) The licensed air ambulance provider shall establish safety and infection control protocol that comply with the Occupational Safety and Health Administration (OSHA) Standards.

(10) The licensed air ambulance provider shall have an appropriate dress code that addresses mission specific hazards as well as jewelry, hair, and other personal items that medical personnel may possibly ~~be~~ use ~~(d) [by medical personnel]~~ that may interfere with patient care.

#### **R426-10-27~~(600)~~. Air Ambulance ~~Service~~ Provider Medical Director Qualifications.**

(1) A licensed air ambulance provider's medical director who oversees the practice of the emergency medical services during patient transport shall be familiar with Utah ~~state~~ medical standards practices, and licensing requirements.

(2) A licensed air ambulance provider's medical director shall be a Utah licensed physician in good standing to supervise the medical care provided in an air medical environment.

(3) The medical director shall ~~also~~:

(a) be board certified or board-eligible in EMS, emergency medicine, or other appropriate critical care specialty that services the patient population involved;

(b) have experience in the care of patients consistent with the licensing and mission profile of the air ambulance provider's service;

(c) designate other medical physician specialists for direction outside medical director's area of practice as appropriate to the licensed air ambulance provider's service mission profile;

(d) have access to medical specialists for consultation regarding patients whose illness and care needs are outside the medical director's area of practice;

(e) have a current DEA registration; and

(f) have current credentials achieved through active participation in patient care and continuing medical education activities appropriate for the role of a licensed air ambulance provider's medical director.

(4) The licensed air ambulance provider's medical director shall have familiarity in the following areas:

(a) care of patients in the air medical environment, including the impact of altitude and other patient stressors, in-flight assessment and care, monitoring capabilities, and limitations of the flight environment;

(b) hazardous materials recognition and response;

(c) management of disaster and mass casualty events;

(d) infection control and prevention;

(e) advanced resuscitation and care of adult, pediatric and neonatal patients with both traumatic and non-traumatic diagnoses;

(f) quality improvement theories and applications;

(g) principles of adult learning;

(h) capabilities and limitations of care in air ambulance;

(i) applicable federal, state, and local law, rules and protocols related to air ambulance providers and state trauma rule guidelines;

(j) air ambulance dispatch and communications; and

(k) ethical and legal issues related to air medical transport.

(5) The licensed air ambulance provider's medical director roles and responsibilities shall include:

(a) oversight of medical care provided by the air medical service provider;

(b) ensure competency and currency of all medical personnel;

(c) active engagement in the evaluation credentialing, initial training, and continuing education of all personnel who provide patient care;

(d) development and approval of written patient care guidelines, policies and protocols, including ~~but not limited to,~~ those addressing the adverse impact of altitude on patient physiology and stressors of transport; and

(e) active engagement in quality management, utilization review, and safety reviews.

#### **R426-10-28~~(700)~~. Patient Compartment General Standards.**

(1) A licensed air ambulance provider shall ensure that a permitted air ambulance has the following:

(a) a climate control system to prevent temperature variations that would adversely affect patient care;

(b) the air ambulance shall have an adequate interior lighting system so that patient care can be given and the patient's status monitored;

(c) for each place where a patient may be positioned, at least one electrical power outlet or other power source that is capable of operating all electrically powered medical equipment without compromising the operation of any electrical air ambulance equipment;

~~(e)~~ (d) a back-up source of electrical power or batteries capable of operating all electrically powered life-support equipment for at least one hour;

(~~f~~e) an appropriate power source which is sufficient to meet the requirements of the complete specialized equipment package without compromising the operation of any electrical air ambulance equipment;

(~~g~~f) an entry that allows for patient loading and unloading without excessive maneuvering and without compromising the operation of monitoring systems, intravenous lines, or manual or mechanical ventilation;

(~~h~~g) ~~H~~i if an isolette is used during patient transport, the operator shall ensure that the isolette ~~[is able to]~~ can be opened from its secured in-flight position ~~[in order]~~ to provide full access to the patient;

(~~i~~h) adequate access and necessary space to maintain the patient's airway and to provide adequate ventilatory support by an attendant from the secured, seat-belted position within the air ambulance;

(~~j~~i) a configuration that allows for rapid exit of personnel and patients that will not allow obstruction from stretchers and medical equipment;

(~~k~~j) an interior of the air ambulance that is sanitary and in good working order during use;

(~~l~~k) secure positioning of cardiac monitors, defibrillators, and external pacers so that displays are visible to medical personnel; and

(~~m~~l) provision for medications that maintains temperatures within manufacturer recommendations.

(2) The licensed air ambulance provider may not use ~~[G]~~glass containers ~~[shall not be used]~~ unless required by medication specifications and be properly vented.

(~~2~~3) Each air ambulance operator shall ensure that all medical equipment is appropriate to the air medical service's scope and mission and maintained in working order according to the manufacturer's recommendations.

(~~3~~4) All permitted air ambulances shall be equipped to provide patient care according to approved medical protocols.

**KEY:** emergency medical services, air

**Date of Last Change:** ~~2023~~~~December 12, 2018~~

**Authorizing, and Implemented or Interpreted Law:** ~~[26-8a]~~~~26B-4-102~~

## NOTICE OF PROPOSED RULE

**TYPE OF FILING:** Amendment

<b>Rule or Section Number:</b>	<b>R432-12</b>	<b>Filing ID:</b> <b>55686</b>
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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>	Multi-Agency State Office Bldg.
<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 144103
<b>City, state and zip:</b>	Salt Lake City, UT 84114-4103

### Contact persons:

<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Janice Weinman	385-321-5586	jweinman@utah.gov

**Please address questions regarding information on this notice to the persons listed above.**

### General Information

#### 2. Rule or section catchline:

R432-12. Small health Care Facility (Four to Sixteen Beds) Construction Rule

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

The purpose of this amendment is to modify and replace outdated language with the Rulewriting Manual for Utah standards, update citations in response to S.B. 38 in the 2023 General Session for statute recodification, and re-title rules to the new division titles that are consistent with the Rulewriting Manual for Utah standards.

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

The revisions include more specific language consistent with the Rulewriting Manual for Utah. Substantive changes only constitute removal of incorporated materials that will be encompassed as recommended standards in the Department of Health and Human Services (Department) plans review process.

Additionally, this amendment updates titles and citations due to the recodification 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:

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 Rulewriting Manual for Utah 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 Rulewriting Manual for Utah standards.

The Freestanding Ambulatory Surgical Center Standards are regulated by the Department and not local governments.

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

**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 Rulewriting Manual for Utah 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 Rulewriting Manual for Utah 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 other persons because this amendment modifies and replaces outdated language with the Rulewriting Manual for Utah 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 Rulewriting Manual for Utah 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>
<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-2-202		
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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>	10/16/2023
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<b>9. This rule change MAY become effective on:</b>	10/23/2023
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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>	08/19/2023
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**R432. Health and Human Services, [Family Health and Preparedness,]Health Care Facility Licensing.**

**R432-12. Small Health Care Facility-~~[(Four to Sixteen Beds)]4 to 16 Beds-~~Construction Rule.**

**R432-12-1. Legal Authority.**

Section 26B-2-202 authorizes this rule.~~[This rule is adopted pursuant to Title 26, Chapter 21.]~~

**R432-12-2. Purpose.**

This rule defines construction standards for small health care facilities ~~[which]that~~ are categorized as Level I, Level II, Level III, or Level IV as defined in Section R432-200-4 and according to the resident's ability or capability to exit a building unassisted in an emergency.

**R432-12-3. Definitions.**

(1) "Plenum" means a separate space provided for air circulation for heating, ventilation, and air-conditioning typically provided in the space between the structural ceiling and a drop-down ceiling.

(2) "Public space" means lobbies, dining rooms, recreation rooms, treatment rooms, and similar space in a small health care facility.

(3) "Service area" means kitchens, elevators, elevator machine rooms, laundries, garages, maintenance rooms, boiler and mechanical equipment rooms, and similar spaces of high noise.

**R432-12-~~3~~4. General Design Requirements.**

~~[Refer to-]~~General Design requirements shall be done in accordance with Sections R432-4-1 through R432-4-~~22~~18.

**R432-12-~~4~~5. General Construction Requirements.**

(1) Table 1 identifies the levels of care and construction requirements ~~[which]that~~ apply.

**[TABLE 1  
CONSTRUCTION REQUIREMENTS SUMMARY**

	LEVEL I	LEVEL II	LEVEL III	LEVEL IV
No. residents	1-16	4-16	4-16	4-16
Resident	No, they	No, they	Yes, they	Yes, they
Capable of	are non	are non	are	are
Self	ambulatory	ambulatory	ambulatory	ambulatory
Preservation	non-mobile	non-mobile	mobile	mobile
Unassisted				
Resident	restricted,	restricted,	restricted,	not
Exit Ability	physical	physical	chemical	restricted
in an	or mental	or mental	or physical	
Emergency	disability	disability	restraints	
and				
medical				
condition				
Accessible	100%	10% or	10%	10%
Rooms		100% if		Physical
		Rehab.		
Construction				
Requirements				
code or	NFPA 101	NFPA 101	NFPA 101	Utah Fire
regulation				Prevention
				Board
				Rules
				R710-3;
				IBC
				R 4 occupancy

fire rating	1 hour	1 hour	1 hour	No
of const				requirement
sprinkler	yes	yes	yes	Only if bldg.
				larger than 4,500
SF				
smoke	yes	yes	yes	yes
detector				
manual	yes	yes	yes	yes
fire				
alarm				
above 3	yes	yes	yes	no
systems				
interconnected				
corridor	8 feet	6 feet	5 feet	As required
				by IBC
resident	44 inch	44 inch	36 inch	36 inch
room door				
width				
nurse call	yes	yes	optional	yes
system]				

TABLE 1 CONSTRUCTION REQUIREMENTS SUMMARY				
	LEVEL I	LEVEL II	LEVEL III	LEVEL IV
Number of residents	1-16	4-16	4-16	4-16
Are residents Capable of Unassisted Self Preservation?	No, they are non ambulatory non-mobile	No, they are non ambulatory non-mobile	Yes, they are ambulatory mobile	Yes, they are ambulatory mobile
What are resident's exit ability in an emergency	Restricted, physical or mental disability and medical condition	Restricted, physical or mental disability	Restricted, chemical or physical restraints	Not restricted
Percentage of accessible rooms required	100%	10% or 100% if Physical Rehab.	10%	10%
Construction Requirements code or regulation	NFPA 101	NFPA 101	NFPA 101	Utah Fire Prevention Board Rule R710-3; IBC R-4 occupancy
Fire rating of construction	1 hour	1 hour	1 hour	No requirement
Sprinkler required?	Yes	Yes	Yes	Only if bldg. larger than 4,500 SF
Smoke detector required?	Yes	Yes	Yes	Yes
Manual fire alarm required?	Yes	Yes	Yes	Yes
Above 3 systems required to be interconnected	Yes	Yes	Yes	No
Corridor width required	8 feet	6 feet	5 feet	As required by IBC

Resident room door width required	44 inch	44 inch	36 inch	36 inch
Nurse call system required?	Yes	Yes	Optional	yes

~~[(2)]~~ **(2) General Requirements.**

~~[(a)]~~<sup>2</sup> Level I facilities shall meet the Nursing Facility Construction standards in Rule R432-5.

~~[(b)]~~<sup>3</sup> Level II and III facilities shall ~~[meet]~~ additionally comply with the construction and design requirements identified in this section, unless specifically exempted.

~~[(e)]~~<sup>4</sup> Level IV facilities shall ~~[meet]~~ additionally comply with the Assisted Living Facility Type I Construction standards in Rule R432-6.

~~[(d)]~~<sup>5</sup> Level I, II, III, and IV facilities shall additionally comply with the Americans with Disabilities Act, Title 42, Part 12101, 1990~~[the Americans with Disabilities Act and Architectural Barriers Act Accessibility Guidelines (ADA/ABA-AG)]~~.

~~[(e)]~~<sup>6</sup> Level I, II, and III facilities shall ~~[conform to]~~ additionally comply with the life safety code requirements of the plans review process in Rule R432-4, [NFPA 101, Chapter 18, which is adopted and incorporated by reference.]

~~[(f)]~~<sup>7</sup> Level IV facilities shall ~~[conform to]~~ additionally comply with the fire safety ~~[provisions]~~ requirements of [R432-710-3]Rule R710-3, Assisted Living Facilities.

(8) The licensee shall ensure that:

(a) there is a common room for dining, sitting, meeting, visiting, recreation, worship, and other activities with enough space or separation to promote and facilitate the activity without interfering with concurrent activities or functions;

(b) there is at least 30 square feet computed per licensed bed capacity but no less than a total of 225 square feet; and

(c) there is enough space for necessary equipment and storage of recreational equipment and supplies.

**R432-12-5. Common Areas.**

~~There shall be a common room or rooms for dining, sitting, meeting, visiting, recreation, worship, and other activities that is of sufficient space or separation to promote and facilitate the activity without interfering with concurrent activities or functions.~~

~~(1) There shall be at least 30 square feet computed per license bed capacity but no less than a total of 225 square feet.~~

~~(2) There shall be sufficient space for necessary equipment and storage of recreational equipment and supplies.]~~

**R432-12-6. Resident Bedr[R]ooms.**

~~(1) [The maximum room capacity shall be two residents. Provisions shall be made for individual privacy.]~~For small health care facility bedrooms, the licensee shall ensure:

~~[(2)]~~<sup>a</sup> [There shall be at least 100 square feet for a single-bed room and 160 square feet in shared rooms, exclusive of toilets and closets.]maximum bedroom capacity is limited to two residents, and there are accommodations for individual privacy;

~~[(a)]~~<sup>b</sup> [Minor encroachments such as columns, lavatories, and door swings may be ignored in determining space requirements if function is not impaired.]single bedrooms measure at least 100 square feet and shared bedrooms measure 160 square feet, exclusive of toilets and closets;

~~[(b)]~~ In a facility licensed prior to 1977, the Department may grant a variance, pursuant to R432-2-18, to allow 80 square feet per

bed for a single bed room and 60 square feet per bed for a multiple bed room.]

~~(c) there is enough clearance between beds in shared bedrooms to allow movement of beds, wheelchairs, and other equipment without disturbing residents;~~

~~[(3)]~~<sup>d</sup> ~~[In multiple bed rooms there shall be enough clearance between beds to allow movement of beds, wheelchairs, and other equipment without disturbing residents.]~~any room commonly used for other purposes may not be used as a bedroom for a resident. This shall include any hall, unfinished attic, garage, storage area, shed, or similarly detached building;

~~[(4)]~~<sup>e</sup> ~~[No room commonly used for other purposes shall be used as a sleeping room for any resident. This includes any hall, unfinished attic, garage, storage area, shed, or similar detached building.]~~a bedroom is not used as a passageway to another room, bath, or toilet;

~~[(5)]~~<sup>f</sup> ~~[No bedroom may be used as a passageway to another room, bath, or toilet.]~~a bedroom only opens directly into a corridor or common living area;

~~[(6)]~~<sup>g</sup> ~~[Bedrooms shall open directly into a corridor or common living area, but not into a food preparation area.]~~a bedroom is not located in a basement or an upper floor unless residents have access to one exit from that level leading directly to the exterior at grade level;

~~[(7)]~~<sup>h</sup> ~~[Bedrooms shall not be located in a basement or on an upper floor unless residents have access to one exit from that level leading directly to the exterior at grade level.]~~a bedroom is provided with light and ventilation by an operable window that opens to the outside or to a courtyard that opens to the sky;

(i) if the window requires the use of tools or keys for operation, the tools or keys are stored in a prominent location on each floor convenient for staff use;

~~[(8)]~~<sup>i</sup> ~~[Each bedroom shall be provided with light and ventilation by means of an operable window which opens to the outside or to a court that opens to the sky. Where the window requires the use of tools or keys for operation, such devices shall be stored in a prominent location on each floor convenient for staff use.]~~storage space is provided within each resident's bedroom including a wardrobe, closet, or space suitable for hanging clothing and personal belongings with minimum inside dimensions of 22 inches deep by 36 inches wide by 72 inches tall; and

~~[(9)]~~<sup>k</sup> ~~[Each resident shall have a wardrobe, closet, or space suitable for hanging clothing and personal belongings with minimum inside dimensions of 22 inches deep by 36 inches wide by 72 inches tall. Space accommodations shall be provided within each resident's room.]~~facilities serving infants or children may substitute a chest of drawers for the closet.

(2) A facility licensed before 1977 may apply for a variance pursuant to Section R432-2-19 to allow 80 square feet per bed for a single resident bed room and 60 square feet per bed for a multiple resident bedroom.

**R432-12-7. Toilet and Bathing Facilities.**

~~(1) [Toilet rooms and bathrooms shall be mechanically exhausted, conveniently located, and accessible to, and usable by all persons accepted for care.]~~The licensee shall ensure toilet and bathrooms are:

(a) mechanically exhausted;

(b) conveniently located; and

(c) accessible and usable by each resident accepted for care.



(2) The licensee shall ensure:

([1]a) [F]there ~~shall be~~ is one toilet and ~~washbasin~~ sink on each floor for each four occupants, including staff and live-in family; ~~[- A facility licensed for eight beds or more shall have distinct and separate toilet and bathing facilities for live-in family and staff.]~~

(b) a facility licensed for eight or more beds has distinct and separate toilets and bathing facilities for live-in family and staff;

([2]c) [F]there is ~~shall be~~ at least one bathtub or shower for each six residents[-];

([a]d) ~~In~~ a multi-story building ~~has~~ ~~there shall be~~ at least one bathtub or shower on each floor that has resident bedrooms[-];

([b]e) [E]each resident ~~shall have~~ has access to at least one bathtub and one shower[-];

([e]f) [F]there is ~~shall be~~ at least one shower or bathtub ~~[which]that~~ opens from a corridor designed for use by resident using a wheelchair with room for staff assistance that meets ~~[ADA/ABA-AG-recommended standards[-] in the plans review required in Section R432-4-12;~~

([3]g) [E]each central shared bathroom ~~shall have~~ has a toilet and washbasin[-]; and

([4]h) [F]toilet and bathing facilities ~~may~~ do not open directly into food preparation areas.

~~[- (5) There shall be adequate provision for privacy and safety, including grab bars, in accordance with ADA/ABA-AG, at each toilet, tub, and shower used by residents.]~~

(3) The licensee shall ensure that toilet and bathing facilities:

~~[- (6) All toilets, showers, and tub facilities shall have walls of impermeable, cleanable, and easily sanitized surfaces.]~~

(a) include accommodations for privacy and safety, including grab bars at each toilet, tub, and shower used by residents; and

(b) any toilets, showers, and tub facilities are impermeable, cleanable, and easily sanitized walls and surfaces.

(4) For toilet and bathing room doors, windows, and plumbing fixtures, the licensee shall ensure:

(a) doors to rooms containing bathtubs, sitz baths, showers, and toilets for resident use are equipped with hardware that may be secured for privacy and allow emergency access from the outside without the use of keys;

(b) toilet or bathing rooms used by residents are trimmed with valves, with cross, tee, or single lever devices;

(c) showers and tubs have slip-resistant surfaces;

(d) toilets are securely anchored to withstand a vertical load of not less than 250 pounds on the front of the fixture;

(e) mirrors are provided at each hand washing facility except as otherwise noted;

(f) the tops and bottoms of mirrors may be at levels for use by sitting and standing individuals, or additional mirrors may be provided for residents using a wheelchair; and

(g) one separate full-length mirror in a single room may serve wheelchair occupants in that room.

**R432-12-8. Service Areas.**

(1) The licensee shall ensure [F]there ~~shall be~~ is adequate space and equipment for ~~[the following]services or functions of the facility~~. Except where the word "room" or "office" is used, space is specifically identified as a room or an office, the licensee may provide the services outlined in this section~~[- may be provided]~~ in a multi-purpose area.

(2) For a small health care facility, the licensee shall provide:

([1]a) ~~an~~ ~~A~~ administrator's office with space for private interviews, storage of files and records, and a public reception or information area[-];

([2]b) ~~a~~ ~~F~~ telephone area for private use by residents or visitors[-];

([3]c) ~~A~~ ~~a~~ control station with a well-lighted desk, and equipment for keeping records and supplies[-];

([4]d) ~~C~~ ~~a~~ closet[s] or compartment[s] for the safekeeping of staff's personal items[-];

([5]e) ~~M~~ ~~a~~ medication preparation and storage area, including locked drug cabinets, work counter, refrigerator, and sink with running water located near the control station[-];

([6]f) ~~C~~ ~~a~~ clean linen storage area[-]; and

([7]g) ~~S~~ ~~a~~ soiled workroom mechanically ventilated to the outside~~[- In a Level II facility this room] that shall contain a clinical sink or equivalent flushing rim fixture, handwashing facilities, work counter, waste, and soiled linen receptacle in a Level II facility.~~

(3) The licensee shall provide the following rooms and offices that may not be located in a multi-purpose area:

([8]a) ~~H~~ ~~a~~ housekeeping room, ~~[which]that~~ in large facilities over eight residents ~~shall~~ contains a service sink[-];

([9]b) ~~E~~ ~~an~~ equipment room or separate building for mechanical and electrical equipment[-];

([10]c) ~~S~~ ~~a~~ storage room for maintenance supplies[-];

([11]d) ~~G~~ ~~a~~ general storage area within the facility or in a separate building convenient for daily access with at least five square feet of storage per bed[-]; and

([12]e) ~~A~~ ~~an~~ area outside the facility for sanitary storage and disposal of waste.

**R432-12-9. Dietary Services.**

(1) The licensee shall ensure [F]food service facilities and equipment ~~shall~~ comply with the ~~[Utah Department of Health] Rule R392-100 Food Service Sanitation Regulations~~.~~[- According to the size of the facility and services offered, there shall be]~~

(2) The licensee shall ensure there is enough~~[adequate]~~ space and equipment, according to the size of the facility and services offered, for the following:

([1]a) [F]food preparation;

([2]b) [H]handwashing located in the food preparation area;

([3]c) [S]serving and distributing resident meals;

([4]d) [D]dining space for residents, staff, and visitors;

([5]e) [D]dishwashing, receiving, scraping, sorting, and stacking soiled tableware and for transferring clean tableware to use areas;

([6]f) [S]storage, including cold storage; ~~and~~ ~~[- and space for at least a seven-day supply of staple foods and a three-day supply of perishable foods, shall be maintained in the facility.]~~

(g) space for at least a seven-day supply of staple foods and a three-day supply of perishable foods maintained in the facility.

**R432-12-10. Linen Services.**

(1) The licensee shall ensure that ~~[Each facility shall have]~~ there are provisions for storage and processing of clean and soiled linen as required for resident care that is ~~[- P]processed~~[ing may be done]~~~~ within the facility, in a separate building on or off site, or in a commercial or shared laundry.

(2) The licensee shall provide ~~[capacity of central storage shall be sufficient]~~ enough central storage for four days operation or two normal deliveries, whichever is greater.

(3) ~~The licensee shall provide h[andwashing facilities shall be provided]~~in each area where unbagged soiled linen is handled.

(4) ~~[Provisions shall be made to keep soiled linen separate from clean linen]~~The licensee shall separate soiled linens from clean linens.

(5) ~~[Provision shall be made for storage of laundry supplies]~~The licensee shall provide storage for laundry supplies.

(6) ~~The licensee shall arrange e[quipment shall be arranged]~~to ~~[permit]~~allow an orderly work[-]flow and reduce cross traffic that may ~~[mingle]~~combine clean and soiled operations.

(7) The licensee shall ensure there is a~~[A]~~ least one washing machine and dryer, and ironing equipment ~~[shall be]~~available for use by residents who wish to do ~~[their-]~~personal laundry.

#### **R432-12-11. Nurse Call System.**

(1) The licensee of a Level I, II or IV facility shall ensure there is a~~[A]~~ nurse call system in the facility.~~[is required in Level I, II and IV facilities.]~~ A nurse call system is optional in a Level III facility~~[ies]~~.

~~[(1)2]~~ The licensee shall ensure:~~[Each resident's room shall be served by at least one calling station and each bed shall be provided with a call button including operating switch and cord from the wall station to each bed.]~~

~~(a)~~ each resident's room is served by at least one calling station and each bed is provided with a call button including operating switch and cord from the wall station to each bed;

~~[(2)b]~~ ~~[T]~~two call buttons serving adjacent beds may be served by one calling station~~[-];~~

~~[(3)c]~~ ~~[C]~~alls ~~[shall-]~~activate a visible signal in the corridor at the resident's door and the control station~~[-];~~

~~[(4)d]~~ ~~[T]~~he system ~~[shall be]~~is designed so that a signal light activated at the resident's station will remain ~~[lighted]~~lit until turned off at the resident's calling station~~[-]; and~~

~~[(5)e]~~ ~~[A]~~a system that provides two-way voice communication ~~[shall be]~~is equipped at each calling station with an indicator light that remains lit as long as the voice circuit is operating.

#### **R432-12-12. Rehabilitation Therapy.**

(1) A ~~[facility]~~licensee that offers on-site specialized rehabilitation services shall ~~[provide-]~~ensure that the facility has the following space and equipment necessary to meet the intent of the ~~[approved-]~~program.~~[—The following shall be available in the facility:]~~

(2) The licensee shall provide:

~~[(1)a]~~ ~~[S]~~upplies and equipment storage, including separate clean and soiled linen;

~~[(2)b]~~ ~~[C]~~onvenient handwashing facilities;

~~[(3)c]~~ ~~[S]~~pace and equipment to carry out specific types of therapy;

~~[(4)d]~~ ~~[Provision]~~accommodation for resident privacy;

~~[(5)e]~~ ~~[C]~~onvenient access to a room that can be used to train and educate staff and residents; and

~~[(6)f]~~ ~~[D]~~dressing rooms for residents.

#### **R432-12-13. Doors and Windows.**

(1) ~~[Doors to all rooms containing bathtubs, sitz baths, showers and water closets for resident use shall be equipped with hardware which may be secured for privacy yet permit emergency access from the outside without the use of keys.]~~For a small health care facility's doors, the licensee shall ensure:

~~[(2)a]~~ ~~[E]~~ach room, including ~~[all]~~any resident toilet rooms and bathing rooms that may be used by residents, staff, or employees confined to wheelchairs, ~~[shall have]~~has at least one door with a minimum clearance width of 34 inches~~[-];~~

~~[(3)b]~~ ~~[R]~~esident~~[-]~~ room doors and exit doors ~~[shall be]~~are at least 36 inches wide, defined by the width of the door leaf~~[-]; and~~

~~[(4)c]~~ ~~[T]~~hresholds and expansion-joint covers ~~[shall be]~~are flush with the floor surface to facilitate use of wheelchairs and carts and to prevent tripping.

~~[(5)2]~~ ~~[Every room intended for 24 hour occupancy shall have a window that opens to the building exterior or to a court that is open to the sky.]~~For a small health care facility's windows, the licensee shall ensure:

~~[(6)a]~~ ~~[Windows and outer doors shall have insect screens.]~~every room used for 24-hour occupancy has a window that opens to the building exterior or to a courtyard that is open to the sky; and

~~(b)~~ windows and outer doors have insect screens.

#### **R432-12-14. Grab Bars and Handrails.**

(1) ~~[Grab bars shall meet the requirements of ADA/ABA-AG.]~~The licensee shall ensure that grab bars meet the requirements of the plans review outlined in Rule R432-4.

(2) ~~[In Level I and II facilities, there shall be handrails on both sides of all corridors normally used by residents. Handrail profiles shall be graspable in accordance with NFPA 101 Chapter 7, which is adopted and incorporated by reference and the Americans with Disabilities Act and Architectural Barriers Act Accessibility Guidelines.]~~The licensee shall ensure that there are handrails on both sides of any corridors in Level I and Level II facilities as defined in Rule R432-200 and that handrail profiles are graspable in accordance with the plans review section of Rule R432-4.

(3) Ends of grab bars and handrails shall ~~[be-]~~return~~[ed]~~ to the wall or be otherwise arranged to minimize potential for injury.

#### **~~R432-12-15. Lavatories and Plumbing Fixtures.~~**

~~(1) All lavatories used by residents shall be trimmed with valves, with cross, tee or single lever devices.~~

~~(2) Showers and tubs shall have slip resistant surfaces.~~

~~(3) Lavatories shall be securely anchored to withstand a vertical load of not less than 250 pounds on the front of the fixture.~~

~~(4) A mirror shall be provided at each handwashing facility except as otherwise noted.~~

~~(a) The tops and bottoms of mirrors may be at levels for use by sitting and standing individuals, or additional mirrors may be provided for residents using a wheelchair.~~

~~(b) One separate full length mirror in a single room may serve for wheelchair occupants in that room.]~~

#### **R432-12-~~14~~15. Ceilings.**

(1) ~~[Ceiling height in the facility shall be a minimum of eight feet with the following exceptions:]~~The licensee shall ensure that ceiling height in the facility is at least eight feet except:

(a) ~~[R]~~ooms containing ceiling-mounted equipment ~~[shall]~~have adequate height for the proper functioning of that equipment~~[-];~~

(b) ~~[C]~~eilings in corridors, storage rooms, and toilet rooms ~~[shall be]~~are at least seven feet ten inches~~[-]; and~~

(c) ~~[B]~~uilding components and suspended tracks, rails, and pipes located in the path of normal traffic ~~[may]~~are not ~~[be-]~~less than seven feet above the floor.

(2) ~~[Where]~~If existing conditions make ~~[the above]~~compliance with Subsection R432-12-15(1) impractical, ~~there shall be enough~~ clearance~~[s shall be sufficient]~~ to avoid injury and at least six feet four inches above the floor.

#### **R432-12-~~[47]~~16. Heat and Noise Reduction.**

(1) The licensee shall ensure ~~[R]~~rooms containing heat producing equipment ~~including[such as]~~ a furnace, heater, washer, or dryer, ~~[shall be]~~are insulated and ventilated to prevent floors of overhead occupied areas and adjacent walls from exceeding a temperature of 10 degrees Fahrenheit or ~~[6]~~6 degrees Celsius~~[3]~~ above the ambient room temperature of such occupied areas.

(2) ~~[Recreation rooms, exercise rooms, and similar spaces where impact noises may be generated may not be located directly over resident bed areas unless special provisions are made to minimize such noise.]~~For noise reduction precautions in a small health care facility, the licensee shall ensure:

(~~[3]~~a) ~~[Sound transmission limitations shall conform to Table 2.]~~recreation rooms, exercise rooms, and similar spaces where impact noises may be generated are not located directly over resident-bed areas unless special accommodations are made to minimize such noise;

(b) sound transmission limitations conform to Table 2;

(c) there is consideration of sound transmission through ceilings and composite sound transmission class (STC) performance where partitions do not extend to the structure above;

(d) service areas requiring sound transmission determinations include kitchens, elevators, elevator machine rooms, laundries, garages, maintenance rooms, boiler and mechanical equipment rooms, and similar spaces of high noise; and

(e) mechanical equipment located on the same floor or above residents' rooms, offices, nurses' stations, and similarly occupied space is effectively isolated from the floor.

TABLE 2  
SOUND TRANSMISSION LIMITATIONS  
IN LONG TERM CARE FACILITIES

	AIRBORNE SOUND TRANSMISSIONS	
	Class (STC)(a)	Partitions Floors
Residents' room to residents' room	35	40
Public space to residents' room(b)	40	40
Service areas to residents' room(c)	45	45

TABLE 2  
SOUND TRANSMISSION LIMITATIONS IN LONG-  
TERM CARE FACILITIES AIRBORNE SOUND  
TRANSMISSIONS

Class Sound Transmission Class (STC)(a)	Partitions	Floors
Residents' room to residents' room	35	40
Public Space to residents' room(b)	40	40
Service areas to residents' room(c)	45	45

~~[—]~~~~\_\_\_\_~~(~~[a]~~3) Sound transmission class (STC) listed in Table 2 ~~[shall be]~~is determined by tests in accordance with methods set forth in American Society for Testing and Materials (ASTM) recommended standards in the plans review of Section R432-4-12.~~[Standard E~~

90 and ASTM Standard E 413. Where partitions do not extend to the structure above, sound transmission through ceilings and composite STC performance must be considered.

~~—(b) Public space includes lobbies, dining rooms, recreation rooms, treatment rooms, and similar space.~~

~~—(c) Service areas include kitchens, elevators, elevator machine rooms, laundries, garages, maintenance rooms, boiler and mechanical equipment rooms, and similar spaces of high noise. Mechanical equipment located on the same floor or above residents' rooms, offices, nurses' stations, and similarly occupied space shall be effectively isolated from the floor.]~~

#### **R432-12-~~[48]~~17. Floor, Wall, and Ceiling Finishes.**

(1) For small health care facility flooring, the licensee shall ensure:

(a) ~~[F]~~floor materials ~~[shall be]~~are easily cleanable and appropriate for the location~~[-]~~;

(~~[a]~~b) ~~[F]~~floors and floor joints in areas used for food preparation and food assembly ~~[shall be]~~are water-resistant, grease proof, and resistant to food acids~~[-]~~;

(~~[d]~~c) ~~[In all]~~any areas subject to frequent wet cleaning, have floor materials that may not be physically affected by germicidal cleaning solutions~~[-]~~;

(~~[e]~~d) ~~[F]~~floors that are subject to traffic while wet, ~~[such as]~~including shower and bath areas, kitchen, and similar work areas~~[3]~~, ~~[shall]~~have a non-slip surface~~[-]~~; and

(~~[d]~~e) ~~[C]~~carpet and carpet pads in resident areas ~~[shall be]~~are applied with adhesive or stretched taut and maintained without loose edges or wrinkles ~~[which]~~that might create hazards or interfere with the operation of wheelchairs, walkers, or wheeled carts.

(2) ~~[Wall bases in areas subject to wet cleaning shall be covered and tightly sealed.]~~For small health care facility walls, the licensee shall ensure:

(~~[3]~~a) ~~[W]~~wall finishes are ~~[shall be]~~washable~~[-]~~;

(b) wall bases in areas subject to wet cleaning are covered and tightly sealed; and

(~~[a]~~c) ~~[W]~~walls in the immediate area of plumbing fixtures ~~[shall be]~~are smooth and moisture resistant.

(~~[b]~~3) The licensee shall ensure:

(a) ~~[F]~~finish, trim, walls, and floor construction~~[s]~~ in dietary and food preparation and storage areas ~~[may]~~do not have spaces that may harbor rodents and insects~~[-]~~; and

(~~[4]~~b) ~~[F]~~floor and wall openings for pipes, ducts, and conduits ~~[shall be]~~are sealed tightly to resist fire and smoke and to minimize entry of rodents and insects~~[-]~~ and joints of structural elements ~~[shall be]~~are similarly sealed.

(~~[5]~~4) ~~[All exposed ceilings and ceiling structures in resident and staff work areas shall have finishes that are readily cleanable with ordinary housekeeping equipment. Ceilings in the dietary area and other areas where dust fallout might create a potential problem shall have a finished ceiling that covers all conduits, piping, duct work, and exposed construction systems.]~~The licensee shall ensure joints of structural elements, floor and wall openings for pipes, ducts, and conduits are sealed tightly to resist fire and smoke and to minimize entry of rodents and insects.

(5) The licensee shall ensure any exposed ceilings and ceiling structures in resident and staff work areas have finishes that are readily cleanable with ordinary housekeeping equipment.

(6) The licensee shall ensure ceilings in the dietary area and other areas where dust fallout might create a potential problem, have a finished ceiling that covers any conduits, piping, duct work, and exposed construction systems.

### R432-12-[49]18. Heating and Cooling.

(1) ~~[There shall be adequate and safe heating and cooling equipment to maintain comfortable temperatures in the facility.]~~ The licensee shall ensure there is adequate and safe heating and cooling equipment to maintain comfortable temperatures in the facility.

(1)2 The licensee shall ensure that [F]the heating system [shall be]is capable of maintaining temperatures of 80 degrees F or [C]27 degrees C[.] in areas occupied by residents.

(2)3 The licensee shall ensure [F]the cooling system [shall be]is capable of maintaining temperatures of 72 degrees F or [C]22 degrees C[.] in areas occupied by residents.

### R432-12-[20]19. Ventilation.

(1) ~~[All]~~ The licensee shall ensure each room[s] and area[s] in the small health care facility [shall have provision]provides for positive ventilation[-] that includes:

(a) ~~[While]~~ natural window ventilation for non-sensitive areas and resident rooms that may be used [utilized where]when weather permits[-] and mechanical ventilation [shall be]is provided for interior areas and during periods of temperature extremes[-]; and

(b) ~~[F]~~ fans serving exhaust systems [shall be]are located at the discharge end and [shall be]are conveniently accessible for service.

(2) The licensee shall ensure[Fresh air intakes shall be located as far as possible from exhaust outlets of ventilating systems, combustion equipment stacks, plumbing vents, or from areas which may collect vehicular exhaust or other noxious fumes.]

(a) fresh air intakes are located as far as possible from exhaust outlets of ventilating systems, combustion equipment stacks, plumbing vents, or from areas that may collect vehicular exhaust or other noxious fumes;

(3)b ~~[F]~~ furnace rooms [shall be]are provided with [sufficient]enough outdoor air to maintain equipment combustion rates and to limit work[-]station temperatures to an [E]effective [F]temperature of 90 degrees F or [C]32.5 degrees C[-]; ~~When the ambient outside air temperature is higher than 90 degrees F, then the maximum temperature may be 97 degrees F (36 degrees C).~~

(c) when the ambient outside air temperature is higher than 90 degrees F, the maximum temperature does not exceed 97 degrees F or 36 degrees C;

(4)d ~~[E]~~ exhaust hoods in food[-]preparation centers [shall comply]are compliant with Rule R392, the Utah Department of Health and Human Services Food Service Sanitation Regulations[-] All hoods over cooking ranges] and[shall be] hoods over cooking ranges are equipped with grease filters[-];

(5)e ~~[N]~~ non-resident as well as resident areas where specific requirements are not given shall be ventilated in accordance with the[ASHRAE] recommended standards reviewed in Section R432-4-12;[Standard 62-2004, "Ventilation for Acceptable Indoor Air Quality Including Requirements for Outside Air."]

(6)f ~~[A]~~ air from areas with odor problems, including toilet rooms, baths, soiled linen storage and housekeeping rooms, shall be exhausted to the outside and not recirculated[-];

(7)g ~~[In]~~ Level II facility[ies;-] fans and dampers [shall be]are interconnected so that activation of dampers will automatically shut down [all]everything [but]except exhaust fans[-];

(8)h ~~[S]~~ supply and return systems [shall be]are in ducts[-]; and[Common returns using corridors or attic spaces as plenums are prohibited.]

(i) common returns using corridors or attic spaces as plenums are not used.

### R432-12-[24]20. Plumbing and Hot Water Systems.

(1) [Water supply systems shall be designed to supply water at sufficient pressure to operate all fixtures and equipment during maximum demand periods.]The licensee shall ensure:

(2)a [Water distribution systems shall be arranged to provide for continuous hot water at each hot water outlet.]water supply systems are designed to supply water at high enough pressure to operate any fixtures and equipment during maximum demand periods;

(3)b [Hot water provided to resident tubs, showers, whirlpools, and handwashing facilities shall be regulated by thermostatically controlled automatic mixing valves at appropriate temperatures for comfortable use within a range of 105 to 115 degrees F. These valves may be installed on the recirculating system or on individual inlets to appliances.]water distribution systems are arranged to provide for continuous hot water at each hot water outlet;

(c) thermostatically controlled automatic-mixing valves regulate the hot water provided to resident tubs, showers, whirlpools, and handwashing facilities at temperatures for comfortable use within a range of 105 to 115 degrees F, and these valves are installed on the recirculating system or on individual inlets to appliances;

(4)d ~~[As a minimum,]~~ water heating systems [shall]provide capacity at the minimum temperatures and amounts indicated in Table 3, Hot Water Use[-]; ~~Water temperature is taken at the point of use or inlet to the equipment.~~

(e) water temperature is taken at the point of use or inlet to the equipment;

(f) rinse water at the warewasher is provided at 180 degrees (F) or 82 degrees (C) and may be provided by booster; and

(g) the system can provide hot water at temperatures of 160 degrees F or 71 degrees C at the laundry equipment as needed.

TABLE 3  
HOT WATER USE

	Clinical	Dietary(1)	Laundry
Gallons per Hour per Bed(a)	3	2	2
Temperature (C)(b)	43	49	71(b)
Temperature (F)(b)	105	120	160(b)

TABLE 3  
HOT WATER USE

	Clinical	Dietary(1)	Laundry
Gallons per Hour per Bed(a)	3	2	2
Temperature (C)(b)	43	49	71(b)
Temperature (F)(b)	105	120	160(b)

[— (1) Provisions shall be made to provide 180 degree F (82 degree C) rinse water at warewasher (may be by separate booster).]

[—] ((a)2) Quantities indicated in Table 3 for design demand of hot water

are for general reference minimums and may not act as a substitute for

accepted engineering design procedures using actual number and types of fixtures to be installed. ~~Design shall also be affected by temperatures of cold water used for mixing, length of run and insulation relative to heat loss, etc.]~~

(3) The licensee shall ensure the effect of temperatures of cold water used for mixing, length of run, and insulation relative to heat loss are included in the system design.

[—(b) Provisions shall be made to provide 160 degree F (71 degree C) hot water at the laundry equipment when needed.]

#### **R432-12-[22]21. Drainage Systems.**

(1) The licensee shall ensure that ~~[D]~~drainage piping ~~[may]~~is not ~~[be]~~installed within the ceiling or installed in an exposed location in food preparation centers, food serving facilities, food storage areas, central services, and other sensitive areas.~~[—Where overhead drain piping is unavoidable in these areas, as may occur in existing facilities, special provision shall be made to protect the space below from possible leakage, condensation, or dust particles.]~~

(2) If an existing facility cannot avoid the use of piping in areas listed in Subsection R432-12-21(1), the licensee shall protect the space below from possible leakage, condensation or dust particles.

([2]3) The licensee shall ensure that ~~[B]~~building sewers ~~[shall]~~discharge into a community sewerage system~~[—Where such] and if a system is not available, the [facility]-licensee shall treat [its] sewage in accordance with local and state regulations.~~

#### **R432-12-[23]22. Electrical Systems.**

(1) ~~[All electrical materials shall be tested and approved by Underwriters Laboratory.]~~The licensee shall ensure:

([2]a) ~~[The electrical installations, including alarm and nurse call system, if required, shall be tested to demonstrate that equipment installation and operation is as intended and appropriate. A written record of performance tests of special electrical systems and equipment shall show compliance with applicable codes.]~~electrical materials are tested and approved by Underwriters Laboratory;

[—(3) Switchboards and Power Panels.]

([a]b) ~~[The main switchboard shall be located in an area separate from plumbing and mechanical equipment and be accessible only to authorized persons.]~~electrical installations, including alarm and nurse call systems, if required, are tested to demonstrate that equipment installation and operation is as intended and appropriate; and

([b]c) ~~[The switchboards shall be convenient for use, readily accessible for maintenance, clear of traffic lanes, and located in a dry, ventilated space.]~~a written record of performance tests of special electrical systems and equipment shows compliance with applicable codes.

([e]2) ~~[Overload protection devices shall operate properly in the ambient room temperatures, except for existing Level IV facilities.]~~The licensee shall ensure that switchboards and power panels comply with the following:

([d]a) ~~[Panelboards serving normal lighting and appliance circuits shall be located on the same floor as the circuits they serve.]~~the main switchboard is located in an area separate from plumbing and mechanical equipment and is accessible only to authorized persons;

([4]b) ~~[Lighting. All spaces within buildings that house people, machinery, equipment, or approaches to buildings shall have fixtures for lighting. (See Table 4.)]~~switchboards are convenient for use, readily accessible for maintenance, clear of traffic lanes, and located in a dry, ventilated space;

([a]c) ~~[Resident rooms shall have general and night lighting.]~~overload protection devices operate properly in the ambient room temperatures, except for existing Level IV facilities; and

([i]d) ~~[A reading light shall be provided for each resident.]~~switchboards serving normal lighting and appliance circuits are located on the same floor as the circuits they serve.

([i]3) ~~[Flexible light arms, if used, shall be mechanically controlled to prevent the bulb from coming in contact with bed linen.]~~The licensee shall ensure lighting complies with the following:

([iii]a) ~~[At least one night light fixture shall be controlled at the entrance to each resident room.]~~any spaces within buildings that house people, machinery, equipment, or approaches to buildings have fixtures for lighting that are compliant with Table 4; and

([iv]b) ~~[All controls for lighting in resident areas shall operate quietly.]~~resident rooms have:

([b]i) ~~[Parking lots shall have fixtures for lighting to provide light at levels recommended in the Illuminating Engineering Society of North America (IESN) Lighting for Parking Facilities (RP 20-1998).]~~general and night lighting;

([e]ii) ~~[Lighting levels shown in Table 4 shall be used as minimum standards and do not preclude the use of higher levels that may be needed to insure the health and safety of the specific facility population served. Values in Table 4 are minimum maintained average illuminance measured at the task plane. Corridor lighting shall be adjustable so that light levels may be reduced at night and still provide a maximum brightness ratio of 1:10.]~~a reading light for each resident;

(iii) flexible light arms, if used, that are mechanically controlled to prevent the bulb from coming in contact with bed linen;

(iv) at least one night light fixture is controlled at the entrance to each resident room; and

(v) any controls for lighting in resident areas operate quietly.

(4) The licensee shall ensure:

(a) parking lots have fixtures for lighting to provide light at levels recommended in the plans review Section R432-4-12; and

(b) corridor lighting is adjustable so that light levels may be reduced at night and still provide a maximum brightness ratio of 1:10.

(5) Lighting levels shown in Table 4 are used as minimum standards and do not preclude the use of higher levels that may be needed to ensure the health and safety of the specific facility population served.

(6) values in Table 4 are the minimum maintained average illuminance measured at the task plane.

[TABLE 4  
SMALL HEALTH CARE FACILITIES LIGHTING STANDARDS

MINIMUM FOOT CANDLES		
Physical Plant Area	Level I, II, III Facilities	Level IV Facilities
Corridors		
Day	20	15
Night	10	10
Exits	20	20
Stairways	20	20
Nursing Station		
General	30	30
Charting	75	75
Med. Prep.	75	75
Pt./Res. Room		
General	10	10
Reading/Mattress Level	30	30
Toilet area	30	30
Lounge		
General	10	10
Reading	30	30
Recreation	30	30
Dining	30	30
Laundry	30	30

TABLE 4 SMALL HEALTH CARE FACILITIES LIGHTING STANDARDS		
MINIMUM FOOT-CANDLES (one lumen per square foot)		
Physical Plan Area	Level I, II, III Facilities	Level IV Facilities
<u>Corridors</u>		
<u>Day</u>	<u>20</u>	<u>15</u>
<u>Night</u>	<u>10</u>	<u>10</u>
<u>Exits</u>	<u>20</u>	<u>20</u>
<u>Stairways</u>	<u>20</u>	<u>20</u>
<u>Nursing Station</u>		
<u>General</u>	<u>30</u>	<u>30</u>
<u>Charting</u>	<u>75</u>	<u>75</u>
<u>Med. Prep.</u>	<u>75</u>	<u>75</u>
<u>Pt./Res. Room</u>		
<u>General</u>	<u>10</u>	<u>10</u>
<u>Reading/Mattress Level</u>	<u>30</u>	<u>30</u>
<u>Toilet area</u>	<u>30</u>	<u>30</u>
<u>Lounge</u>		
<u>General</u>	<u>10</u>	<u>10</u>
<u>Reading</u>	<u>30</u>	<u>30</u>
<u>Dining</u>	<u>30</u>	<u>30</u>
<u>Laundry</u>	<u>30</u>	<u>30</u>

([5]6) The licensee shall ensure that [E]each resident room [shall have]has duplex grounding type receptacles as follows:

- (a) one located on each side of the head of each bed;
- (b) one for television, if used; and
- (c) one on each other wall.

([6]7) The licensee may omit r[R]eceptacles [may be omitted]from exterior walls where construction would make installation impractical.

([7]8) The licensee shall ensure that [D]duplex grounded receptacles for general use [shall be]are installed in [all]any corridors.

#### R432-12-[24]23. Emergency Power System.

(1) [Facilities that provide skilled nursing care or care for persons who require electrically operated life support systems, shall be equipped with an emergency power system.]The licensee shall ensure the facility is equipped with an emergency power system if providing skilled nursing care for a person requiring electrically operated life-support systems.

(2) The licensee shall ensure the following services are connected to the emergency generator:

[—(2) The following services shall be connected to the emergency generator:

—(a) Life Safety Branch as defined in NFPA 70, section 517-32,]

—(b)a [critical branch as defined in NFPA 70, section 517-33 and]life safety branch;

—(c)b [Equipment systems defined in NFPA 70, section 517-34.]critical branch; and

—(3)c [Power need not be provided to all building heating and ventilation equipment if it is provided to a common area sufficient in size to accommodate temporary beds on a short-term emergency basis.]equipment systems.

([4]3) [Automatic transfer switches shall transfer essential electrical loading to the circuits described above within 10 seconds

of any interruption of normal power.]The licensee is not required to provide power to any building heating and ventilation equipment if it is provided to a common area sufficient in size to accommodate temporary beds on a short-term emergency basis.

([5]4) [The emergency generator shall be fueled with a storable fuel source such as diesel fuel, gasoline, or propane. At least 48 hours of fuel shall be available.]The licensee shall ensure that:

([6]a) [All other facilities shall make provision for essential emergency lighting and heating during an emergency to meet the needs of residents. All emergency heating devices shall be approved by the local Fire Marshal.]automatic transfer switches transfer essential electrical loading to the circuits described in Section R432-12-22 within 10 seconds of any interruption of normal power;

(b) the emergency generator is fueled with a storable fuel source such as diesel fuel, gasoline, or propane;

(c) any other facilities allow for essential lighting and heating during an emergency to meet the needs of residents; and

(d) any heating devices are approved by the local fire marshal.

#### R432-12-[25]24. Penalties.

(1) In accordance with Section 26B-1-224, t[F]he Department may assess a civil money penalty of [of up to \$10,000 and deny approval for patient utilization of new or remodeled areas if a health care provider does not submit architectural drawings to the Bureau of Licensing. The Department may assess a civil money penalty of up to \$10,000 if the licensee fails to follow Department-approved architectural plans. The Department may assess a civil money penalty of up to \$1,000 per day for each day a new or renovated area is occupied prior to licensing agency approval.]

(a) up to \$5,000 and deny approval for resident utilization of new or remodeled areas if a health care licensee does not submit architectural drawings to the Department;

(b) the Department may assess a civil money penalty of up to \$5,000 if the licensee fails to follow Department-approved architectural plans; or

(c) the Department may assess a civil money penalty of up to \$1,000 per day for each day a new or renovated area is occupied before licensing agency approval.

KEY: health care facilities

Date of Last Change: 2023[February 21, 2012]

Notice of Continuation: March 4, 2019

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

#### NOTICE OF PROPOSED RULE

TYPE OF FILING: Repeal and Reenact

Rule or Section  
Number:

R432-152

Filing ID:  
55687

#### Agency Information

1. Department:	Health and Human Services
Agency:	Health Care Facility Licensing
Room number:	1st Floor
Building:	Multi-Agency State Office Bldg
Street address:	195 N 1950 W

<b>City, state and zip:</b>	Salt Lake City, UT 84116	
<b>Mailing address:</b>	PO Box 144103	
<b>City, state and zip:</b>	Salt Lake City, UT 84114-4103	
<b>Contact persons:</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Janice Weinman	385-321-5586	jweinman@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>
R432-152. Intermediate Care Facility for Individuals with Intellectual Disabilities
<b>3. Purpose of the new rule or reason for the change:</b>
The purpose of this repeal and reenactment is to make significant language and structure changes to replace outdated language with the Rulewriting Manual for Utah standards.
Structural changes are made but did not change existing content.
<b>4. Summary of the new rule or change:</b>
The revisions include more specific language consistent with the Rulewriting Manual for Utah.
Substantive changes were made in conjunction with the Disability law Center recommendations for inclusive language regarding client access to community-based services in Subsections R432-152-6(10); R432-152-7(2) and (3) and R432-152-14(5).
The Health Care Licensing Rule Committee approved these additions on 07/12/2023.

**Fiscal Information**

<b>5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:</b>
<b>A) State budget:</b>
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 repeal and reenactment modifies and replaces outdated language with the Rulewriting Manual for Utah standards.
There are no substantive changes being made regarding the fiscal impact of this rule.

**B) Local governments:**

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

The Intermediate Care Facility Standards are regulated by the Department of Health and Human Services (Department) and not local governments. There will be no change in local business licensing or any other item(s) with which local government is involved.

There are no substantive changes being made regarding the fiscal impact of this rule.

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

The repeal and reenactment should not impact cost for small businesses because this amendment modifies and replaces outdated language with the Rulewriting Manual for Utah standards.

There are no substantive changes being made regarding the fiscal impact of this rule.

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

The repeal and reenactment should not impact costs for non-small businesses because this amendment modifies and replaces outdated language with the Rulewriting Manual for Utah standards.

There are no substantive changes being made regarding the fiscal impact 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**):

This repeal and reenactment will not result in a fiscal impact to affected persons because this amendment modifies and replaces outdated language with the Rulewriting Manual for Utah standards.

There are no substantive changes being made regarding the fiscal impact 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?):

This rule repeal and reenactment will not result in a fiscal impact to compliance costs for affected persons because this amendment modifies and replaces outdated language with the Rulewriting Manual for Utah standards.



There are no substantive changes being made regarding the fiscal impact 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**

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-1-202	Section 26B-2-212	
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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.)

**A) Comments will be accepted until:** 10/16/2023

**9. This rule change MAY become effective on:** 10/23/2023

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 Gruber, Executive Director	<b>Date:</b>	08/19/2023
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~~R432. Health, Family Health and Preparedness, Licensing, R432-152. Intermediate Care Facility for Individuals with Intellectual Disabilities.~~

~~R432-152-1. Legal Authority.~~

~~This rule is adopted pursuant to Title 26, Chapter 21 Health Care Facility Licensing and Inspection Act.~~

~~R432-152-2. Purpose.~~

~~It is the purpose of the rule to meet the intent of the Legislature as expressed in Section 26-21-13.5.~~

~~R432-152-3. Definitions.~~

~~The definitions in Section R432-1-3 apply to this rule. In addition, the following definitions apply to this rule:~~

~~(1) "Administrator" means the person in charge of the daily operations of the Intermediate Care Facility for Individuals with Intellectual Disabilities.~~

~~(2) "Developmental Period" means the period between conception and the 18th birthday.~~

~~(3) "Direct Care Staff" means personnel who provide care, training, treatment or supervision of residents.~~

~~(4) "QIDP" means a Qualified Intellectual Disabilities Professional as defined in 42 CFR 483.403(a).~~

~~(5) "Significantly Sub average General Intellectual Functioning" is operationally defined as a score of two or more standard deviations below the mean on a standardized general intelligence test.~~

~~R432-152-4. Licensure.~~

~~These rules apply to Intermediate Care Facilities for Individuals with Intellectual Disabilities licensed before July 1, 1990, pursuant to Section 26-21-13.5.~~

~~R432-152-5. Construction and Physical Environment.~~

~~Intermediate Care Facilities for Individuals with Intellectual Disabilities shall be constructed and maintained in accordance with Rule R432-5 Nursing Facility Construction.~~

**~~R432-152-6. Governing Body and Management.~~**

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

~~(2) The governing body shall:~~

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

~~(b) set the qualifications for the administrator of the facility.~~

~~(3) The licensee shall comply with applicable federal, state and local laws, regulations and codes pertaining to health, safety and sanitation.~~

~~(4) The licensee shall appoint, in writing, an administrator professionally licensed by the Utah Department of Commerce as a nursing home administrator. The administrator shall supervise no more than one licensed Intermediate Care Facility for Individuals with Intellectual Disabilities.~~

~~(a) The administrator shall be on the premises of the facility enough hours in the business day, and at other times as necessary, to permit attention to the management and administration of the facility.~~

~~(b) The administrator shall designate, in writing, the name and title of a person to act as administrator in any temporary absence of the administrator. This designated person shall have sufficient power, authority, and freedom to act in the best interests of client safety and well-being. It is not the intent of this paragraph to permit an unlicensed de facto administrator to supplant or replace the designated, licensed administrator.~~

~~(5) The administrator's responsibilities shall be included in a written job description on file in the facility and available for Department review. The job description shall include at least the following responsibilities:~~

~~(a) complete, submit and file records and reports required by the Department;~~

~~(b) function as liaison between the licensee, qualified intellectual disabilities professional and other supervisory staff of the facility;~~

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

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

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

~~(f) hire and maintain the required number of licensed and non-licensed staff, as specified in these rules, to meet the needs of clients;~~

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

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

~~(i) verify required licenses and permits of staff and consultants at the time of hire or effective date of contract; and~~

~~(j) review incident and accident reports and take appropriate action.~~

~~(6) The administrator, Qualified Intellectual Disabilities Professional and facility department supervisors shall develop job descriptions for each position including job title, job summary, responsibilities, qualifications, required skills and licenses, and physical requirements.~~

~~(a) The administrator or designee shall conduct and document periodic employee performance evaluations.~~

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

~~(7) The administrator shall establish policies and procedures for health screening that meet Subsection R432-150-10(4).~~

**~~R432-152-7. Client Rights.~~**

~~(1) The administrator is responsible to ensure the rights of clients. The administrator or designee shall:~~

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

~~(b) inform each client 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, 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 medications and physical restraints and are provided active treatment to reduce dependency on medications 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 keep and use appropriate personal possessions and clothing, and ensure that each client is dressed in their own clothing each day; and~~

~~(n) permit a married couple to reside together as a couple.~~

~~(2) The administrator shall establish and maintain a system that assures a complete accounting of clients' personal funds entrusted to the facility on behalf of clients and precludes any commingling of client funds with facility funds or with the funds of any person other than another client.~~

~~\_\_\_\_\_ (a) The client's financial record shall be available on request to the client or client's legal guardian.~~

~~\_\_\_\_\_ (b) The administrator shall ensure that monies entrusted to the facility on behalf of clients are kept in the facility or are deposited within five days of receipt in an insured interest-bearing account in a local bank, credit union or savings and loan association authorized to do business in Utah.~~

~~\_\_\_\_\_ (c) When the amount of a client's money entrusted to the facility exceeds \$150, money in excess of \$150 shall be deposited in an interest-bearing account.~~

~~\_\_\_\_\_ (d) Upon discharge of a client, money and valuables of that client that have been entrusted to the licensee shall be 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 obtained and surrendered to the client in a timely manner.~~

~~\_\_\_\_\_ (e) Within 30 days following the death of a client, except in a medical examiner case, money and valuables of that client that have been entrusted to the licensee shall be surrendered to the person responsible for the client or to the executor or the administrator of the estate in exchange for a signed receipt. If a client dies without a representative or known heirs, the licensee shall immediately notify in writing the local probate court.~~

~~\_\_\_\_\_ (3) The administrator shall promote communication and encourage participation of clients, parents and guardians in the active treatment process. Facility staff shall:~~

~~\_\_\_\_\_ (a) promote participation of parents and legal guardians, if the client is a minor, in the process of providing active treatment to a client unless their participation is unobtainable or inappropriate;~~

~~\_\_\_\_\_ (b) answer communications from clients' families and friends promptly and appropriately;~~

~~\_\_\_\_\_ (c) promote visits by individuals with a relationship to the client, such as family, close friends, legal guardians and advocates, at any reasonable hour, without prior notice, consistent with the right of the 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 services to the 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) promptly notify the client's parents or guardian of any significant incidents or changes in the client's condition including serious illness, accident, death, abuse or unauthorized absence.~~

~~\_\_\_\_\_ (4) The administrator shall develop and implement written policies and procedures that prohibit abuse, neglect or exploitation of clients.~~

~~\_\_\_\_\_ (a) Any person, including a social worker, physician, psychologist, nurse, teacher or employee of a private or public facility serving adults, who has reason to believe that any disabled or elder adult has been the subject of abuse, emotional or psychological abuse, neglect or exploitation, shall immediately notify the nearest peace officer, law enforcement agency or local office of Adult Protective Services pursuant to Section 62A-3-302.~~

~~\_\_\_\_\_ (i) The administrator shall document that alleged violations are thoroughly investigated and shall prevent further potential abuse while the investigation is in progress.~~

~~\_\_\_\_\_ (ii) The administrator shall report the results of investigations within five working days of the incident. If the alleged violation is verified, the administrator shall take appropriate corrective action.~~

~~\_\_\_\_\_ (iii) The administrator or designee shall plan and document annual in-service training of staff on the reporting requirements of suspected abuse, neglect and exploitation.~~

~~\_\_\_\_\_ (b) A licensee shall not retaliate, discipline or terminate an employee who reports suspected abuse, neglect or exploitation for that reason alone.~~

~~\_\_\_\_\_ (5) Clients under the age of 22 years shall not live in the same room with:~~

~~\_\_\_\_\_ (a) more than one individual; or~~

~~\_\_\_\_\_ (b) individuals over the age of 22 years, unless they are members of the individual's immediate family.~~

~~\_\_\_\_\_ (6) The administrator shall develop written policies and procedures to implement Subsection R432-200-7(5) and shall obtain written approval from the Department for any exceptions.~~

#### **~~R432-152-8. Facility Staffing.~~**

~~\_\_\_\_\_ (1) A Qualified Intellectual Disabilities Professional shall integrate, coordinate and monitor each client's active treatment program.~~

~~\_\_\_\_\_ (2) Each client shall receive the professional services required to implement the active treatment program defined by each client's individual program plan.~~

~~\_\_\_\_\_ (a) Professional program staff shall work directly with clients and with other staff who work with clients.~~

~~\_\_\_\_\_ (b) The licensee shall have available enough qualified professional staff to carry out and monitor the various professional interventions in accordance with the stated goals and objectives of every individual program plan.~~

~~\_\_\_\_\_ (c) Professional program staff shall participate in ongoing staff development and training of other staff members.~~

~~\_\_\_\_\_ (d) Professional program staff shall be licensed and provide professional services in accordance with each respective professional practice act as outlined in Title 58 Occupations and Professions. A copy of the current license, registration or certificate shall be posted or maintained in employee personnel files.~~

~~\_\_\_\_\_ (e) Those professional program staff designated as a human services professional who do not fall under the jurisdiction of licensure, certification or registration requirements specified in Title 58 Occupations and Professions, shall have at least a bachelor's degree in a human services field.~~

~~\_\_\_\_\_ (f) If the client's individual program plan is being successfully implemented by facility staff, professional program staff meeting the qualifications of Subsection R432-152-8(2)(d) are not required:~~

~~\_\_\_\_\_ (i) except for Qualified Intellectual Disabilities Professionals;~~

~~\_\_\_\_\_ (ii) except for the requirements of Subsection (2)(b) of this section requiring enough qualified professional program staff; and~~

~~\_\_\_\_\_ (iii) as otherwise specified by licensure and certification requirements.~~

~~\_\_\_\_\_ (3) There shall be responsible direct care staff on duty and awake on a 24-hour basis, when clients are present, to take prompt, appropriate action in case of injury, illness, fire or other emergency, in each defined residential living unit housing as follows:~~

~~\_\_\_\_\_ (a) for clients for whom a physician has ordered a medical care plan;~~

~~\_\_\_\_\_ (b) for clients who are aggressive, assaultive or are security risks;~~

~~\_\_\_\_\_ (c) when there are more than 16 clients; or~~

~~\_\_\_\_\_ (d) with each unit of 16 or fewer clients within a multi-unit building.~~

~~(4) There shall be a responsible direct care staff person on duty on a 24-hour basis, when clients are present, to respond to injuries and symptoms of illness and to handle emergencies in each defined residential living unit housing as follows:~~

~~(a) for clients for whom a physician has not ordered a medical care plan;~~

~~(b) for clients who are not aggressive, assaultive or security risks; or~~

~~(c) with residential living units housing 16 or fewer clients.~~

~~(5) Sufficient support staff shall be available so that direct care staff are not required to perform support services to the extent that these duties interfere with the exercise of their primary direct client care duties.~~

~~(6) Clients or volunteers may not perform direct care services for the facility.~~

~~(7) The licensee shall employ sufficient direct care staff to manage and supervise clients in accordance with their individual program plans.~~

~~(a) Direct care staff shall meet the following minimum ratios of direct care staff to clients:~~

~~(i) for each defined residential living unit serving children under the age of 12, with severe and profound intellectual disabilities, clients with severe physical disabilities or clients who are aggressive, assaultive or security risks, or who manifest severely hyperactive or psychotic-like behavior, the staff to client ratio is 1 to 3.2, 2.5 hours per client per 24-hour period;~~

~~(ii) for each defined residential living unit serving individuals with moderate intellectual disabilities, the staff to client ratio is 1 to 4, 2 hours per client per 24-hour period; and~~

~~(iii) for each defined residential living unit serving clients who function within the range of mild intellectual disabilities, the staff to client ratio is 1 to 6.4, 1.25 hours per client per 24-hour period.~~

~~(b) When there are no clients present in the living unit, a responsible staff member shall be available by telephone.~~

~~(8) Each employee shall have initial and ongoing training to include the necessary skills and competencies required to meet the clients' developmental, behavioral and health needs.~~

~~(9) When there are clients under the age of 22 years, each employee shall receive specialized training regarding the care of children and youth with intellectual disabilities.~~

#### **R432-152-9. Volunteers.**

~~(1) Volunteers may be included in the daily activities with clients, but may not be included in the staffing plan or staffing ratios.~~

~~(2) Volunteers shall be supervised by staff and oriented to client rights and the facility's policies and procedures.~~

#### **R432-152-10. Services Provided Under Agreements with Outside Sources.**

~~(1) If a service required under this rule is not provided directly, the licensee shall have a written agreement with an outside program, resource or service to furnish the necessary service, including emergency and other health care.~~

~~(2) The agreement under Subsection (1) shall:~~

~~(a) contain the responsibilities, functions, objectives and other terms agreed to by both parties; and~~

~~(b) require the licensee to be responsible for assuring that the outside services meet the standards for quality of services contained in this rule.~~

~~(3) If living quarters are not provided in a facility owned by the licensee, the licensee shall be responsible for the standards relating to physical environment that are specified in Rule R432-5.~~

#### **R432-152-11. Individual Program Plan.**

~~(1) An interdisciplinary team shall develop an individual program plan for each client that represents the professions, disciplines or service areas that are relevant to:~~

~~(a) identifying the client's needs, as described by the comprehensive functional assessments required in Subsection R432-152-12(4); and~~

~~(b) designing programs that meet the client's needs.~~

~~(2) Interdisciplinary team meetings shall include the following participants:~~

~~(a) representatives of other agencies who may serve the client; and~~

~~(b) the client and the client's legal guardian unless participation is unobtainable or inappropriate.~~

~~(3) Within 30 days after admission, the interdisciplinary team shall prepare for each client an individual program plan that states the specific objectives necessary to meet the client's needs, as identified by the comprehensive assessment required by Section R432-152-12, and the planned sequence for dealing with those objectives.~~

~~(a) The program objectives shall:~~

~~(i) be stated separately, in terms of a single behavioral outcome;~~

~~(ii) be assigned projected completion dates;~~

~~(iii) be expressed in behavioral terms that provide measurable indices of performance;~~

~~(iv) be organized to reflect a developmental progression appropriate to the individual; and~~

~~(v) be assigned priorities.~~

~~(b) Each written training program designed to implement the objectives in the individual program plan shall specify:~~

~~(i) the methods to be used;~~

~~(ii) the schedule for use of the method;~~

~~(iii) the person responsible for the program;~~

~~(iv) the type of data and frequency of data collection necessary to be able to assess progress toward the desired objectives;~~

~~(v) the inappropriate client behavior, if applicable; and~~

~~(vi) the appropriate expression of behavior and the replacement of inappropriate behavior, if applicable, with behavior that is adaptive or appropriate.~~

~~(c) The individual program plan shall:~~

~~(i) describe relevant interventions to support the individual toward independence;~~

~~(ii) identify the location where program strategy information, that shall be accessible to any person responsible for implementation, can be found;~~

~~(iii) include, for those clients who lack them, training in personal skills essential for privacy and independence, including toilet training, personal hygiene, dental hygiene, self feeding, bathing, dressing, grooming and communication of basic needs, until it has been demonstrated that the client is developmentally incapable of acquiring them;~~

~~(iv) identify mechanical supports, if needed, to achieve proper body position, balance or alignment, including the reason for each support, the situations that each is to be applied, and a schedule for the use of each support;~~

~~(v) provide that clients who have multiple disabling conditions spend a major portion of each waking day out of bed and outside the bedroom area, moving about by various methods and devices when possible; and~~

~~(vi) include opportunities for client choice and self-management.~~

~~(4) The facility shall make available a copy of each client's individual program plan to relevant staff, staff of other agencies who work with the client or a legal guardian.~~

~~(5) As soon as the interdisciplinary team has formulated a client's individual program plan, each client shall receive a continuous active treatment program consisting of needed interventions and services in sufficient number and frequency to support the achievement of the objectives identified in the individual program plan.~~

~~(a) The facility shall develop an active treatment schedule that outlines the current active treatment program and that is readily available for review by relevant staff.~~

~~(b) Staff who work with the client shall implement each client's individual program plan, except those facets of the individual program plan that may be implemented only by licensed personnel.~~

~~(6) The facility shall document, in measurable terms, data and significant events relative to the accomplishment of the criteria specified in individual client program plans.~~

~~(7) The Qualified Intellectual Disabilities Professional shall review and revise the individual program plan, including situations that the client:~~

~~(a) has successfully completed an objective or objectives identified in the individual program plan;~~

~~(b) is regressing or losing skills already gained;~~

~~(c) is failing to progress toward identified objectives after reasonable efforts have been made; or~~

~~(d) is being considered for training towards new objectives.~~

#### **R432-152-12. Comprehensive Functional Assessment.**

~~(1) Within 30 days after admission, the interdisciplinary team shall complete accurate assessments or reassessments as needed to supplement the preliminary evaluation referred to in Subsection R432-152-14(3).~~

~~(2) The comprehensive functional assessment in Subsection (1) shall take into consideration the client's age and the implications for active treatment and shall:~~

~~(a) identify the presenting problems and disabilities and, where possible, their causes;~~

~~(b) identify a client's specific developmental strengths;~~

~~(c) identify a client's specific developmental and behavioral management needs;~~

~~(d) identify a client's need for services without regard to the actual availability of the services needed; and~~

~~(e) include physical development and health, nutritional status, sensorimotor development, affective development, speech and language development, auditory functioning, cognitive development, social development, adaptive behaviors and independent living skills necessary for a client to be able to function in the community and vocational skills.~~

~~(3) The interdisciplinary team shall annually review the comprehensive functional assessment of each client and update the plan as needed including the identified assessments required in Section R432-152-14(3).~~

#### **R432-152-13. Human Rights Committee.**

~~(1) The facility shall designate and use a specially constituted committee or committees consisting of members of the facility staff, parents, legal guardians, clients as appropriate, qualified persons who have experience or training in contemporary practices to change inappropriate client behavior and persons with no ownership or controlling interest in the facility to:~~

~~(a) review, approve and monitor individual programs designed to manage inappropriate behavior and other programs that, in the opinion of the committee, involve risks to client protection and rights;~~

~~(b) ensure that these programs are conducted only with the written informed consent of the client, parent, if the client is a minor, or legal guardian; and~~

~~(c) review, monitor and make suggestions to the facility about its practices and programs as they relate to medication usage, physical restraints, time-out rooms, application of painful or noxious stimuli, control of inappropriate behavior, protection of client rights and funds and any other area that the committee believes need to be addressed.~~

#### **R432-152-14. Admissions, Transfers, and Discharge.**

~~(1) The facility may only admit clients who need active treatment services.~~

~~(2) The facility shall base its admission decision on a preliminary evaluation of the client. The preliminary evaluation may be conducted or updated by the facility or an outside source and shall determine that the facility can provide for the client's needs and that the client is likely to benefit from placement in the facility.~~

~~(3) A preliminary evaluation under Subsection (2) shall contain background information as well as current valid assessments of the following:~~

~~(a) functional developmental;~~

~~(b) behavioral status;~~

~~(c) social status; and~~

~~(d) health and nutritional status.~~

~~(4) The facility shall not admit clients under the age of 22 years without express permission of the Department.~~

~~(5) Client transfers and discharges shall comply with the requirements of Section R432-150-22.~~

#### **R432-152-15. Client Behavior and Facility Practices.**

~~(1) The facility shall develop and implement written policies and procedures for the management of conduct between staff and clients.~~

~~(2) The policies and procedures under Subsection (1) shall:~~

~~(a) promote the growth, development and independence of the client;~~

~~(b) address the extent that client choice will be accommodated in daily decision-making, emphasizing self-determination and self management to the extent possible;~~

~~(c) specify client conduct to be allowed or not allowed; and~~

~~(d) be available to staff, clients, parents of minor children and legal guardians.~~

~~(3) To the extent possible, clients shall participate in the formulation of the policies and procedures under Subsection (1).~~

~~(4) Clients shall not discipline other clients, except as part of an organized system of self government, as set forth in facility policy.~~

~~(5) The facility shall develop and implement written policies and procedures that govern the management of inappropriate client behavior:~~

~~(a) The policies and procedures shall be consistent with the Subsection R432-152-15(2).~~

~~(b) The policies and procedures shall:~~

~~(i) specify facility approved interventions to manage inappropriate client behavior;~~

~~(ii) designate these interventions on a hierarchy to be implemented, ranging from most positive or least intrusive, to least positive or most intrusive; and~~

~~(iii) ensure, before the use of more restrictive techniques, that less restrictive measures have been implemented with the results documented in the client's record.~~

~~(c) The policies and procedures shall address the following:~~

~~(i) the use of time-out rooms;~~

~~(ii) the use of physical restraints;~~

~~(iii) the use of chemical restraints to manage inappropriate behavior;~~

~~(iv) the application of painful or noxious stimuli;~~

~~(v) the staff members who may authorize the use of specified interventions; and~~

~~(vi) a mechanism for monitoring and controlling the use of such interventions.~~

~~(d) Interventions to manage inappropriate client behavior shall be employed with safeguards and supervision to ensure that the safety, welfare and civil and human rights of clients are adequately protected.~~

~~(e) A facility may not utilize "as needed" programs to control inappropriate behavior.~~

~~(6) A client may be placed in a time-out room where egress is prevented only if the following conditions are met:~~

~~(a) the placement is part of an approved systematic time-out program as required by Subsection R432-152-15(5);~~

~~(b) the client is under the direct constant visual supervision of designated staff;~~

~~(c) the door to the room is held shut by staff or by a mechanism requiring constant physical pressure from a staff member to keep the mechanism engaged;~~

~~(d) placement of a client in a time-out room shall not exceed one hour per incident of maladapted behavior;~~

~~(e) clients placed in time-out rooms shall be protected from hazardous conditions including sharp corners and objects, uncovered light fixtures and unprotected electrical outlets; and~~

~~(f) the facility shall maintain a log for each time-out room.~~

~~(7) A facility may use physical restraints only:~~

~~(a) as an integral part of an individual program plan that is intended to lead to less restrictive means of managing and eliminating the behavior that the restraint is applied for;~~

~~(b) as an emergency measure, but only if absolutely necessary to protect the client or others from injury; or~~

~~(c) as a health related protection prescribed by a physician, but only if absolutely necessary during the conduct of a specific medical or surgical procedure, or only if absolutely necessary for client protection during the time that a medical condition exists.~~

~~(8) A facility may apply emergency restraints for initial or extended use for no longer than 12 consecutive hours for the combined initial and extended use time period provided that authorization is obtained as soon as the client is restrained or stable.~~

~~(9) A facility may not issue orders for restraint on a standing or as needed basis.~~

~~(10) Facility staff shall check clients placed in restraints at least every 30 minutes and maintain documentation of these checks.~~

~~(a) Restraints shall be applied to cause the least possible discomfort and may not cause physical injury to the client.~~

~~(b) Facility staff shall provide and document opportunity for motion and exercise for a period of not less than 10 minutes during each two hour period that a restraint is employed.~~

~~(c) Barred enclosures shall not be more than three feet in height and shall not have tops.~~

~~(11) The facility shall not administer medications at a dose that interferes with a client's daily living activities.~~

~~(a) The interdisciplinary team shall approve medications used for the control of inappropriate behavior and be used only as an integral part of the client's individual program plan that is directed specifically towards the reduction of and eventual elimination of the behaviors that the medications are employed for.~~

~~(b) Medications used for control of inappropriate behavior shall be:~~

~~(i) monitored closely, in conjunction with the physician and the medication review requirement; and~~

~~(ii) gradually withdrawn at least annually in a carefully monitored program conducted in conjunction with the interdisciplinary team, unless clinical evidence justifies that this is contraindicated.~~

#### **R432-152-16. Physician Services.**

~~(1) The facility shall ensure the availability of physician services 24 hours a day.~~

~~(a) The physician shall develop, in coordination with facility licensed nursing personnel, a medical care plan of treatment for a client if the physician determines that the client requires 24 hour licensed nursing care.~~

~~(b) The care plan shall be integrated into the client's program plan.~~

~~(c) Each client requiring a medical care plan of treatment shall be admitted by and remain under the care of a health practitioner licensed to prescribe medical care for the client.~~

~~(d) The facility shall obtain written orders for medical treatment at the time of admission.~~

~~(e) The facility shall provide or obtain preventive and general medical care as well as annual physical examinations of each client that includes:~~

~~(i) an evaluation of vision and hearing;~~

~~(ii) immunizations, using as a guide the recommendations of the Public Health Service Advisory Committee on Immunization Practices or of the Committee on the Control of Infectious Diseases of the American Academy of Pediatrics;~~

~~(iii) routine screening laboratory examinations, as determined necessary by the physician; and~~

~~(iv) tuberculosis control in accordance with Rule R388-804, Tuberculosis Control.~~

~~(2) A physician shall participate in the establishment of each newly admitted client's initial individual program plan as required by Section R432-152-11.~~

~~(a) If appropriate, physicians shall participate in the review and update of an individual program plan as part of the interdisciplinary team process either in person or through written report to the interdisciplinary team.~~

~~(b) A physician shall participate in the discharge planning of clients under a medical care plan of treatment. In cases of discharge against medical advice, the facility shall immediately notify the attending physician.~~

#### **R432-152-17. Nursing Services.**

~~(1) The facility shall provide nursing services in accordance with client needs. Nursing services shall include:~~

~~(a) participation as appropriate in the development, review and update of an individual program plan as part of the interdisciplinary team process;~~

~~(b) the development, with a physician, of a medical care plan of treatment for a client if the physician has determined that an individual client requires such a plan; and~~

~~(c) for those clients certified as not needing a medical care plan, a documented quarterly health status review by direct physical examination conducted by a licensed nurse including identifying and implementing nursing care needs as prescribed by the client's physician.~~

~~(2) Nursing services shall coordinate with other members of the interdisciplinary team to implement appropriate protective and preventive health measures that include:~~

~~(a) training clients and staff as needed in appropriate health and hygiene methods;~~

~~(b) control of communicable diseases and infections, including the instruction of other personnel in methods of infection control; and~~

~~(c) training direct care staff in detecting signs and symptoms of illness or dysfunction, first aid for accidents or illness and basic skills required to meet the health needs of the clients.~~

~~(3) Nursing practice and delegation of nursing tasks shall comply with Section R156-31b-701.~~

~~(a) If the facility utilizes only licensed practical nurses to provide health services, there shall be a formal arrangement for a registered nurse to provide verbal or on-site consultation to the licensed practical nurse.~~

~~(b) Non-licensed staff who work with clients under a medical care plan shall be supervised by licensed nursing personnel.~~

~~(4) The administrator shall employ and designate, in writing, a nursing services supervisor.~~

~~(a) The nursing services supervisor may be either a registered nurse or a licensed practical nurse.~~

~~(b) The nursing services supervisor shall designate, in writing, a licensed nurse to be in charge during any temporary absence of the nursing services supervisor.~~

~~(5) The nursing services supervisor shall:~~

~~(a) establish a system to assure nursing staff implement physician orders and deliver health care services as needed;~~

~~(b) plan and direct the delivery of nursing care, treatments, procedures, and other services to assure that each client's needs are met;~~

~~(c) review each client's health care needs and orders for care and treatment;~~

~~(d) review client individual program plans to assure necessary medical aspects are incorporated;~~

~~(e) review the medication system for completeness of information, accuracy in the transcription of physician's orders, and adherence to stop-order policies;~~

~~(f) instruct the nursing staff on the legal requirements of charting and ensure that a nurse's notes describe the care rendered and include the client's response;~~

~~(g) teach and coordinate rehabilitative nursing to promote and maintain optimal physical and mental functioning of the client;~~

~~(h) inform the administrator, attending physician and family of significant changes in the client's health status;~~

~~(i) when appropriate, plan with the physician, family, and health-related agencies for the care of the client upon discharge;~~

~~(j) develop, with the administrator, a nursing services procedure manual including procedures practiced in the facility;~~

~~(k) coordinate client services through appropriate quality assurance and interdisciplinary team meetings;~~

~~(l) respond to the pharmacist's quarterly medication report;~~

~~(m) develop written job descriptions for levels of nursing personnel and orient new nursing personnel to the facility and their duties and responsibilities;~~

~~(n) complete written performance evaluations for each member of the nursing staff at least annually; and~~

~~(o) plan or conduct documented training programs for nursing staff and clients.~~

#### **R432-152-18. Dental Services.**

~~(1) The facility shall provide or arrange for comprehensive dental diagnostic services and comprehensive dental treatment for each client.~~

~~(a) "Comprehensive dental diagnostic services" means:~~

~~(i) a complete extra-oral and intra-oral examination, using diagnostic aids necessary to properly evaluate the client's oral condition, before one month after admission to the facility, unless the client's record contains an examination that was completed within 12 months before admission;~~

~~(ii) periodic examination and diagnosis performed annually, including radiographs when indicated and detection of manifestations of systemic disease; and~~

~~(iii) a review of the results of examination and entry of the results in the client's dental record.~~

~~(b) "Comprehensive Dental Treatment" means:~~

~~(i) the available emergency dental treatment on a 24-hour basis by a licensed dentist; and~~

~~(ii) dental care needed for relief of pain and infection, restoration of teeth and maintenance of dental health.~~

~~(2) If appropriate, a dental professional shall participate in the development, review and update of the individual program plan as part of the interdisciplinary process, either in person or through written report to the interdisciplinary team.~~

~~(3) The facility shall provide education and training for clients and responsible staff in the maintenance of clients' oral health.~~

~~(4) If the facility maintains an in-house dental service, the facility shall keep a permanent dental record for each client with a dental summary maintained in the client's living unit.~~

~~(5) If the facility does not maintain an in-house dental service, the facility shall obtain a dental summary of the results of dental visits and maintain the summary in the client's record.~~

#### **R432-152-19. Pharmacy Services.**

~~(1) The facility shall provide routine and emergency medications and biologicals.~~

~~(a) Medications and biologicals may be obtained from community or contract pharmacists, or the facility may maintain a licensed pharmacy.~~

~~(b) Pharmacy services shall be under the direction and responsibility of a qualified, licensed pharmacist. The pharmacist may be employed full time by the facility or may be retained by contract.~~

~~(c) The pharmacist shall develop pharmacy service policies and procedures in conjunction with the administrator. Pharmacy policies shall address:~~

~~(i) medication orders;~~

~~(ii) labeling;~~

~~(iii) storage;~~

~~(iv) emergency medication supply;~~

~~(v) administration of medications;~~

~~(vi) pharmacy supplies; and~~

~~(vii) automatic stop orders.~~



~~(2) The pharmacist, with input from the interdisciplinary team, shall review the medication regimen of each client at least quarterly.~~

~~(a) The pharmacist shall report any irregularities or errors in a client's medication regimen to the prescribing physician and interdisciplinary team.~~

~~(b) The pharmacist shall develop and review a record of each client's medication regimen.~~

~~(3) The facility shall maintain an individual medication administration record for each client.~~

~~(4) As appropriate, the pharmacist shall participate in the development, implementation, and review of each client's individual program plan, either in person or through written report to the interdisciplinary team.~~

~~(5) The facility shall have an organized system for medication administration that identifies each medication up to the point of administration. The system shall assure that medications and treatments:~~

~~(a) are administered in compliance with the physician's orders;~~

~~(b) are administered without error; and~~

~~(c) are administered by licensed medical or licensed nursing personnel.~~

~~(6) The facility shall teach clients how to administer their own medications if the interdisciplinary team determines that self-administration of medications is an appropriate objective.~~

~~(a) The facility shall inform the client's physician of the interdisciplinary team's recommendation that self-administration of medications is an objective for the client.~~

~~(b) No client may self-administer medications until they demonstrate the competency to do so.~~

~~(7) The facility shall immediately record each telephone order for medications including the date and time of the order and the receiver's signature and title. The person who prescribed the order shall countersign and date the order within 15 days of writing the order.~~

~~(8) The facility shall maintain records of the receipt and disposition of controlled medications.~~

~~(a) The facility shall maintain records of schedule III and IV drugs in such a manner that the receipt and disposition are readily traced.~~

~~(b) The facility shall, on a sample basis, periodically reconcile the receipt and disposition of controlled drugs in schedules II through IV, drugs subject to the Comprehensive Drug Abuse Prevention and Control Act of 1970 as implemented by 42 CFR Part 308.~~

~~(9) The facility shall store medications under proper conditions of sanitation, temperature, light, humidity and security.~~

~~(a) The facility shall secure controlled substances in a manner consistent with applicable pharmacy laws.~~

~~(b) The facility shall separate and secure the storage of non-medication items such as poisonous and caustic materials.~~

~~(c) Medication containers shall be clearly labeled.~~

~~(d) Only persons authorized by facility policy shall have access to medications.~~

~~(e) The facility shall store medication intended for internal use separately from medication intended for external use.~~

~~(f) The facility shall maintain medications stored at room temperature between 59 and 80 degrees Fahrenheit and shall maintain refrigerated medications between 36 and 46 degrees Fahrenheit.~~

~~(g) The facility shall store medications, and similar items that require refrigeration, securely and segregated from food items.~~

~~(h) The facility shall keep medications in the original pharmacy container and shall not transfer the medications to other containers. Medications taken out of the facility for home visits, workshops, school or other activities shall be packaged and labeled by a person authorized to package medications in accordance with law.~~

~~(i) Clients who have been trained to self-administer medications in accordance with Subsection R432-152-19(6) may have access to keys to their individual medication supply.~~

~~(10) Labeling of medications and biologicals shall:~~

~~(a) be based on currently accepted professional principles and practices; and~~

~~(b) include the appropriate accessory and cautionary instructions, as well as the expiration date, if applicable.~~

~~(11) The facility shall remove from use outdated medications and medication containers with worn, illegible or missing labels.~~

~~(12) The facility shall immediately remove medications and biologicals packaged in containers designated for a particular client from the client's current medication supply if the medication is discontinued by the physician.~~

~~(13) Medications may be sent with the client upon discharge if so ordered by the discharging physician, provided the medications are released in compliance with Utah pharmacy law and rules and a record of the medications sent with the client is documented in the client's health record.~~

~~(14) Within one month of a medication being discontinued, the facility shall destroy the individual client medications supplied by prescription or those that remain in the facility after discharge or death of the client in the following manner:~~

~~(a) medications shall be destroyed by the facility in the presence of the staff pharmacist or consulting pharmacist and an appointed licensed nurse employed by the facility;~~

~~(b) if one or both of these persons are not available within the month, a licensed nurse and an individual appointed by the administrator may serve as witnesses;~~

~~(c) the appointments shall be rotated periodically among responsible staff members; and~~

~~(d) the name of the client, the name and strength of the medication, the prescription number, the amount destroyed, the method of destruction, the date of destruction and the signatures of the witnesses shall be recorded in the client's record or in a separate log and retained for at least three years.~~

~~(15) Unless otherwise prohibited under applicable federal or state laws, individual client medications supplied in sealed containers may be returned, if unopened, to the issuing pharmacy for disposition provided that:~~

~~(a) no controlled medications are returned;~~

~~(b) medications are identified as to lot or control number; and~~

~~(c) the signatures of the receiving pharmacist and a licensed nurse employed by the facility are recorded and retained for at least three years in a separate log that lists the name of the client, the name, strength, prescription number, if applicable, the amount of the medication returned and the date of return.~~

~~(16) The facility shall maintain an emergency medication supply appropriate to the needs of the clients served.~~

~~(a) The pharmacist in coordination with the administrator shall develop an emergency medication supply policy to include the following requirements:~~

~~(i) specific medications and dosages to be included in the emergency medication supply shall be listed;~~

~~(ii) containers shall be sealed to prevent unauthorized use;~~  
~~(iii) contents of the emergency medication supply shall be listed on the outside of the container and the use of contents shall be documented by nursing staff;~~  
~~(iv) the emergency medication supply shall be accessible to nursing staff; and~~  
~~(v) the pharmacist shall inventory the emergency medication supply monthly. Used or outdated items shall be replaced within 72 hours.~~  
~~(17) The pharmacy shall furnish medications and biologicals as follows:~~  
~~(a) medications ordered for administration as soon as possible shall be available and administered within two hours of a physician's order;~~  
~~(b) antibiotics shall be available and administered within four hours of a physician's order;~~  
~~(c) new medication orders shall be initiated within 24 hours of the order or as indicated by the physician;~~  
~~(d) prescription medications shall be refilled in a timely manner; and~~  
~~(e) orders for controlled substances shall be sent to the pharmacy within 48 hours of the order. The order sent to the pharmacy may be a written prescription by the prescriber, a direct copy of the original order, or an electronic reproduction.~~

#### **R432-152-20. Laboratory Services.**

~~(1) The facility shall provide laboratory services in accordance with the size and needs of the client population.~~  
~~(2) Laboratory services shall comply with the requirements of the Clinical Laboratory Improvement Amendments of 1988. Laboratory inspection reports shall be available for Department review.~~

#### **R432-152-21. Environment.**

~~(1) Infection control procedures and reporting shall comply with Subsection R432-150-11(4).~~  
~~(2) The facility shall have a safety committee that includes the administrator, Qualified Intellectual Disabilities Professional, head housekeeper, chief of facility maintenance and others as designated by facility policy.~~  
~~(a) The safety committee shall:~~  
~~(i) review incident and accident reports and recommend changes to the administrator to prevent or reduce recurrence;~~  
~~(ii) review facility safety policies and procedures at least annually, and make appropriate recommendations; and~~  
~~(iii) establish a procedure to inspect the facility periodically for hazards.~~  
~~(b) Inspection reports shall be filed with the safety committee.~~

#### **R432-152-22. Emergency Plan and Procedures.**

~~(1) The facility shall develop and implement detailed written plans and procedures to meet potential emergencies and disasters such as fire, severe weather and missing clients.~~  
~~(a) The facility shall periodically review and update written emergency procedures.~~  
~~(b) The emergency plan shall be made available to the staff.~~  
~~(c) Facility staff shall receive periodic training on emergency plan procedures.~~  
~~(d) The emergency plan shall address the following:~~

~~(i) evacuation of occupants to a safe place within the facility or to another location;~~  
~~(ii) delivery of essential care and services to facility occupants by alternate means;~~  
~~(iii) delivery of essential care and services when additional persons are housed in the facility during an emergency;~~  
~~(iv) delivery of essential care and services to facility occupants when the staff is reduced by an emergency; and~~  
~~(v) maintenance of safe ambient air temperatures within the facility. Ambient air temperature of at least 58 degrees Fahrenheit shall be maintained during emergencies.~~  
~~(c) Emergency heating shall be approved by the local fire department.~~  
~~(2) The facility's emergency plan shall identify:~~  
~~(a) the person with decision making authority for fiscal, medical and personnel management;~~  
~~(b) on hand personnel, equipment and supplies and how to acquire additional resources after an emergency or disaster;~~  
~~(c) assignment of personnel to specific tasks during an emergency;~~  
~~(d) methods of communicating with local emergency agencies, authorities and other appropriate individuals;~~  
~~(e) the individuals who shall be notified in an emergency, in order of priority;~~  
~~(f) method of transporting and evacuating clients and staff to other locations; and~~  
~~(g) conversion of the facility for emergency use.~~  
~~(3) Emergency telephone numbers shall be posted near telephones accessible to staff.~~  
~~(4) The facility shall hold simulated disaster drills semi-annually for staff, in addition to fire drills. Documentation shall be maintained for Department review.~~  
~~(5) The licensee and administrator shall develop a written fire emergency and evacuation plan in consultation with qualified fire safety personnel.~~  
~~(a) The evacuation plan shall delineate evacuation routes and location of fire alarm boxes and fire extinguishers.~~  
~~(b) The written fire emergency plan shall include fire containment procedures and how to use the facility alarm systems and signals.~~  
~~(c) Fire drills and fire drill documentation shall be in accordance with Buildings under the jurisdiction of the Fire Prevention Board.~~  
~~(d) The facility shall evacuate clients during at least one drill each year on each shift that shall include:~~  
~~(i) evacuation of clients with physical disabilities;~~  
~~(ii) filing a report and evaluation on each evacuation drill; and~~  
~~(iii) investigation of problems with evacuation drills, including accidents, and corrective action taken.~~

#### **R432-152-23. Smoking Policies.**

~~Smoking policies shall comply with Title 26, Chapter 38, "Utah Indoor Clean Air Act".~~

#### **R432-152-24. Pets in Long-Term Care Facilities.**

~~(1) Each facility shall develop a written policy regarding pets in accordance with these rules and local ordinances.~~  
~~(2) The facility shall adhere to the requirements of Section R432-150-21.~~

**R432-152-25. Housekeeping Services.**

~~\_\_\_\_\_ (1) The facility shall provide housekeeping services to maintain a clean, sanitary and healthy environment.~~

~~\_\_\_\_\_ (2) If the facility contracts for housekeeping services with an outside agency, there shall be a signed and dated agreement that details services provided.~~

~~\_\_\_\_\_ (3) The housekeeping service shall meet the requirements of Section R432-150-26.~~

**R432-152-26. Laundry Services.**

~~\_\_\_\_\_ The facility shall adhere to the requirements of Section R432-150-27.~~

**R432-152-27. Maintenance Services.**

~~\_\_\_\_\_ The facility shall adhere to the requirements of Section R432-150-28.~~

**R432-152-28. Dietary Services.**

~~\_\_\_\_\_ The facility shall adhere to the requirements of Section R432-150-24.~~

**R432-152-29. Client Records.**

~~\_\_\_\_\_ (1) The facility shall develop and maintain a record keeping system that includes a separate record for each client with documentation of the client's health care, active treatment, social information and protection of the client's rights.~~

~~\_\_\_\_\_ (a) The facility shall keep confidential information contained in the client's records.~~

~~\_\_\_\_\_ (b) The facility shall develop and implement policies and procedures governing the release of any client information, including consent necessary from the client or client's legal guardian.~~

~~\_\_\_\_\_ (c) Entries into client records shall be legible, dated and signed by the individual making the entry.~~

~~\_\_\_\_\_ (d) The facility shall provide a legend to explain any symbol or abbreviation used in a client's record.~~

~~\_\_\_\_\_ (e) The facility shall insure each identified residential living unit has available on-site pertinent information of each client's record.~~

~~\_\_\_\_\_ (f) Client's records shall be complete and systematically organized according to facility policy to facilitate retrieval and compilation of information.~~

~~\_\_\_\_\_ (2) The client record department shall be under the direction of a Registered Health Information Administrator or a Registered Health Information Technician through employment or consultation. If retained by consultation, visits shall be at least semi-annually and documented through written reports to the administrator.~~

~~\_\_\_\_\_ (3) The facility shall safeguard client records from loss, defacement, tampering, fires and floods.~~

~~\_\_\_\_\_ (4) The facility shall protect client records against access by unauthorized individuals.~~

~~\_\_\_\_\_ (5) The facility shall retain client records for at least seven years after the last date of client care.~~

~~\_\_\_\_\_ (a) The facility shall retain records of minors as follows:~~

~~\_\_\_\_\_ (i) at least two years after the minor reaches age 18 or the age of majority; and~~

~~\_\_\_\_\_ (ii) a minimum of seven years.~~

~~\_\_\_\_\_ (b) The facility shall retain client records within the facility upon change of ownership.~~

~~\_\_\_\_\_ (c) If a facility ceases operation, the facility shall arrange for appropriate safe storage and prompt retrieval of client records, client indices and discharges for the period specified.~~

~~\_\_\_\_\_ (d) The facility may arrange storage of client records with another facility or may return client records to the attending physician who is still in the community.~~

**R432-152-30. Respite Care.**

~~\_\_\_\_\_ (1) Intermediate Care Facilities for Individuals with Intellectual Disabilities may provide respite services that comply with the following requirements:~~

~~\_\_\_\_\_ (a) the purpose of respite is to provide intermittent, time-limited care to give primary caretakers relief from the demands of caring for a person;~~

~~\_\_\_\_\_ (b) respite services may be provided at an hourly rate or daily rate, but shall not exceed 14 days for any single respite stay.~~

~~\_\_\_\_\_ (c) the facility shall coordinate the delivery of respite services with the recipient of services, case manager and the family member or primary caretaker;~~

~~\_\_\_\_\_ (d) the facility shall document the person's response to the respite placement and coordinate with provider agencies to ensure an uninterrupted service delivery program;~~

~~\_\_\_\_\_ (e) the facility shall complete a service agreement to serve as the plan of care, and shall identify the prescribed medications, physician treatment orders, need for assistance for activities of daily living and diet orders;~~

~~\_\_\_\_\_ (f) the facility shall have written policies and procedures available to staff regarding the respite care clients that include:~~

~~\_\_\_\_\_ (i) medication administration;~~

~~\_\_\_\_\_ (ii) notification of a responsible party in the case of an emergency;~~

~~\_\_\_\_\_ (iii) service agreement and admission criteria;~~

~~\_\_\_\_\_ (iv) behavior management interventions;~~

~~\_\_\_\_\_ (v) philosophy of respite services;~~

~~\_\_\_\_\_ (vi) post-service summary;~~

~~\_\_\_\_\_ (vii) training and in-service requirement for employees; and~~

~~\_\_\_\_\_ (viii) handling personal funds;~~

~~\_\_\_\_\_ (g) The facility shall provide persons receiving respite services a copy of the Resident Rights documents upon initial day of service and updated annually;~~

~~\_\_\_\_\_ (h) the facility shall maintain a record for each person receiving respite services that includes:~~

~~\_\_\_\_\_ (i) retention and storage of records shall comply with Subsections R432-152-29(3) and (4);~~

~~\_\_\_\_\_ (ii) confidentiality and release of information shall comply with Subsection R432-150-25(3); and~~

~~\_\_\_\_\_ (iii) the record shall contain the following:~~

~~\_\_\_\_\_ (A) a service agreement;~~

~~\_\_\_\_\_ (B) demographic information and resident identification data;~~

~~\_\_\_\_\_ (C) nursing notes;~~

~~\_\_\_\_\_ (D) physician treatment orders;~~

~~\_\_\_\_\_ (E) records made by staff regarding daily care of the person in service;~~

~~\_\_\_\_\_ (F) accident and injury reports; and~~

~~\_\_\_\_\_ (G) a post-service summary; and~~

~~\_\_\_\_\_ (i) The facility shall file in the client record and inform staff if a client has an advanced directive.~~

**R432-152-31. Penalties.**

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

**R432. Health and Human Services, Health Care Facility Licensing.**

**R432-152. Intermediate Care Facility for Individuals with Intellectual Disabilities.**

**R432-152-1. Legal Authority.**

This rule is authorized by Sections 26B-1-202 and 26B-2-212.

**R432-152-2. Purpose.**

This rule establishes the licensing and operational standards for intermediate care facilities serving individuals with disabilities.

**R432-152-3. Definitions.**

The definitions in Section R432-1-3 apply to this rule. In addition, the following definitions apply:

(1) "Active Treatment Services" means the delivery of member-specific specialized and generic training, treatment, healthcare services, and related services. Each active treatment program is individually tailored to and integrated into the member's daily life activities.

(2) "Administrator" means the person in charge of the daily operations of the Intermediate Care Facility for Individuals with Intellectual Disabilities.

(3) "Biologicals" means a medicinal product created from living organisms that are used to treat or alleviate symptoms and medical conditions.

(4) "Comprehensive Dental Treatment" means:

(a) available emergency dental treatment on a 24-hour basis by a licensed dentist; and

(b) dental care needed for relief of pain and infection, restoration of teeth, and maintenance of dental health.

(5) "Comprehensive dental diagnostic services" means:

(i) a complete extra-oral and intra-oral examination, using diagnostic aids necessary to properly evaluate the client's oral condition, before one month after admission to the facility, unless the client's record contains an examination that was completed within 12 months before admission;

(ii) periodic examination and diagnosis performed annually, including radiographs when indicated and detection of manifestations of systemic disease; and

(iii) a review of the results of examination and entry of the results in the client's dental record.

(6) "Developmental Period" means the period between conception and the 18th birthday.

(7) "Direct Care Staff" means personnel who provide care, training, treatment or supervision of residents.

(8) "Intermediate Care Facility" (ICF/ID) means a facility for individuals with Intellectual Disability.

(9) "QIDP" means a Qualified Intellectual Disabilities Professional as defined in 42 CFR 483.430(a).

(10) "Respite Care" means to provide intermittent, time-limited care to give primary caretakers relief from the demands of caring for a person.

(11) "Significantly Sub Average General Intellectual Functioning" means a score of two or more standard deviations below the mean on a standardized general intelligence test.

**R432-152-4. Licensure.**

This rule applies to Intermediate Care Facilities for Individuals with Intellectual Disabilities licensed before July 1, 1990, in accordance with Section 26B-2-212.

**R432-152-5. Construction and Physical Environment.**

Intermediate Care Facilities for Individuals with Intellectual Disabilities constructed after July 1, 1990 shall be constructed and maintained in accordance with Rule R432-5 Nursing Facility Construction.

**R432-152-6. Governing Body and Management.**

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

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

(b) set the qualifications for the administrator of the facility.

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

(3)(a) The licensee shall appoint, in writing, an administrator professionally licensed by the Utah Department of Commerce as a nursing home administrator.

(b) The administrator shall supervise no more than one licensed Intermediate Care Facility for Individuals with Intellectual Disabilities.

(c) The administrator shall be on the premises of the facility enough hours in the business day, and at other times as necessary, to permit attention to the management and administration of the facility.

(4)(a) The administrator shall designate, in writing, the name and title of a person to act as administrator in any temporary absence of the administrator.

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

(c) It is not the intent of Subsection (4)(b) to permit an administrator's designee to supplant or replace the administrator the licensee appointed under Subsection (3)(a).

(5) The licensee shall ensure the administrator's responsibilities are included in a written job description that is maintained on file and available for department review. The job description shall include the following responsibilities:

(a) complete, submit and file records and reports required by the department;

(b) function as liaison between the licensee, qualified intellectual disabilities professional and other supervisory staff of the facility;

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

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

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

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

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

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

(i) verify required licenses and permits of staff and consultants at the time of hire or effective date of contract; and

(j) review incident and accident reports and take appropriate action.

(6) The administrator, QIDP and facility department supervisors shall develop job descriptions for each position including job title, job summary, responsibilities, qualifications, required skills and licenses, and physical requirements.

(7) The administrator or designee shall conduct and document periodic employee performance evaluations.

(8) The licensee shall ensure that personnel have access to facility policy and procedure manuals and other information necessary to effectively perform duties and carry out responsibilities.

(9) The administrator shall establish policies and procedures for health screening that meet Subsection R432-150-10(4).

(10) The administrator shall ensure that, in accordance with the state Medicaid Provider Agreement, facility staff provides any requested client records, including current contact information for the client's family, legal guardian or other client representatives upon request of the department.

(11) The licensee shall:

(a) establish and maintain a system that ensures a complete accounting of clients' personal funds entrusted to the facility on behalf of clients and precludes any commingling of client funds with facility funds or with the funds of any person other than another client;

(b) ensure clients' financial records are available on request to each client or client's legal guardian;

(c) ensure funds entrusted to the facility on behalf of clients are kept in the facility or are deposited within five days of receipt in an insured interest-bearing account in a local bank, credit union or savings and loan association authorized to do business in Utah;

(d) deposit any money entrusted to the licensee over \$150 in an interest-bearing account;

(e) surrender any money and valuables of a client that have been entrusted to the licensee in exchange for a signed receipt, upon discharge of a client;

(f) ensure money and valuables kept at the facility are surrendered upon demand and those kept in an interest-bearing account are obtained and surrendered to the client in a timely manner;

(g) ensure within 30 days following the death of a client, except in the case of a medical examiner investigation, money and valuables of that client that have been entrusted to the licensee 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;

(h) immediately notify the local probate court in writing if a client dies without a representative or known heirs; and

(i) promote communication and encourage participation of clients, parents and guardians in the active treatment services process.

#### **R432-152-7. Client Rights.**

(1) The licensee shall ensure the rights of the clients are protected and shall:

(a) inform each client, or legal guardian, of the client's rights as outlined in this section and the rules of the facility;

(b) inform each client 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 each client to exercise their rights as a client of the facility, and as a citizen of the United States, including the right to file complaints, 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 each client 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 medications and physical restraints and are provided active treatment services to reduce dependency on medications 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, fundraising 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 clients have access to a telephone with privacy for incoming and outgoing local and long-distance calls except as contraindicated by factors identified within their individual program plan;

(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 keep and use appropriate personal possessions and clothing, and ensure that each client is dressed in their own clothing each day; and

(n) permit a married couple to reside together as a couple.

(2) The licensee shall ensure facility staff:

(a) promote participation of parents and legal guardians of clients who are minors in the client's active treatment services, unless their participation is unobtainable or inappropriate;

(b) answer communications from clients' families and friends promptly and appropriately;

(c) promote visits by individuals with a relationship to the client, such as family, close friends, legal guardians and advocates, at any reasonable hour, without prior notice, consistent with the right of the 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 services to the 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;

(f) promptly notify the client's parents or guardian of any significant incidents or changes in the client's condition including serious illness, accident, death, abuse or unauthorized absence;

(g) provide support for client access to information about home and community-based services;

(h) provide support for clients in moving into a home or community-based environment; and

(i) do not discourage a client from access to information, making decisions about, learning about or moving into home and community-based services.

(3) A facility employee is considered to have discouraged access to community-based services under Subsection R432-153-7(2)(i) if they attempt to or seek to prevent client access by:

- (a) limiting client access to information;
- (b) providing false information;
- (c) expressing disapproval of community-based services;
- (d) preventing communication with outside organizations and government agencies; or

(e) interfering with the transition process.

(4)(a) The administrator shall develop and implement written policies and procedures that prohibit abuse, neglect or exploitation of clients.

(b) Any person, including a social worker, physician, psychologist, nurse, teacher or employee of a private or public facility serving adults, who has reason to believe that any disabled or elder adult has been the subject of abuse, emotional or psychological abuse, neglect or exploitation, shall immediately notify the nearest peace officer, law enforcement agency or local office of Adult Protective Services in accordance with Section 26B-6-202.

(c) The administrator shall document and ensure that alleged violations are thoroughly investigated and shall prevent further potential abuse while the investigation is in progress.

(d) The administrator shall report the results of investigations within five working days of the incident. If the alleged violation is verified, the administrator shall take appropriate corrective action.

(e) The administrator or designee shall plan and document annual in-service training of staff on the reporting requirements of suspected abuse, neglect and exploitation.

(f) A licensee shall not retaliate, discipline or terminate an employee who reports suspected abuse, neglect or exploitation for that reason alone.

(5) A client under the age of 22 years may not live in the same room with:

- (a) more than one individual; or
- (b) individuals over the age of 22 years, unless they are members of the individual's immediate family.

(6) The administrator shall develop written policies and procedures to implement Subsection R432-152-7(5) and obtain written approval from the department for any exceptions.

#### **R432-152-8. Facility Staffing.**

(1) A QIDP shall integrate, coordinate and monitor each client's active treatment services program.

(2) The licensee shall ensure:

(a) each client receives the professional services required to implement the active treatment services program defined by each client's individual program plan;

(b) professionally licensed program staff work directly with clients and with any other staff who work with clients;

(c) there are enough qualified professional staff to carry out and monitor the various professional interventions in accordance with the stated goals and objectives of every individual program plan;

(d) professional program staff participate in ongoing staff development and training of other staff members;

(e) professional program staff are licensed and provide professional services in accordance with each respective professional practice act as outlined in Title 58 Occupations and Professions and a copy of the current license, registration or certificate is posted or maintained in employee personnel files;

(f) professional program staff designated as human services professionals who do not fall under the jurisdiction of

licensure, certification or registration requirements specified in Title 58 Occupations and Professions, have at least a bachelor's degree in a human services field; and

(g) if the client's individual program plan is being successfully implemented by facility staff, then professionally licensed program staff meeting the qualifications of Subsection R432-152-8(2)(f) are not required except:

(i) QIDPs;

(ii) requirements of Subsection (2)(c) of this section requiring enough qualified professional program staff; and

(iii) as otherwise specified by licensure and certification requirements.

(3) The licensee shall ensure there are enough responsible direct care staff on duty and awake on a 24-hour basis, when clients are present, to take prompt, appropriate action in case of injury, illness, fire or other emergency, in each defined residential living unit housing:

(a) clients for whom a physician has ordered a medical care plan;

(b) clients who are aggressive, assaultive or are security risks;

(c) more than 16 clients; or

(d) each unit of 16 or fewer clients within a multi-unit building.

(4) The licensee shall ensure there is a responsible direct care staff person on duty on a 24-hour basis, when clients are present, to respond to injuries and symptoms of illness and to handle emergencies in each defined residential living unit housing for the following:

(a) clients for whom a physician has not ordered a medical care plan;

(b) clients who are not aggressive, assaultive or security risks; or

(c) residential living units housing 16 or fewer clients.

(5) The licensee shall ensure there are enough support staff available so that direct care staff are not required to perform support services to the extent that these duties interfere with the exercise of their primary direct client care duties.

(6) Clients or volunteers may not perform direct care services for the facility.

(7) The licensee shall employ enough direct care staff to manage and supervise clients in accordance with their individual program plans and ensure the following minimum direct care staff to client ratios for each defined residential unit for each 24-hour period:

(a) 1 direct care staff to 3.2 clients with 2.5 hours per client serving:

(i) children under the age of 12 with severe and profound intellectual disabilities;

(ii) clients with severe physical disabilities;

(iii) clients who are aggressive, assaultive or security risks; or

(iv) clients who manifest severely hyperactive or psychotic behavior;

(b) 1 direct care staff to 4 clients with 2 hours per client serving individuals with moderate intellectual disabilities; and

(c) 1 direct care staff to 6.4 clients with 1.25 hours per serving clients who function within the range of mild intellectual disabilities.

(7) The licensee shall ensure that when there are no clients present in the living unit, a responsible staff member is available by telephone.

(8) The licensee shall ensure each employee has initial and ongoing training to include the necessary skills and competencies required to meet the clients' developmental, behavioral and health needs.

(9) The licensee shall ensure when there are clients under the age of 22 years, each employee receives specialized training regarding the care of children and youth with intellectual disabilities.

#### **R432-152-9. Volunteers.**

(1) Volunteers may be included in the daily activities with clients, but may not be included in the staffing plan or staffing ratios.

(2) The licensee shall ensure volunteers are supervised by staff and oriented to client rights and the facility's policies and procedures.

#### **R432-152-10. Services Provided Under Agreements with Outside Sources.**

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

(2) The licensee shall ensure the agreement under Subsection R432-152-10(1):

(a) contains the responsibilities, functions, objectives and other terms agreed to by both parties; and

(b) requires the licensee to be responsible for assuring that the outside services meet the standards for quality of services contained in this rule.

(3) If living quarters are not provided in a facility owned by the licensee, the licensee shall ensure compliance with the standards relating to physical environment that are specified in Rule R432-5.

#### **R432-152-11. Individual Program Plan.**

(1) The licensee shall ensure each client's program plan is developed by an interdisciplinary team that represents the professions, disciplines or service areas that are relevant to:

(a) identifying the client's needs, as described by the comprehensive functional assessment required in Section R432-152-12; and

(b) designing programs that meet the client's needs.

(2) The licensee shall ensure the interdisciplinary team meetings include the following participants:

(a) representatives of other agencies who may serve the client; and

(b) the client and the client's legal guardian unless participation is unobtainable or inappropriate.

(3) Within 30 days after admission, the interdisciplinary team shall prepare for each client an individual program plan that states the specific objectives necessary to meet the client's needs, as identified by the comprehensive functional assessment required by Section R432-152-12, and the planned sequence for dealing with those objectives that shall be:

(a) stated separately, in terms of a single behavioral outcome;

(b) be assigned projected completion dates;

(c) be expressed in behavioral terms that provide measurable indices of performance;

(d) be organized to reflect a developmental progression appropriate to the individual; and

(e) be assigned priorities.

(4) Each written training program designed to implement the objectives in the individual program plan shall specify the:

(a) methods to be used;

(b) schedule for use of the method;

(c) person responsible for the program;

(d) type of data and frequency of data collection necessary to be able to assess progress toward the desired objectives;

(e) inappropriate client behavior, if applicable; and

(f) appropriate expression of behavior and the replacement of inappropriate behavior, if applicable, with behavior that is adaptive or appropriate.

(5) The licensee shall ensure that the individual program plan:

(a) describes relevant interventions to support the individual toward independence;

(b) identifies the location where program strategy information, that shall be accessible to any person responsible for implementation, can be found;

(c) includes training in personal skills essential for privacy and independence, including toilet training, personal hygiene, dental hygiene, self-feeding, bathing, dressing, grooming and communication of basic needs as client needs dictate or until a client is assessed to be developmentally incapable of acquiring them;

(d) identifies mechanical supports, if needed, to achieve proper body position, balance or alignment, including the reason for each support, the situations that each is to be applied, and a schedule for the use of each support;

(e) provides that clients who have multiple disabling conditions spend a major portion of each waking day out of bed and outside the bedroom area, moving about by various methods and devices when possible; and

(f) includes opportunities for client choice and self-management.

(6) The licensee shall ensure a copy of each client's individual program plan is provided to relevant staff, staff of other agencies who work with the client or a legal guardian.

(7)(a) As soon as the interdisciplinary team has formulated a client's individual program plan, the licensee shall ensure each client receives a continuous active treatment services program consisting of needed interventions and services with enough number and frequency to support the achievement of the objectives identified in the individual program plan.

(b) The licensee shall ensure an active treatment services schedule is developed that outlines the current active treatment services program and that is readily available for review by relevant staff.

(c) Staff who work directly with the client shall implement each client's individual program plan, except those facets of the individual program plan that may be implemented only by licensed personnel.

(8) The licensee shall document, in measurable terms, data and significant events relative to the accomplishment of the criteria specified in individual client program plans.

(9) The QIDP shall review and revise the individual program plan; including situations that the client:

(a) has successfully completed an objective or objectives identified in the individual program plan;

(b) is regressing or losing skills already gained;

(c) is failing to progress toward identified objectives after reasonable efforts have been made; or



(d) is being considered for training towards new objectives.

#### **R432-152-12. Comprehensive Functional Assessment.**

(1) Within 30 days after admission, the interdisciplinary team shall complete accurate assessments or reassessments as needed to supplement the preliminary evaluation referred to in Subsection R432-152-14(3).

(2) The licensee shall ensure the comprehensive functional assessment in Subsection (1) takes into consideration the client's age and the implications for active treatment services and:

(a) identifies the presenting problems and disabilities and, where possible, their causes;

(b) identify a client's specific developmental strengths;

(c) identifies a client's specific developmental and behavioral management needs;

(d) identifies a client's need for services without regard to the availability of the services needed; and

(e) includes:

(i) physical development;

(ii) health, and nutritional status;

(iii) sensorimotor development;

(iv) affective development;

(v) speech and language development;

(vi) auditory functioning;

(vii) cognitive development;

(viii) social development;

(ix) adaptive behaviors;

(x) independent living skills necessary for a client to function in the community; and

(xi) vocational skills.

(3) The interdisciplinary team shall annually review the comprehensive functional assessment of each client and updated the plan as needed including the identified assessments required in Subsection R432-152-14(3).

#### **R432-152-13. Human Rights Committee.**

(1) The licensee shall designate and use a specially constituted committee consisting of:

(a) members of the facility staff;

(b) parents or legal guardians;

(c) clients, as appropriate;

(d) qualified individuals who have experience or training in contemporary practices to change inappropriate client behavior; and

(e) individuals with no ownership or controlling interest in the facility.

(2) The committee outlined in Subsection R432-152-13(1) shall:

(a) review, approve, and monitor individual programs designed to manage inappropriate behavior and any other programs that the committee considers to involve risks to client protection and rights;

(b) ensure that these programs are conducted only with the written informed consent of the client, parent, if the client is a minor, or legal guardian; and

(c) review, monitor and make recommendations to the licensee about its practices and programs as they relate to:

(i) medication usage;

(ii) physical restraints

(iii) time-out rooms;

(iv) application of painful or noxious stimuli;

(v) control of inappropriate behavior;

(vi) protection of client rights and funds; and

(vii) any other area that the committee identifies as risks to client protection and rights.

#### **R432-152-14. Admissions, Transfers, and Discharge.**

(1) The licensee may only admit clients who require active treatment services.

(2)(a) The licensee shall base its admission decision on a preliminary evaluation of the client.

(b) The preliminary evaluation may be conducted or updated by the facility or an outside source and shall determine that the facility can provide for the client's needs and that the client is likely to benefit from placement in the facility.

(c) A preliminary evaluation shall contain background information as well as current assessments of the following:

(a) functional developmental status;

(b) behavioral status;

(c) social status; and

(d) health and nutritional status.

(3) The licensee may not admit clients under the age of 22 years without express permission of the department.

(4) The licensee shall ensure client transfers and discharges shall comply with the requirements of Section R432-150-21.

(5) The licensee shall ensure each client's discharge plan of care:

(a) identifies the essential supports and services necessary for the client to successfully adjust to the new living environment;

(b) incorporates the client's preferences; and

(c) describes necessary coordination of services to meet specific client needs after discharge, to include:

(i) personal care;

(ii) physical therapy; and

(iii) access to supplies and medication.

#### **R432-152-15. Client Behavior and Facility Practices.**

(1) The licensee shall develop and implement written policies and procedures for the management of conduct between staff and clients that:

(a) promote the growth, development and independence of the client;

(b) address the extent that client choice will be accommodated in daily decision-making, with emphasis on self-determination and self-management to the extent possible;

(c) specify client conduct that is allowed or disallowed; and

(d) are made available to staff, clients, parents of minor children and legal guardians.

(2) To the extent possible, clients shall participate in the formulation of the policies and procedures under Subsection R432-152-15(1).

(3) Clients may not discipline other clients, except as part of an organized system of self-government, as outlined in facility policy.

(4) The licensee shall develop and implement written policies and procedures that govern the management of inappropriate client behavior that:

(a) are consistent with the Subsection R432-152-15(1);

(b) specify facility-approved interventions to manage inappropriate client behavior;

(c) designate these interventions on a hierarchy to be implemented, ranging from most positive or least intrusive, to least positive or most intrusive; and

(d) ensure, before the use of more restrictive techniques, that less restrictive measures have been implemented with the results documented in the client's record.

(5) The policies and procedures outlined in Subsection R432-151-15(4) shall address the following:

(a) the use of time-out rooms;

(b) the use of physical restraints;

(c) the use of chemical restraints to manage inappropriate behavior;

(d) the application of painful or noxious stimuli;

(e) the staff members who may authorize the use of specified interventions; and

(f) a mechanism for monitoring and controlling the use of such interventions.

(6) The licensee shall ensure interventions to manage inappropriate client behavior are employed with safeguards and supervision to ensure that the safety, welfare and civil and human rights of clients are adequately protected.

(7) A licensee may not utilize as-needed programs to control inappropriate behavior.

(8) A licensee may place a client in a time-out room where egress is prevented only if the following conditions are met:

(a) the placement is part of an approved systematic time-out program as required by Subsection R432-152-15(4);

(b) the client is under the direct constant visual supervision of designated staff;

(c) the door to the room is held shut by staff or by a mechanism requiring constant physical pressure from a staff member to keep the mechanism engaged;

(d) placement of a client in a time-out room does not exceed one hour per incident of maladapted behavior;

(e) clients placed in time-out rooms are protected from hazardous conditions including sharp corners and objects, uncovered light fixtures, and unprotected electrical outlets; and

(f) the licensee maintains a log for each time-out room.

(9) A licensee may use physical restraints only:

(a) as an integral part of an individual program plan that is intended to lead to less restrictive means of managing and eliminating the behavior that the restraint is applied for;

(b) as an emergency measure, but only if absolutely necessary to protect the client or others from injury; or

(c) as a health-related protection prescribed by a physician, but only if absolutely necessary during the conduct of a specific medical or surgical procedure or only if absolutely necessary for client protection during the time that a medical condition exists.

(10) A licensee may apply emergency restraints for initial or extended use for no longer than 12 consecutive hours for the combined initial and extended use time period as long as authorization is obtained as soon as the client is restrained or stable.

(11) A licensee may not issue orders for restraint on a standing or as needed basis.

(12)(a) The licensee shall ensure staff check clients placed in restraints at least every 30 minutes and maintain documentation of each check.

(b) Staff shall apply restraints to cause the least possible discomfort and may not cause physical injury to the client.

(c) Staff shall provide and document opportunity for motion and exercise for a period of not less than 10 minutes during each two hour period that a restraint is employed.

(d) Staff may not use barred enclosures more than three feet in height and barred enclosures may not have tops.

(13)(a) The licensee may not administer medications at a dose that interferes with a client's daily living activities.

(b) The interdisciplinary team shall approve medications used for the control of inappropriate behavior and is used only as an integral part of the client's individual program plan that is directed specifically towards the reduction of and eventual elimination of the behaviors that the medications are employed for.

(c) Medications used for control of inappropriate behavior shall be:

(i) monitored closely, in conjunction with the physician and the medication review requirement; and

(ii) gradually withdrawn at least annually in a carefully monitored program conducted in conjunction with the interdisciplinary team, unless clinical evidence justifies that this is contraindicated.

#### **R432-152-16. Physician Services.**

(1)(a) The licensee shall ensure the availability of physician services 24 hours a day.

(b) The physician shall develop, in coordination with facility licensed nursing personnel, a medical care plan of treatment for a client if the physician determines that the client requires 24-hour licensed nursing care.

(c) The physician shall integrate the care plan into the client's program plan.

(d) Each client requiring a medical care plan of treatment shall be admitted by and remain under the care of a health practitioner licensed to prescribe medical care for the client.

(e) The licensee shall obtain written orders for medical treatment at the time of admission.

(f) The licensee shall provide or obtain preventive and general medical care as well as annual physical examinations of each client that includes:

(i) an evaluation of vision and hearing;

(ii) immunizations, using as a guide the recommendations of the Public Health Service Advisory Committee on Immunization Practices or of the Committee on the Control of Infectious Diseases of the American Academy of Pediatrics;

(iii) routine screening laboratory examinations, as determined necessary by the physician; and

(iv) tuberculosis control in accordance with Rule R388-804, Tuberculosis Control.

(2)(a) A physician shall participate in the establishment of each newly admitted client's initial individual program plan as required by Section R432-152-11.

(b) A physician shall participate in the review and update of an individual program plan as part of the interdisciplinary team process either in person or through a written report to the interdisciplinary team.

(c) A physician shall participate in the discharge planning of clients under a medical care plan of treatment.

(d) In cases of discharge against medical advice, the licensee shall immediately notify the attending physician.

#### **R432-152-17. Nursing Services.**

(1) The licensee shall provide nursing services in accordance with client needs that ensures:

(a) nursing staff participation in the development, review and update of an individual program plan as part of the interdisciplinary team process;

(b) the development, with a physician, of a medical care plan of treatment for a client if the physician has determined that an individual client requires such a plan; and

(c) for those clients assessed to not need a medical care plan, a documented quarterly health status review by direct physical examination conducted by a licensed nurse including identifying and implementing nursing care needs as prescribed by the client's physician.

(2) The licensee shall ensure nursing services staff coordinate with other members of the interdisciplinary team to implement appropriate protective and preventive health measures that include:

(a) training clients and staff as needed in appropriate health and hygiene methods;

(b) control of communicable diseases and infections, including the instruction of other personnel in methods of infection control; and

(c) training direct care staff in detecting signs and symptoms of illness or dysfunction, first aid for accidents or illness and basic skills required to meet the health needs of the clients.

(3)(a) The licensee shall ensure nursing practice and delegation of nursing tasks comply with Section R156-31b-701.

(b) If the licensee utilizes only licensed practical nurses to provide health services, there shall be a formal arrangement for a registered nurse to provide verbal or on-site consultation to the licensed practical nurse.

(c) The licensee shall ensure non-licensed staff who work with clients under a medical care plan shall be supervised by licensed nursing personnel.

(4)(a) The administrator shall employ and designate, in writing, a nursing services supervisor.

(b) The nursing services supervisor may be either a registered nurse or a licensed practical nurse.

(c) The nursing services supervisor shall designate, in writing, a licensed nurse to be in charge during any temporary absence of the nursing services supervisor.

(5) The nursing services supervisor shall:

(a) establish a system to ensure nursing staff implement physician orders and deliver health care services as needed;

(b) plan and direct the delivery of nursing care, treatments, procedures, and other services to ensure that each client's needs are met;

(c) review each client's health care needs and orders for care and treatment;

(d) review client individual program plans to ensure necessary medical aspects are incorporated;

(e) review the medication system for completeness of information, accuracy in the transcription of physician's orders, and adherence to stop-order policies;

(f) instruct the nursing staff on the legal requirements of charting and ensure that a nurse's notes describe the care provided and include the client's response;

(g) teach and coordinate rehabilitative nursing to promote and maintain optimal physical and mental functioning of the client;

(h) inform the administrator, attending physician and family of significant changes in the client's health status;

(i) plan with the physician, family, and health-related agencies for the care of the client upon discharge;

(j) develop, with the administrator, a nursing services procedure manual including procedures practiced in the facility;

(k) coordinate client services through quality assurance and interdisciplinary team meetings;

(l) respond to the pharmacist's quarterly medication report;

(m) develop written job descriptions for levels of nursing personnel and orient new nursing personnel to the facility and their duties and responsibilities;

(n) complete written performance evaluations for each member of the nursing staff at least annually; and

(o) plan or conduct documented training programs for nursing staff and clients.

#### **R432-152-18. Dental Services.**

(1) The licensee shall provide or arrange for comprehensive dental diagnostic services and comprehensive dental treatment for each client.

(2) A dental professional shall participate in the development, review and update of the individual program plan as part of the interdisciplinary process, either in person or through a written report to the interdisciplinary team.

(3) The licensee shall provide education and training for clients and responsible staff in the maintenance of clients' oral health.

(4) If the licensee maintains an in-house dental service, the licensee shall maintain a permanent dental record for each client with a dental summary in the client's living unit.

(5) If the licensee does not maintain an in-house dental service, the licensee shall obtain a summary of the results of dental visits and maintain the summary in the client's record.

#### **R432-152-19. Pharmacy Services.**

(1)(a) The licensee shall provide routine and emergency medications and biologicals.

(b) The licensee may obtain medications and biologicals from community or contract pharmacists, or the licensee may maintain a licensed pharmacy.

(c) The licensee shall ensure pharmacy services are under the direction and responsibility of a qualified, licensed pharmacist who may be employed full time by the facility or may be retained by contract.

(d) The pharmacist shall develop pharmacy service policies and procedures in conjunction with the administrator that address:

(i) medication orders;

(ii) labeling;

(iii) storage;

(iv) emergency medication supply;

(v) administration of medications;

(vi) pharmacy supplies; and

(vii) automatic-stop orders.

(2)(a) The pharmacist, with input from the interdisciplinary team, shall review the medication regimen of each client at least quarterly.

(b) The pharmacist shall report any irregularities or errors in a client's medication regimen to the prescribing physician and interdisciplinary team.

(c) The pharmacist shall develop and review a record of each client's medication regimen.

(3) The licensee shall maintain an individual medication administration record for each client.

(4) The pharmacist shall participate in the development, implementation, and review of each client's individual program plan, either in person or through a written report to the interdisciplinary team.

(5) The licensee shall ensure the facility has an organized system for medication administration that identifies each medication

up to the point of administration and ensure that medications and treatments:

(a) are administered in compliance with the physician's orders;

(b) are administered without error; and

(c) are administered by licensed medical or licensed nursing personnel.

(6)(a) The licensee shall teach clients how to administer their own medications if the interdisciplinary team determines that self-administration of medications is an appropriate objective.

(b) The licensee shall inform the client's physician of the interdisciplinary team's recommendation that self-administration of medications is an objective for the client.

(c) The licensee may not allow a client to self-administer medications until they demonstrate the competency to do so.

(7) The licensee shall immediately record each telephone order for medications including the date and time of the order and the receiver's signature and title and ensure the person who prescribed the order countersigns and dates the order within 15 days of writing the order.

(8)(a) The licensee shall maintain records of the receipt and disposition of controlled medications.

(b) The licensee shall maintain records of schedule III and IV drugs in such a manner that the receipt and disposition are readily traced.

(c) The licensee shall, on a sample basis, periodically reconcile the receipt and disposition of controlled drugs in schedules II through IV, drugs subject to the Comprehensive Drug Abuse Prevention and Control Act of 1970 as implemented by 42 CFR Part 308.

(9) The licensee shall:

(a) store medications under proper conditions of sanitation, temperature, light, humidity and security;

(b) secure controlled substances in a manner consistent with applicable pharmacy laws;

(c) separate and secure the storage of non-medication items such as poisonous and caustic materials;

(d) clearly label medication containers;

(e) only allow a person authorized by facility policy top access to medications;

(f) store medication intended for internal use separately from medication intended for external use;

(g) maintain medications stored at room temperature between 59 and 80 degrees Fahrenheit and maintain refrigerated medications between 36 and 46 degrees Fahrenheit;

(h) store medications, and similar items that require refrigeration, securely and segregated from food items; and

(i) store medications in the original pharmacy container and not transfer the medications to other containers;

(j) ensure medications taken out of the facility for home visits, workshops, school or other activities are packaged and labeled by a person authorized to package medications in accordance with law; and

(k) ensure clients who have been trained to self-administer medications in accordance with Subsection R432-152-19(6) have access to keys to their individual medication supply.

(10) The licensee shall ensure labeling of medications and biologicals:

(a) is based on currently accepted professional principles and practices; and

(b) includes the appropriate accessory and cautionary instructions, as well as the expiration date, if applicable.

(11) The licensee shall remove outdated medications and medication containers with worn, illegible or missing labels from use.

(12) The licensee shall immediately remove medications and biologicals packaged in containers designated for a particular client from the client's current medication supply if the medication is discontinued by the physician.

(13) The licensee may send medications with the client upon discharge if ordered by the discharging physician, as long as the medications are released in compliance with Utah pharmacy law and rules and a record of the medications sent with the client is documented in the client's health record.

(14)(a) Within one month of a medication being discontinued, the licensee shall destroy the individual client medications supplied by prescription or those that remain in the facility after discharge or death of the client as follows:

(b) the licensee shall destroy medications in the presence of the staff pharmacist or consulting pharmacist and an appointed licensed nurse employed by the facility;

(c) if one or both of the individuals listed in Subsection R432-152-19(14)(a) are not available within the month, a licensed nurse and an individual appointed by the administrator may serve as witnesses;

(d) the licensee shall rotate appointments periodically among responsible staff members; and

(e) the licensee shall document and retain the following in the client record for three years:

(i) the name of the client;

(ii) the name and strength of the medication;

(iii) the prescription number;

(iv) the amount destroyed;

(v) the method of destruction;

(vi) the date of destruction; and

(vii) the signatures of the witnesses.

(15) Unless otherwise prohibited by federal or state law, the licensee may return individual client medications to the issuing pharmacy in sealed containers, if unopened, as long as:

(a) no controlled medications are returned;

(b) medications are identified by lot or control number; and

(c) the signatures of the receiving pharmacist and a licensed nurse employed by the licensee are recorded and retained for at least three years in a separate log that lists:

(i) the name of the client;

(ii) the name, strength and prescription number, if applicable;

(iv) the amount of the medication returned; and

(v) the date of return.

(16)(a) The licensee shall maintain an emergency medication supply appropriate to the needs of the clients served.

(b) The pharmacist, in coordination with the administrator, shall develop an emergency medication supply policy that ensures:

(i) there is a list of each specific medication and dosage to be included in the emergency medication supply;

(ii) a requirement that containers are sealed to prevent unauthorized use;

(iii) the contents of the emergency medication supply are listed on the outside of the container and the use of contents is documented by nursing staff;

(iv) the emergency medication supply is accessible to nursing staff;

(v) the pharmacist inventories the emergency medication supply monthly; and

(vi) staff replace used or outdated items within 72 hours.  
(17) The licensee shall ensure the pharmacy provides medications and biologicals as follows:  
(a) medications ordered for administration as soon as possible shall be available and administered within two hours of a physician's order;  
(b) antibiotics are available and administered within four hours of a physician's order;  
(c) new medication orders are initiated within 24 hours of the order or as indicated by the physician;  
(d) prescription medications shall be refilled in a timely manner;  
(e) orders for controlled substances are sent to the pharmacy within 48 hours of the order; and  
(f) an order sent to the pharmacy may be a written prescription by the prescriber, a direct copy of the original order, or an electronic reproduction.

#### **R432-152-20. Laboratory Services.**

(1) The licensee shall provide laboratory services in accordance with the size and needs of the client population.  
(2) The licensee shall ensure laboratory services comply with the requirements of the Clinical Laboratory Improvement Amendments of 1988 and maintain any laboratory inspection reports available for Department review.

#### **R432-152-21. Environment.**

(1) The licensee shall ensure infection control procedures and reporting comply with Subsection R432-150-11(4).  
(2)(a) The licensee shall have a safety committee that includes the administrator, QIDP, head housekeeper, chief of facility maintenance and any others as designated by facility policy.  
(b) The licensee shall ensure the safety committee:  
(i) reviews incident and accident reports and recommends changes to the administrator to prevent or reduce recurrence;  
(ii) reviews facility safety policies and procedures at least annually, and makes recommendations; and  
(iii) establishes a procedure to inspect the facility periodically for hazards.  
(c) The licensee shall file inspection reports with the safety committee.

#### **R432-152-22. Emergency Plan and Procedures.**

(1) The licensee shall develop and implement detailed written plans and procedures to address potential emergencies and disasters including fire, severe weather and missing clients and shall ensure:  
(a) written emergency procedures are periodically reviewed and updated;  
(b) the emergency plan is available to the staff;  
(c) staff receives periodic training on emergency plan procedures;  
(d) the emergency plan addresses the following:  
(i) evacuation of occupants to a safe place within the facility or to another location;  
(ii) delivery of essential care and services to facility occupants by alternate means;  
(iii) delivery of essential care and services when additional persons are housed in the facility during an emergency;  
(iv) delivery of essential care and services to facility occupants when the staff is reduced by an emergency; and

(v) maintenance of safe ambient air temperatures within the facility and an ambient air temperature of at least 58 degrees Fahrenheit is maintained during emergencies; and

(e) emergency heating is approved by the local fire department.

(2) The licensee shall ensure the emergency plan identifies:

(a) the person with decision-making authority for fiscal, medical and personnel management;

(b) on-hand personnel, equipment and supplies and how to acquire additional resources after an emergency or disaster;

(c) assignment of personnel to specific tasks during an emergency;

(d) methods of communicating with local emergency agencies, authorities and other appropriate individuals;

(e) the individuals who shall be notified in an emergency, in order of priority;

(f) method of transporting and evacuating clients and staff to other locations; and

(g) conversion of the facility for emergency use.

(3) The licensee shall post emergency telephone numbers near telephones accessible to staff.

(4) The licensee shall hold simulated disaster drills semi-annually for staff, in addition to fire drills and maintain documentation for department review.

(5) The licensee and administrator shall develop a written fire emergency and evacuation plan in consultation with qualified fire safety personnel and shall ensure:

(a) the evacuation plan shall delineate evacuation routes and location of fire alarm boxes and fire extinguishers;

(b) the written fire emergency plan includes fire-containment procedures and how to use the facility alarm systems and signals;

(c) fire drills and fire drill documentation are in accordance with requirements for buildings under the jurisdiction of the Fire Prevention Board; and

(d) clients are evacuated during at least one drill each year on each shift that includes:

(i) evacuation of clients with physical disabilities;

(ii) filing a report and evaluation on each evacuation drill; and

(iii) investigating problems with evacuation drills, including accidents, and corrective action taken.

#### **R432-152-23. Smoking Policies.**

Smoking policies shall comply with Section 26B-7-503, "Utah Indoor Clean Air Act".

#### **R432-152-24. Pets in Long-Term Care Facilities.**

(1) Each licensee shall develop a written policy regarding pets in accordance with this rule and local ordinances.

(2) The licensee shall adhere to the requirements of Section R432-150-20.

#### **R432-152-25. Housekeeping Services.**

(1) The licensee shall provide housekeeping services to maintain a clean, sanitary and healthy environment.

(2) The licensee shall ensure there is a signed and dated agreement that details services provided if housekeeping services are contracted with an outside agency.

(3) The licensee shall ensure housekeeping services comply with Section R432-150-25.

**R432-152-26. Laundry Services.**

The licensee shall comply with the requirements of Section R432-150-26.

**R432-152-27. Maintenance Services.**

The licensee shall comply with the requirements of Section R432-150-27.

**R432-152-28. Food Services.**

The licensee shall comply with the requirements of Section R432-150-23.

**R432-152-29. Client Records.**

(1)(a) The licensee shall develop and maintain a record keeping system that includes a separate record for each client with documentation of the client's health care, active treatment services, social information and protection of the client's rights.

(b) The licensee shall protect confidential information contained in the client's records.

(c) The licensee shall develop and implement policies and procedures governing the release of any client information, including consent necessary from the client or client's legal guardian.

(d) The licensee shall ensure entries into client records shall be legible, dated and signed by the individual making the entry.

(e) The licensee shall provide a legend to explain any symbol or abbreviation used in a client's record.

(f) The licensee shall ensure each identified residential living unit has available on-site pertinent information of each client's record.

(g) The licensee shall ensure client records are complete and systematically organized according to facility policy to facilitate retrieval and compilation of information.

(2) A Registered Health Information Administrator or a Registered Health Information Technician shall oversee the client record department through employment or consultation. If retained by consultation, onsite visits shall be at least semi-annually and documented through written reports to the administrator.

(3) The licensee shall:

(a) safeguard client records from loss, defacement, tampering, fires and floods;

(b) protect client records against access by unauthorized individuals;

(c) retain client records for at least seven years after the last date of client care; and

(d) retain records of minors as follows:

(i) at least two years after the minor reaches age 18 or the age of majority; and

(ii) a minimum of seven years.

(4)(a) The licensee shall retain client records within the facility upon change of ownership;

(b) If a licensee ceases operation, the licensee shall arrange for appropriate safe storage and prompt retrieval of client records, client indexes and discharges for the period specified.

(c) The facility may arrange storage of client records with another facility or may return client records to the attending physician who is still in the community.

**R432-152-30. Respite Care.**

(1) An Intermediate Care Facilities for Individuals with Intellectual Disabilities licensee may provide respite services that comply with the following requirements:

(a) the purpose of respite is to provide intermittent, time-limited care to give primary caretakers relief from the demands of caring for a person;

(b) respite services may be provided at an hourly rate or daily rate, but shall not exceed 14-days for any single respite stay;

(c) the licensee shall coordinate the delivery of respite services with the recipient of services, case manager and the family member or primary caretaker;

(d) the licensee shall document the person's response to the respite placement and coordinate with provider agencies to ensure an uninterrupted service delivery program;

(e) the licensee shall complete a service agreement to serve as the plan of care, and shall identify the prescribed medications, physician treatment orders, need for assistance for activities of daily living and diet orders;

(f) the licensee shall have written policies and procedures available to staff regarding the respite care clients that include:

(i) medication administration;

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

(iii) service agreement and admission criteria;

(iv) behavior management interventions;

(v) philosophy of respite services;

(vi) post-service summary;

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

(viii) handling personal funds;

(g) the licensee shall provide persons receiving respite services a copy of the resident rights documents upon initial day of service and updated annually; and

(h) the licensee shall maintain a record for each person receiving respite services that ensures:

(i) retention and storage of records complies with Subsections R432-152-29(3) and (4); and

(ii) confidentiality and release of information complies with Subsection R432-150-24(3).

(2) The licensee shall ensure each record contains the following:

(a) a service agreement;

(b) demographic information and resident identification data;

(c) nursing notes;

(d) physician treatment orders;

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

(f) accident and injury reports; and

(g) a post-service summary.

(3) The licensee shall file any client's advanced directive in the client record and inform staff of the directive.

**R432-152-31. Penalties.**

Any person who violates any part of this rule is subject to the penalties enumerated in Section 26B-2-208.

**KEY: health care facilities**

Date of Last Change: ~~2023~~January 31, 2022

Notice of Continuation: February 9, 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		
Rule or Section Number:	R495-882	Filing ID: 55683

#### 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
<b>Please address questions regarding information on this notice to the persons listed above.</b>		

#### General Information

2. Rule or section catchline:
R495-882. Termination of Parental Rights
3. Purpose of the new rule or reason for the change:
Due to the consolidation of the Department of Health and Human Services (DHHS) and the recodification of the Title R495 rules, this rule is being repealed. DHHS will simultaneously propose this rule as Rule R527-33 under Title R527.
4. Summary of the new rule or change:
This rule is being repealed in its entirety and will be proposed as a new rule under Title R527.

#### Fiscal Information

5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:
A) State budget:
No impact on state budgets. This filing is due to the consolidation and recodification of the DHHS code from the 2023 General Session.
It will not result in a fiscal impact because this rule is simultaneously being proposed as Rule R527-33, this repeal is technical in nature.

#### B) Local governments:

No impact on local governments. This filing is due to the consolidation and recodification of the DHHS code from the 2023 General Session.

It will not result in a fiscal impact because this rule is simultaneously being proposed as Rule R527-33, this repeal is technical in nature.

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

No impact on small businesses. This filing is due to the consolidation and recodification of the DHHS code from the 2023 General Session.

It will not result in a fiscal impact because this rule is simultaneously being proposed as Rule R527-33, this repeal is technical in nature.

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

No impact on non-small businesses. This filing is due to the consolidation and recodification of the DHHS code from the 2023 General Session.

It will not result in a fiscal impact because this rule is simultaneously being proposed as Rule R527-33, this repeal is technical in nature.

#### 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**):

No impact on other persons. This filing is due to the consolidation and recodification of the DHHS code from the 2023 General Session.

It will not result in a fiscal impact because this rule is simultaneously being proposed as Rule R527-33, this repeal is technical in nature.

#### 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 associated with this repeal. This filing is due to the consolidation and recodification of the DHHS code from the 2023 General Session.

It will not result in a fiscal impact because this rule is simultaneously being proposed as Rule R527-33, this repeal is technical in nature.

#### 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>
<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 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 62A-1-111	Section 62A-1-117	Section 62A-11-107
Section 78A-6-356		

**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>	10/16/2023

<b>9. This rule change MAY become effective on:</b>	10/23/2023
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>	08/19/2023
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**R495. Human Services, Administration.****[R495-882. Termination of Parental Rights.****R495-882-1. Authority and Purpose.**

(1) The Department of Human Services is authorized to create rules necessary for social services pursuant to Section 62A-1-111. The Office of Recovery Services (ORS) is authorized to adopt, amend, and enforce rules pursuant to Section 62A-11-107.

(2) The purpose of this rule is to provide information about child support obligations and child support arrears when a child is placed in the care or custody of the state or with an individual other than the parent for at least 30 days.

**R495-882-2. Arrears Obligation for Children in Care.**

Pursuant to Sections 62A-1-117 and 78A-6-356, child support is assigned to the state when a child is placed in the care or custody of the state or with an individual other than the parent for at least 30 days. The juvenile court shall also order the child's parent, guardian, or other obligated individual to pay child support to ORS while the child is in a placement. If parental rights are terminated, and if any child support payable to the state has accrued prior to the termination of parental rights, the parent shall be responsible for paying this amount to the state. ORS will attempt to collect any past due child support that accrued prior to the termination of parental rights for children who were in the care or custody of the state.

**KEY: state custody, parental rights****Date of Last Change: October 25, 2021****Notice of Continuation: February 1, 2019****Authorizing, and Implemented or Interpreted Law: 62A-1-111; 62A-1-117; 62A-11-107; 78A-6-356]****NOTICE OF PROPOSED RULE**

<b>TYPE OF FILING:</b> Repeal		
<b>Rule or Section Number:</b>	<b>R495-883</b>	<b>Filing ID:</b> 55681

**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
<b>Please address questions regarding information on this notice to the persons listed above.</b>		

## General Information

<b>2. Rule or section catchline:</b>
R495-883. Children in Care Support Services
<b>3. Purpose of the new rule or reason for the change:</b>
Due to the consolidation of the Department of Health and Human Services (DHHS) and the recodification of the Title R495 rules, this rule is being repealed. DHHS will propose that this rule be refiled as Rule R527-221 found in the Recovery Services rules (R527).
<b>4. Summary of the new rule or change:</b>
This rule is being repealed in its entirety and will be proposed as a new rule in Title R527 for Recovery Services.  (EDITOR'S NOTE: The proposed new Rule R527-221 is under ID 55682 in this issue, September 15, 2023, of the Bulletin.)

## Fiscal Information

<b>5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:</b>
<b>A) State budget:</b>
No impact on state budgets. This filing is due to the consolidation and recodification of the DHHS code from the 2023 General Session.  It will not result in a fiscal impact because this rule is simultaneously being proposed as Rule R527-221. This repeal is technical in nature.
<b>B) Local governments:</b>
No impact on local governments. This filing is due to the consolidation and recodification of the DHHS code from the 2023 General Session.  It will not result in a fiscal impact because this rule is simultaneously being proposed as Rule R527-221. This repeal is technical in nature.

<b>C) Small businesses</b> ("small business" means a business employing 1-49 persons):																
No impact on small businesses. This filing is due to the consolidation and recodification of the DHHS code from the 2023 General Session.  It will not result in a fiscal impact because this rule is simultaneously being proposed as Rule R527-221. This repeal is technical in nature.																
<b>D) Non-small businesses</b> ("non-small business" means a business employing 50 or more persons):																
No impact on non-small businesses. This filing is due to the consolidation and recodification of the DHHS code from the 2023 General Session.  It will not result in a fiscal impact because this rule is simultaneously being proposed as Rule R527-221. This repeal is technical in nature.																
<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> ):																
No impact on other persons. This filing is due to the consolidation and recodification of the DHHS code from the 2023 General Session.  It will not result in a fiscal impact because this rule is simultaneously being proposed as Rule R527-221. This repeal is technical in nature.																
<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 are no compliance costs associated with this repeal. This filing is due to the consolidation and recodification of the DHHS code from the 2023 General Session.  It will not result in a fiscal impact because this rule is simultaneously being proposed as Rule R527-221. This repeal is technical in nature.																
<b>G) Regulatory Impact Summary Table</b> (This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts will be included in narratives above.)																
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State Government	\$0	\$0	\$0
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<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 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>		
45 CFR 301 through 305	45 CFR 307	Section 62A-1-117
Section 62A-11-104	Section 62A-11-107	Section 62A-11-301
Section 62A-11-320.5	Section 62A-11-320.6	Section 78A-6-356
Section 78B-12-108	Section 78B-12-301	Section 78B-12-302

**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>	10/16/2023
<b>9. This rule change MAY become effective on:</b>	10/23/2023

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>	08/19/2023
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**R495. Human Services, Administration.****[R495-883. Children in Care Support Services.****R495-883 1. Authority and Purpose.**

(1) The Department of Human Services is authorized to create rules necessary for social services pursuant to Section 62A-1-111. The Office of Recovery Services (ORS) is authorized to adopt, amend, and enforce rules pursuant to Section 62A-11-107.

(2) The purpose of this rule is to provide definitions of terms used in this rule and information about child support services for children in care or custody of the state.

**R495-883 2. Definitions.**

As used in this rule:

(1) "Child support services" means efforts to enforce and collect the child support amount due for a calendar month.

(2) "Custodial parent" means one of the financially obligated parents of a child placed in the care or custody of the state.

**R495-883 3. Child Support Services for Children in Care.**

(1) ORS shall collect child support on behalf of children placed in the custody of the state pursuant to Sections 78A-6-356, 78B-12-106, 78B-12-108, 78B-12-301, 78B-12-302, 62A-1-117, 62A-11-104, 62A-11-107, 62A-11-301, 62A-11-320.5, and 62A-11-320.6, and federal regulations 45 CFR 301 through 305 and 45 CFR 307.

(2) Pursuant to Section 78B-12-108, ORS may collect and enforce the child support on behalf of the state or a state-licensed facility based on the current existing order.

(3) ORS may conduct a review of circumstances to determine if an existing order is in compliance with the child support guidelines and if the case meets the review criteria pursuant to Sections 62A-11-320.5 and 62A-11-320.6. If the order is not in compliance with the child support guidelines but still meets the review criteria, ORS may issue an administrative order, under the administrative adjudication process as provided in Rule R527-200, while the child is under the jurisdiction of the juvenile court and in a placement other than with the child's parents.

(4) If a current child support order does not exist, ORS will determine the monthly child support obligation pursuant to the child support guidelines enacted in Sections 78B-12-301 and 78B-12-302.

(5) Child support payments are due and payable on the first day of the month. ORS shall not prorate child support for partial months.

**R495-883 4. Child Support Services During Trial Placements or Temporary Lapses in State Custody.**

(1) Pursuant to Section 78A-6-356, ORS may continue to collect child support based on an administrative order issued at the time the child is initially placed in custody if:

(a) the child returns home; and

(b) the child is subsequently returned to state custody.

~~(2) Child support services shall not be provided on behalf of the Division of Child and Family Services when a child in custody returns to the home of a custodial parent for more than seven consecutive days.~~

~~(a) The more than seven consecutive days at the home of a custodial parent may span two or more calendar months. If the more than seven consecutive days span over more than one calendar month, ORS shall not provide child support services for any of the affected months.~~

~~(b) The child support debt will be retroactively adjusted to remove the child support amount due for each calendar month affected by the more than seven consecutive day stay and child support services to collect any child support due for the affected calendar month(s) will not be provided.~~

~~(c) Adjustments under Subsection (2)(b) cannot be made to a child support case by ORS until information verifying the date, duration and location of the more than seven consecutive day stay is received from the Division of Child and Family Services.~~

~~(d) ORS shall complete the adjustment to the child support debt within ten business days of receiving the necessary verification from the Division of Child and Family Services.~~

~~(e) If ORS has collected the child support amount from the custodial parent prior to ORS receiving the necessary verification from the Division of Child and Family Services, ORS will first apply the amount collected to other debts owed to the state for times that the child has been in care or custody of the state. If no other child in care debts exists, ORS will refund the amount to the custodial parent.~~

~~(f) If the consecutive day stay becomes a permanent placement in the custodial parent's home according to information received from the Division of Child and Family Services, ORS will provide continuing child support services, if appropriate, as of the date of the permanent placement pursuant to 45 CFR 302.33(a)(4).~~

**KEY: child support, foster care, youth corrections**

**Date of Last Change: January 10, 2022**

**Notice of Continuation: April 16, 2020**

**Authorizing, and Implemented or Interpreted Law: 45 CFR 301 through 305; 45 CFR 307; 62A-1-117; 62A-1-111; 62A-11-104; 62A-11-107; 62A-11-301; 62A-11-320.5; 62A-11-320.6; 78A-6-356; 78B-12-106; 78B-12-108; 78B-12-301; 78B-12-302]**

## NOTICE OF PROPOSED RULE

**TYPE OF FILING:** Repeal

<b>Rule or Section Number:</b>	<b>R495-884</b>	<b>Filing ID:</b> <b>55677</b>
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### 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

### Contact persons:

<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 or section catchline:

R495-884. Kinship Locate

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

Due to the consolidation of the Department of Health and Human Services (DHHS) and the recodification of the Title R495 rules, this rule is being repealed. DHHS will propose that this rule be moved to Rule R527-57 found in the Recovery Services rules (R527).

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

This rule is being repealed in its entirety and will be proposed as a new rule in Title R527 for Recovery Services.

(EDITOR'S NOTE: The proposed new Rule R527-57 is under ID 55676 in this issue, September 15, 2023, of the Bulletin.)

### Fiscal Information

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

##### A) State budget:

No impact on state budgets. This filing is due to the consolidation and recodification of the DHHS code from the 2023 General Session.

It will not result in a fiscal impact because this rule is simultaneously being proposed as Rule R527-57. This repeal is technical in nature.

##### B) Local governments:

No impact on local governments. This filing is due to the consolidation and recodification of the DHHS code from the 2023 General Session.

It will not result in a fiscal impact because this rule is simultaneously being proposed as Rule R527-57. This repeal is technical in nature.

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

No impact on small businesses. This filing is due to the consolidation and recodification of the DHHS code from the 2023 General Session.

It will not result in a fiscal impact because this rule is simultaneously being proposed as Rule R527-57. This repeal is technical in nature.

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

No impact on non-small businesses. This filing is due to the consolidation and recodification of the DHHS code from the 2023 General Session.

It will not result in a fiscal impact because this rule is simultaneously being proposed as Rule R527-57. This repeal is technical in nature.

**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**):

No impact on other persons. This filing is due to the consolidation and recodification of the DHHS code from the 2023 General Session.

It will not result in a fiscal impact because this rule is simultaneously being proposed as Rule R527-57. This repeal is technical in nature.

**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 associated with this repeal. This filing is due to the consolidation and recodification of the DHHS code from the 2023 General Session.

It will not result in a fiscal impact because this rule is simultaneously being proposed as Rule R527-57. This repeal is technical in nature.

**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>

**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 S 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:**

45 CFR 302.35	45 CFR 303.21	42 USC 653
Section 62A-1-111	Section 62A-11-107	

**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:** 10/16/2023

**9. This rule change MAY become effective on:** 10/23/2023

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>	08/19/2023
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### R495. Human Services, Administration.

#### [R495-884. Kinship Locate.

##### **R495-884 1. Authority and Purpose.**

(1) The Department of Human Services is authorized to create rules necessary for social services pursuant to Section 62A-1-111. The Office of Recovery Services (ORS) is authorized to adopt, amend, and enforce rules pursuant to Section 62A-11-107.

(2) The purpose of this rule is to provide information about kinship locate services provided pursuant to 42 U.S.C. 653 including who is authorized to request kinship locate services, what information is required to make a request, and what information may be provided from ORS.

##### **R495-884 2. Authorized Persons.**

(1) "Authorized persons" for the purpose of this rule regarding kinship locate is defined in 42 U.S.C. 653(e)(4). An "authorized person" is an agent of a state agency that administers a program pursuant to Part B or Part E of Title IV of the Social Security Act.

(2) ORS provides locate information to authorized persons who request location information about the parents, putative father or non-parental relatives of children in the custody of the Department of Child and Family Services.

##### **R495-884 3. Requesting Kinship Locate Services.**

A request from an authorized person must include the following information:

- (1) the child's name;
- (2) the child's date of birth or Social Security number;
- (3) the individual's name;
- (4) the individual's relationship to the child; and
- (5) the individual's date of birth or Social Security number.

##### **R495-884 4. Information Provided for Kinship Locate.**

(1) ORS will only provide locate information found using the Federal Parent Locator Service and the State Parent Locator Services.

(2) ORS will provide the following kinship locate information, if known, about a parent, alleged father or non-parent relative:

- (a) the individual's name;
- (b) the individual's Social Security number;
- (c) the individual's most recent address; and
- (d) the individual's employer name, employer identification number (EIN), address.

(3) If ORS has issued an administrative child support order that establishes the legal paternity relationship for the child in custody, ORS will provide a copy of that administrative order to the authorized person. Other documentation establishing paternity must be obtained by the requesting agency directly from the keeper of the record.

(4) Pursuant to 45 CFR 303.21, if a safeguard determination has been made for an individual on an ORS case, the individual's information will not be released.

**KEY:** ~~child support, foster care, kinship locate~~

**Date of Last Change:** ~~January 10, 2022~~

**Notice of Continuation:** ~~January 14, 2022~~

**Authorizing, and Implemented or Interpreted Law:** ~~45 CFR 302.35; 45 CFR 303.21; 42 U.S.C. 653; 62A-1-111; 62A-11-107]~~

## NOTICE OF PROPOSED RULE

**TYPE OF FILING:** New

<b>Rule or Section Number:</b>	<b>R527-57</b>	<b>Filing ID:</b> <b>55676</b>
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### Agency Information

<b>1. Department:</b>	Health and Human Services	
<b>Agency:</b>	Recovery 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
<b>Please address questions regarding information on this notice to the persons listed above.</b>		

### General Information

<b>2. Rule or section catchline:</b>
R527-57. Kinship Locate
<b>3. Purpose of the new rule or reason for the change:</b>
Due to the consolidation of the Department of Health and Human Services (DHHS) and the recodification of the Title R495 rules, this rule is being proposed. This rule was previously Rule R495-884 which is being repealed.
<b>4. Summary of the new rule or change:</b>
This rule is being proposed as a new rule in Title R527 for Recovery Services.
(EDITOR'S NOTE: The proposed repeal of R495-884 is under ID 55677 in this issue, September 15, 2023, of the Bulletin.)

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

No impact on state budgets. This filing is due to the consolidation and recodification of the DHHS code from the 2023 General Session.

It will not result in a fiscal impact because this rule was already in place as Rule R495-884, and the proposal of this filing is technical in nature.

**B) Local governments:**

No impact on local governments. This filing is due to the consolidation and recodification of the DHHS code from the 2023 General Session.

It will not result in a fiscal impact because this rule was already in place as Rule R495-884, and the proposal of this filing is technical in nature.

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

No impact on small businesses. This filing is due to the consolidation and recodification of the DHHS code from the 2023 General Session.

It will not result in a fiscal impact because this rule was already in place as Rule R495-884, and the proposal of this filing is technical in nature.

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

No impact on non-small businesses. This filing is due to the consolidation and recodification of the DHHS code from the 2023 General Session.

It will not result in a fiscal impact because this rule was already in place as Rule R495-884, and the proposal of this filing is technical in nature.

**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**):

No impact on other persons. This filing is due to the consolidation and recodification of the DHHS code from the 2023 General Session.

It will not result in a fiscal impact because this rule was already in place as Rule R495-884, and the proposal of this filing is technical in nature.

**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 associated with this repeal. This filing is due to the consolidation and recodification of the DHHS code from the 2023 General Session.

It will not result in a fiscal impact because this rule was already in place as Rule R495-884, and the proposal of this filing is technical in nature.

**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 S 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:**



45 CFR 302.35	45 CFR 303.21	42 USC 653
Section 26B-1-202	Section 26B-9-108	

#### 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:** 10/16/2023

**9. This rule change MAY become effective on:** 10/23/2023

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> 08/19/2023
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#### R527. Health and Human Services, Recovery Services.

##### R527-57. Kinship Locate.

##### R527-57-1. Authority and Purpose.

(1) The Department of Health and Human Services is authorized to create rules necessary for social services pursuant to Section 26B-1-202. The Office of Recovery Services (ORS) is authorized to adopt, amend, and enforce rules pursuant to Section 26B-9-108.

(2) The purpose of this rule is to provide information about kinship locate services provided pursuant to 42 U.S.C. 653 including who may request kinship locate services, what information is required to make a request, and what information may be provided from ORS.

##### R527-57-2. Authorized Persons.

(1) "Authorized persons" for this rule regarding kinship locate is defined in 42 U.S.C. 653(c)(4). An "authorized person" is an agent of a state agency that administers a program pursuant to Part B or Part E of Title IV of the Social Security Act.

(2) ORS provides locate information to authorized persons who request location information about the parents, putative father, or non-parental relatives of children in the custody of the Division of Child and Family Services.

##### R527-57-3. Requesting Kinship Locate Services.

A request from an authorized person must include the following information:

- (1) the child's name;
- (2) the child's date of birth or Social Security number;
- (3) the individual's name;
- (4) the individual's relationship to the child; and
- (5) the individual's date of birth or Social Security number.

##### R527-57-4. Information Provided for Kinship Locate.

(1) ORS will only provide locate information found using the Federal Parent Locator Service and the State Parent Locator Services.

(2) ORS will provide the following kinship locate information, if known, about a parent, alleged father or non-parent relative:

- (a) the individual's name;
- (b) the individual's Social Security number;
- (c) the individual's most recent address; and
- (d) the individual's employer name, employer identification number (EIN), address.

(3) If ORS has issued an administrative child support order that establishes the legal paternity relationship for the child in custody, ORS will provide a copy of that administrative order to the authorized person. Other documentation establishing paternity must be obtained by the requesting agency directly from the keeper of the record.

(4) In accordance with 45 CFR 303.21, ORS will not release the individual's information for an individual on an ORS case that has undergone a safeguard determination.

##### KEY: child support, foster care, kinship locate

##### Date of Last Change: 2023

##### Authorizing, and Implemented or Interpreted Law: 45 CFR 302.35; 45 CFR 303.21; 42 U.S.C. 653; 26B-1-202; 26B-9-108

#### NOTICE OF PROPOSED RULE

**TYPE OF FILING:** New

<b>Rule or Section Number:</b>	<b>R527-221</b>	<b>Filing ID:</b> <b>55682</b>
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#### Agency Information

<b>1. Department:</b>	Health and Human Services	
<b>Agency:</b>	Recovery 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 or section catchline:**

R527-221. Children in Care Support Services

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

Due to the consolidation of the Department of Health and Human Services (DHHS) and the recodification of the Title R495 rules, this rule is being proposed. This rule was recently Rule R495-883 which is being repealed.

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

This rule is being proposed as a new rule in R527 for Recovery Services.

(EDITOR'S NOTE: The proposed repeal of R495-883 is under ID 55681 in this issue, September 15, 2023, of the Bulletin.)

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

No impact on state budgets. This filing is due to the consolidation and recodification of the DHHS code from the 2023 General Session.

It will not result in a fiscal impact because this rule was already in place as Rule R495-883, and the proposal of this filing is technical in nature.

**B) Local governments:**

No impact on local governments. This filing is due to the consolidation and recodification of the DHHS code from the 2023 General Session.

It will not result in a fiscal impact because this rule was already in place as Rule R495-883, and the proposal of this filing is technical in nature.

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

No impact on small businesses. This filing is due to the consolidation and recodification of the DHHS code from the 2023 General Session.

It will not result in a fiscal impact because this rule was already in place as Rule R495-883, and the proposal of this filing is technical in nature.

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

No impact on non-small businesses. This filing is due to the consolidation and recodification of the DHHS code from the 2023 General Session.

It will not result in a fiscal impact because this rule was already in place as Rule R495-883, and the proposal of this filing is technical in nature.

**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**):

No impact on other persons. This filing is due to the consolidation and recodification of the DHHS code from the 2023 General Session.

It will not result in a fiscal impact because this rule was already in place as Rule R495-883, and the proposal of this filing is technical in nature.

**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 associated with this repeal. This filing is due to the consolidation and recodification of the DHHS code from the 2023 General Session.

It will not result in a fiscal impact because this rule was already in place as Rule R495-883, and the proposal of this filing is technical in nature.

**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>
<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 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>		
45 CFR 301 through 305	45 CFR 307	Section 26B-9-111 through 305
Section 26B-1-202	Section 26B-9-104	Section 26B-9-108
Section 26B-9-220	Section 78A-6-356	Section 78B-12-106
Section 78B-12-301	Section 78B-12-302	

#### Public Notice Information

<b>8. The public may submit written or oral comments to the agency identified in box 1.</b> (The public may also request a hearing by submitting a written request to the agency. See Section 63G-3-302 and Rule R15-1 for more information.)	
<b>A) Comments will be accepted until:</b>	10/16/2023

<b>9. This rule change MAY become effective on:</b>	10/23/2023
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>	08/19/2023
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#### R527. Health and Human Services, Recovery Services.

##### R527-221. Children in Care Support Services.

##### R527-221-1. Authority and Purpose.

(1) The Department of Health and Human Services is authorized to create rules necessary for social services pursuant to Section 26B-1-202. The Office of Recovery Services (ORS) is authorized to adopt, amend, and enforce rules pursuant to Section 26B-9-108.

(2) The purpose of this rule is to provide definitions of terms used in this rule and information about child support services for children in care or custody of the state.

##### R527-221-2. Definitions.

As used in this rule:

(1) "Child support services" means efforts to enforce and collect the child support amount due for a calendar month.

(2) "Custodial parent" means one of the financially obligated parents of a child placed in the care or custody of the state.

##### R527-221-3. Child Support Services for Children in Care.

(1) ORS may collect child support on behalf of children placed in the custody of the state pursuant to Sections 78A-6-356, 78B-12-106, 78B-12-108, 78B-12-301, 78B-12-302, 78B-12-303, 78B-12-304, 26B-9-111, 26B-9-104, 26B-9-108, 26B-9-220, and 26B-9-221, and federal regulations 45 CFR 301 through 305 and 45 CFR 307.

(2) Pursuant to Section 78B-12-108, ORS may collect and enforce the child support on behalf of the state or a state-licensed facility based on the current existing order.

(3)(a) ORS may conduct a review of circumstances to determine if an existing order is in compliance with the child support guidelines and if the case meets the review criteria pursuant to Sections 26B-9-220 and 26B-9-221.

(b) If the order is not in compliance with the child support guidelines but still meets the review criteria, ORS may issue an administrative order, under the administrative adjudication process as provided in Rule R527-200, while the child is under the jurisdiction of the juvenile court and in a placement other than with the child's parents.

(4) If a current child support order does not exist, ORS will determine the monthly child support obligation pursuant to the child support guidelines enacted in Sections 78B-12-303 and 78B-12-304.

(5)(a) Child support payments are due and payable on the first day of the month.

(b) ORS may not prorate child support for partial months.

##### R527-221-4. Child Support Services During Trial Placements or Temporary Lapses in State Custody.

(1) Pursuant to Section 78A-6-356, ORS may continue to collect child support based on an administrative order issued when the child is initially placed in custody if:

(a) the child returns home; and

(b) the child is subsequently returned to state custody.

(2)(a) Pursuant to Section 26B-9-104, ORS may not provide child support services on behalf of the Division of Child and Family Services when a child in custody returns to the home of a custodial parent for more than seven consecutive days.

(b)(i) The more than seven consecutive days at the home of a custodial parent may start during one month and end in the next month.

(ii) If the more than seven consecutive days span over more than one calendar month, ORS may not provide child support services for any of the affected months.

(c) ORS will retroactively adjust the child support debt to remove the child support amount due for each calendar month affected by the more than seven consecutive days stay and child support services to collect any child support due for the affected calendar months may not be provided.

(d) ORS cannot make adjustments to a child support case under Subsection (2)(c) until information verifying the date, duration and location of the more than seven consecutive days stay is received from the Division of Child and Family Services.

(e) ORS may complete the adjustment to the child support debt within ten business days of receiving the necessary verification from the Division of Child and Family Services.

(f)(i) If ORS has collected the child support amount from the custodial parent before ORS receives the necessary verification from the Division of Child and Family Services, ORS will first apply the amount collected to other debts owed to the state for times that the child has been in the care or custody of the state.

(ii) If no other child in care debts exists, ORS will refund the amount to the custodial parent.

(g) If the seven consecutive days stay under this section becomes a permanent placement in the custodial parent's home according to information received from the Division of Child and Family Services, ORS will provide continuing child support services, if appropriate, as of the date of the permanent placement pursuant to 45 CFR 302.33(a)(4).

**KEY: child support, foster care, youth corrections**

**Date of Last Change: 2023**

**Authorizing, and Implemented or Interpreted Law: 45 CFR 301 through 305; 45 CFR 307; 26B-9-111; 26B-1-202; 26B-9-104; 26B-9-108; 26B-9-220; 26B-9-221; 78A-6-356; 78B-12-106; 78B-12-108; 78B-12-301; 78B-12-302; 78B-12-303; 78B-12-304; R527-200**

#### NOTICE OF PROPOSED RULE

TYPE OF FILING: New

Rule or Section Number:	R650-303	Filing ID: 55590
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#### Agency Information

<b>1. Department:</b>	Natural Resources	
<b>Agency:</b>	Outdoor Recreation	
<b>Room number:</b>	100	
<b>Building:</b>	Department of Natural Resources Building	
<b>Street address:</b>	1594 W North Temple	
<b>City, state and zip:</b>	Salt Lake City, UT 84116	
<b>Contact persons:</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Tara McKee	801-538-5500	tmckee@utah.gov
Patrick Morrison	801-538-5500	patrickmorrison@utah.gov

Please address questions regarding information on this notice to the persons listed above.

#### General Information

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

R650-303. Restoration Recreation Infrastructure Grant Program

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

Subsection 79-8-202(3) provides that the Division of Outdoor Recreation (Division) shall make rules to establish the eligibility and reporting criteria for an entity to receive a Recreation Restoration Infrastructure grant.

This new rule fulfills this statutory mandate.

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

This rule establishes eligibility and reporting criteria for an entity to receive a Restoration Recreation Infrastructure Grant, including: the form and process of submitting annual project proposals to the Division for a recreation restoration infrastructure grant; which entities are eligible to apply for a recreation restoration infrastructure grant; specific categories of recreation restoration projects that are eligible for a recreation restoration infrastructure grant; the method and formula for determining recreation restoration infrastructure grant amounts; and the reporting requirements of a recipient of a recreation restoration infrastructure grant.

#### Fiscal Information

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

###### A) State budget:

There are no anticipated costs or savings to the state budget associated with this rule, as this rule existed prior to the merging of the Office of Outdoor Recreation, under the Governor's Office of Economic Opportunity, and the Division, under the Department of Natural Resources, and the content of this rule is unaltered.

###### B) Local governments:

There are no anticipated costs or savings to local governments associated with this rule, as this rule existed prior to the merging of the Office of Outdoor Recreation, under the Governor's Office of Economic Opportunity, and the Division, under the Department of Natural Resources, and the content of this rule is unaltered.

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

There are no anticipated costs or savings to small businesses associated with this rule, as this rule existed prior to the merging of the Office of Outdoor Recreation, under the Governor's Office of Economic Opportunity, and the Division, under the Department of Natural Resources, and the content of this rule is unaltered.

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

The proposed rule does not have a fiscal impact on non-small businesses, nor will a service be required of them to implement the grants.

**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 are no anticipated costs or savings to persons other than small businesses, state, or local government entities associated with this rule, as this rule existed prior to the merging of the Office of Outdoor Recreation, under the Governor's Office of Economic Opportunity, and the Division, under the Department of Natural Resources, and the content of this rule is unaltered.

**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 associated with this rule, as this rule existed prior to the merging of the Office of Outdoor Recreation, under the Governor's Office of Economic Opportunity, and the Division, under the Department of Natural Resources, and the content of this rule is unaltered.

**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 Department of Natural Resources, Joel Ferry, 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		
79-8-202(3)		

#### 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:** 10/16/2023

**9. This rule change MAY become effective on:** 10/23/2023

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>	Jason Curry, Director	<b>Date:</b>	08/02/2023
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#### R650. Natural Resources, Outdoor Recreation.

##### R650-303. Restoration Recreation Infrastructure Grant Program.

##### R650-303-1. Authority.

(1) Subsection 79-8-202(3) requires the division to make rules establishing the eligibility and reporting criteria for an entity to receive a recreation restoration infrastructure grant.

(2) The division may seek to accomplish the following objectives in administering the grant program:

(a) rehabilitate or restore high-priority trails for both motorized and nonmotorized uses;



- (b) rehabilitate or restore high-demand recreation areas on public lands; and
- (c) encourage public land entities to engage with volunteer groups to aid with portions of needed trail work.

#### **R650-303-2. Definitions.**

As used in this rule:

- (1) "Advisory committee" means the Utah Outdoor Recreation Infrastructure Advisory Committee created in Section 79-7-206.
- (2) "Developed campground" means a campground that has been improved or developed from a moderate to a highly developed level.
- (3) "Developed recreation site" means an area that has been improved or developed for use as an outdoor recreation facility.
- (4) "Developed trail" means a trail with constructed features of either native or imported materials, and as needed for user reassurance, incorporated route identification signage.
- (5) "Director" means the director of the Division of Outdoor Recreation.
- (6) "Division" means the Division of Outdoor Recreation.
- (7) "Executive director" means the executive director of the Department of Natural Resources.
- (8) "Partner" means two or more entities that collaborate with a grant recipient to advance a common interest or goal of restoring or rehabilitating recreational infrastructure.

#### **R650-303-3. Application Form and Submission Process.**

- (1) The division shall supply an applicant with a grant application form that contains the following:
  - (a) general application submission instructions;
  - (b) grants available for application;
  - (c) the criteria the applicant must meet to be eligible to receive a grant;
  - (d) instructions regarding submission of a project description, including a project timeline;
  - (e) instructions for reporting project impacts, including community and economic impacts;
  - (f) the scoring system the division will use to score the application;
  - (g) any deadlines or relevant timelines applicable to submission of the application;
  - (h) any reports the applicant must include with the application; and
  - (i) all other documents and information an applicant must submit with the application.
- (2) The application form shall provide an applicant with instructions for providing the division with:
  - (a) an outlined budget for total project costs;
  - (b) a highlight of funds the applicant has already procured for the project; and
  - (c) an itemized budget showing the applicant's planned use of the requested grant funds.
- (3) The division shall create an application in an electronic format and make it available to the public at <http://recreation.utah.gov>.
- (4) The division shall supply a paper application to any person or entity requesting it.
- (5) An applicant shall submit a completed application to division staff on or before the deadline specified in the application.
- (6) Upon receipt of an application, division staff shall review the application and:

- (a) ensure it is complete; and

(b) ensure it meets the program criteria outlined in the statute and this rule.

(7) The division shall review a completed application and shall notify a selected recipient via the criteria and method outlined in this rule.

#### **R650-303-4. Eligible Entities.**

The division may award a grant only to the following entities:

- (1) Utah non-profit corporations with a 501(c)(3) or 501(c)(6) status;
- (2) Utah municipalities;
- (3) Utah counties;
- (4) Utah political subdivisions;
- (5) Tribal governments;
- (6) Utah state agencies; or
- (7) Federal land management agencies.

#### **R650-303-5. Recreation Restoration Eligibility Criteria.**

- (1) If a grant recipient is a federal or state entity, the division shall not fund more than 50% of a proposed project's eligible costs.
- (2) Except for a federal or state government grant applicant, the division shall use an algorithm that considers the total population of the county and its per capita income to determine the matching funds required by the grant recipient.
- (3) The division shall make the algorithm available in either the application or the program guide.
- (4) The division shall determine the maximum grant amount available for application based on available annual funds.
- (5) A grant recipient may provide up to 50% of its match through an in-kind contribution if:
  - (a) the contribution is approved by the executive director in consultation with the director and the advisory committee;
  - (b) the recipient's in-kind contribution meets all other requirements for an eligible match; and
  - (c) the recipient's in-kind contribution is for services, materials, or both, that are directly related to the project's construction.
- (6) The division shall include the following information in the application form:
  - (a) the algorithm the division shall use to determine the maximum grant amount available;
  - (b) instructions regarding matching requirements; and
  - (c) eligible and ineligible matching costs.
- (7) The division shall prioritize an application for which the applicant has secured at least 50% of the matching funds for the project at time of application.
- (8) The division shall only fund a recreation restoration infrastructure project that reconstructs, rehabilitates, replaces, or restores existing recreation infrastructure.
- (9) Primitive or semi-primitive sites are not eligible projects.
- (10) Eligible recreational infrastructure projects include:
  - (a) trail improvements, such as the realignment, rerouting, and reconstruction of existing or destroyed developed trails and trail systems;
  - (b) the update, repair, replacement, or improvement of existing or destroyed developed trailside amenities;
  - (c) restoration or rehabilitation of developed campground infrastructure to meet the needs of visitors and improve their safety;

(d) restoration or rehabilitation of developed recreation sites for use as day use sites that include such amenities such as picnic tables, fire pit or grill areas, restrooms, and shade structures, or pavilions for larger groups;

(e) restoration or rehabilitation of water recreation facilities, including piers, docks, and boat ramps;

(f) restoration or rehabilitation of recreation facilities to enhance access for visitors with disabilities; and

(g) rerouting of trails or moving of campsites to enhance sustainability.

#### **R650-303-6. Method and Formula for Determining Grant Amounts.**

(1) The division shall use a weighted scoring system that will enable the advisory committee to analyze and advise on grant amounts.

(2) The weighted scoring system shall:

(a) be made available in the application or program guide; and

(b) allow for the assessment and valuation of general categories.

(3) The division shall distribute eligible grant applications to the advisory committee.

(4) The division shall provide the advisory committee with a synopsis of each application to be scored.

(5) Advisory committee members shall review and score an application using the weighted scoring system provided by the division.

(6) An advisory committee member shall recuse themselves from voting on an application for a project in which the advisory committee member has a substantial interest.

(7) Subject to the availability of funds, the advisory committee shall prioritize a project that:

(a) the advisory committee considers to be for a high-demand outdoor recreation amenity or high-priority trail;

(b) is within a rural county as necessary to ensure parity of urban and rural projects; or

(c) is for a project area that receives or has received high visitation.

(8) The division shall use the average of the scores provided by the advisory committee members to rank the applications in descending order by grant amount.

(9) The division shall forward the ranked applications, and the advisory committee's recommendations, to the executive director for final review, approval, and award.

(10) The division shall notify an applicant of the funding decision within two weeks of the executive director's final decision:

(a) the division shall notify a successful applicant of expected contractual requirements; and

(b) the division shall notify an unsuccessful applicant that the applicant's proposal was not awarded.

(11) An applicant may, in accordance with Utah law and upon written request to the division, receive a redacted copy of the advisory committee members' comments on the applicant's application.

#### **R650-303-7. Reporting and Reimbursement Cooperation Requirements.**

(1) A grant recipient shall submit to the division the following documentation with any request for reimbursement:

(a) a completed reimbursement request on a form provided by the division;

(b) copies of all invoices for costs and expenses incurred on the project;

(c) receipts for any other expenditures the recipient has made toward the project;

(d) evidence of payments made toward the project, such as checks and bank statements;

(e) records of volunteer labor or other in-kind donations made toward the project;

(f) several photos that show the project is complete;

(g) a final report that contains a description of the completed project; and

(h) any other documentation or data requested by the division.

(2) The division may make partial, upfront funding to the recipient pursuant to the terms of the grant agreement.

(3) The division's upfront payments shall not exceed 75% of expenses incurred on the project.

(4) The division shall provide an applicant with instructions on how to apply for upfront funding in the application or program guide.

(5) A grant recipient shall periodically provide to the division an itemized report detailing the expenditure, or intended expenditure, of all grant funds.

(6) A grant recipient shall provide to the division the itemized report required by Subsection (5) at least every six months and no later than 60 days after the grant agreement has expired.

(7) The grant recipient shall include within the itemized report assurances that all funds paid to the grant recipient were used for planning, construction, or improvements described in the grant application.

(8) A grant recipient shall cooperate with division staff's reasonable requests for site visits during and after the completion of the project.

#### **R650-303-8. Modifications to the Original Agreement.**

Modifications to an original grant agreement may be made only by subsequent, written amendment, approved by the director and signed by all parties to the original grant agreement.

**KEY: economic development, recreation restoration, infrastructure grant, outdoor recreation**

**Date of Last Change: 2023**

**Authorizing, and Implemented or Interpreted Law: 79-8-202(3)**

#### **NOTICE OF PROPOSED RULE**

**TYPE OF FILING:** New

**Rule or Section Number:**

**R650-304**

**Filing ID:**  
**55673**

#### **Agency Information**

**1. Department:** Natural Resources

**Agency:** Outdoor Recreation

**Room number:** Suite 100

**Building:** DNR

**Street address:** 1594 W North Temple

**City, state and zip:** Salt Lake City, UT 84116



Contact persons:		
Name:	Phone:	Email:
Tara McKee	385-441-2702	tmckee@utah.gov
Patrick Morrison	385-268-2504	patrickmorrison@utah.gov
Caroline Weiler	385-264-4171	cweiler@utah.gov
Please address questions regarding information on this notice to the persons listed above.		

### General Information

2. Rule or section catchline:
R650-304. Utah Children's Outdoor Recreation and Education Grant Program
3. Purpose of the new rule or reason for the change:
The Division of Outdoor Recreation (Division) came into existence 07/01/2022 (H.B. 305 passed in the 2022 General Session). The Division is officially filing rules as the Division (this rule previously existed under the Governor's Office of Economic Opportunity). This rule sets eligibility and reporting requirements for the Utah Children's Outdoor Recreation and Education (UCORE) grant program.
4. Summary of the new rule or change:
This rule establishes application and submission processes for the Utah Children's Outdoor Recreation and Education (UCORE) grant program, including the programs that are eligible for grants, minimum and maximum grant amounts, and the grant scoring/selection process.

### Fiscal Information

5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:
A) State budget:
There is no anticipated costs or savings to the state budget as this rule only establishes the processes for how UCORE grant funds are distributed.
B) Local governments:
This rule change is not expected to have a fiscal impact on local governments because it only establishes the processes for how UCORE grant funds are distributed. Local governments are eligible to apply/receive this grant.
C) Small businesses ("small business" means a business employing 1-49 persons):

This rule change is not expected to have a fiscal impact on small businesses because it only establishes the processes for how UCORE grant funds are distributed. Small businesses are not eligible to apply/receive this grant.

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

This rule change is not expected to have a fiscal impact on non-small businesses because it only establishes the processes for how UCORE grant funds are distributed.

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

This rule change is not expected to have a fiscal impact on other entities because it only establishes the processes for how UCORE grant funds are distributed.

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

This rule change is not expected to have compliance costs for affected persons because it only establishes the processes for how UCORE grant funds are distributed.

**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 Natural Resources, Joel Ferry, 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 79-8-303		
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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>	10/16/2023
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<b>9. This rule change MAY become effective on:</b>	10/23/2023
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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>	Jason Curry, Director	<b>Date:</b>	08/21/2023
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**R650. Natural Resources, Outdoor Recreation.**

**R650-304. Utah Children's Outdoor Recreation and Education Grant Program.**

**R650-304-1. Authority.**

(1) Subsection 79-8-303(1) requires the division to make rules establishing the eligibility and reporting criteria for an entity to receive a Utah Children's Outdoor Recreation and Education grant.

(2) The division may seek to accomplish the following objectives in administering the grant program:

(a) promote the health and social benefits of outdoor recreation to the state's children;

(b) encourage children to develop the skills and confidence to be physically active for life;

(c) provide outdoor recreational opportunities to underserved communities in the state; and

(d) encourage hands-on outdoor or nature-based learning and play to prepare children for achievement in science, technology, engineering, and math.

**R650-304-2. Definitions.**

As used in this rule:

(1) "Advisory committee" means the Utah Outdoor Recreation Infrastructure Advisory Committee created in Section 79-7-206.

(2) "Director" means the Director of the Division of Outdoor Recreation.

(3) "Division" means the Division of Outdoor Recreation.

(4) "Executive director" means the executive director of the Department of Natural Resources.

(5) "Program" means a children's program that is eligible to receive a UCORE grant.

(6) "UCORE Grant" means a grant awarded pursuant to Title 79, Chapter 8, Part 3, Utah Children's Outdoor Recreation and Education Grant Program, and this rule.

(7)(a) "Utah political subdivision" means a Utah county, Utah city, or Utah town.

(b) "Utah political subdivision" does not mean a department, division, board, council, committee, institution, office, bureau, or other similar administrative unit of the executive branch of state government.

**R650-304-3. Application Form and Submission Process.**

(1) The division shall provide an applicant with a UCORE grant application form that contains the following:

(a) general application submission instructions;

(b) grants available for application;

(c) the criteria an applicant must meet to be eligible to receive a UCORE grant;

(d) instructions regarding submission of a program description, including a program timeline;

(e) instructions for providing an outlined budget for total program costs that highlights funds already procured for the program;

(f) an itemized budget showing the planned use of the requested grant funds;

(g) instructions regarding reporting of program impacts, including community and economic impacts;

(h) the scoring system the division shall use to score the application;

(i) any deadlines or other timelines applicable to submission of an application;

(j) any reports the applicant must include with the application; and

(k) other documents and information an applicant must submit with the application.

(2) The division shall create an application in an electronic format and make it available to the public at <http://recreation.utah.gov>.

(3) The division shall supply a paper application to any person or entity requesting a paper application.

(4) An applicant shall submit a completed application to division staff on or before the deadline specified in the application form.

(5) Upon receipt of an application, division staff shall verify that an applicant's application is complete and meets the criteria outlined in Title 79, Chapter 9, Part 3, Utah Children's Outdoor Recreation and Education Grant Program, and this rule.

(6) The division shall review a complete application, and shall select UCORE grant recipients, via the criteria and methods outlined in this rule.

**R650-304-4. Eligible Entities.**

The division may award a UCORE grant to the following entities:

- (1) Utah non-profit corporations with a 501(c)(3) or (c)(6) status;
- (2) Utah political subdivisions;
- (3) Tribal governments; and
- (4) Utah public schools or Utah public higher education institutions.

**R650-304-5. Program Categories Eligible for UCORE Grants.**

(1) Eligible program categories include outdoor recreation skill development programs, outdoor-focused physical activity programs, nature-based STEM concepts provided in outdoor settings, or other programs that implement and further the objectives set out in Subsection 79-8-203(5).

(2) The division may award a UCORE grant for eligible program-related expenses, including:

- (a) program equipment, transportation, and staffing;
- (b) program participant lodging costs;
- (c) insurance coverage for grant recipient employees and program participants;
- (d) field trip and education-based event entry fees;
- (e) participation scholarships for underserved program participants; or
- (f) items and supplies for program participants and grant recipient volunteers.

(3) A UCORE grant recipient shall provide matching funds of 20% of the total program cost.

(4) The division shall determine a portion of a recipient's match that shall be in the form of cash.

(5) The division, at its sole discretion, may allow a grant recipient to provide a smaller percentage of matching funds if the recipient demonstrates difficulty in procuring the matching funds required by Subsection (3).

(6) The maximum UCORE grant amount the division may award is \$15,000 and the minimum UCORE grant amount the division may award is \$500.

(7) Programs shall be physically located within the state.

**R650-304-6. Method and Formula for Determining Grant Amounts.**

(1) The division shall use a weighted scoring system that enables the advisory committee to analyze and advise on UCORE grant awards and award amounts.

(2) The weighted scoring system shall:

- (a) be made available in the application or grant program guide; and
  - (b) assess and value general categories.
- (3) The division shall distribute completed grant applications among advisory committee members.

(4) Advisory committee members shall review and score each application using the weighted scoring system.

(5) The division shall use the average of the advisory committee members' scores to create a prioritization matrix that ranks the applications in descending order by grant amount.

(6) The division shall provide the advisory committee with:

(a) the matrix created pursuant to Subsection (5); and

(b) a synopsis of each scored application.

(7) The advisory committee shall review the applications in the prioritization matrix, and the synopsis of each scored application, and shall recommend to the division UCORE grants for award.

(8) Subject to available funds, the advisory committee shall prioritize an application that:

- (a) is for a program that emphasize outdoor recreation and education for disadvantaged children;
- (b) is for a program from a qualified applicant within a rural county to ensure geographic parity with urban counties; or
- (c) is for a program that benefits an underrepresented and underserved community.

(9) In awarding a UCORE grant, the advisory committee shall consider whether the proposed program furthers the objectives set out in Subsection 79-8-303(5).

(10) The advisory committee's recommendations shall be forwarded to the executive director.

(11) The executive director may award a UCORE grant after consulting with the director and in conjunction with the advisory committee's recommendations.

(12) The division shall notify an applicant as to whether the applicant's application was successful within two weeks of the executive director's final decision:

- (a) a successful applicant shall be notified of expected contractual requirements; and
- (b) a unsuccessful applicant shall be notified that the applicant's application was unsuccessful.

(13) An advisory committee member shall recuse themselves from participating in recommendations for any grant in which the advisory committee member has a substantial interest.

**R650-304-7. Reporting and Reimbursement Cooperation Requirements.**

(1) A UCORE grant recipient shall submit the following documentation with a reimbursement request:

- (a) a reimbursement request on a form provided by the division;
- (b) copies of all invoices and evidence of payment, such as, checks, bank statements, or receipts;
- (c) records of volunteer labor or other in-kind donations for work completed on the program;
- (d) several photos that show the program is complete;
- (e) a final report that explains how grant funds were spent and the impacts the program had to the youth served; and
- (f) any other documentation or data the division requests.

(2)(a) The division may make partial upfront funding payments to the recipient pursuant to the terms of the grant agreement.

(b) In no event shall the division's upfront payments exceed 75% of expenses incurred on the program.

(3) The division shall provide instructions in the application form or program guide as to how the applicant may apply for upfront funding.

(4) A grant recipient shall provide a program description and an itemized report detailing the expenditure of the grant funds and the intended expenditure of any grant funds that have not been spent.

(5) A grant recipient shall provide the itemized report required by Subsection (4) at least every six months and no later than 60 days after the grant agreement has expired.

(6) Program reports shall include assurances that all grant funds were used to further the program described in the recipient's grant application and grant agreement.

**R650-304-8. Modifications to the Original Agreement.**

Modifications to an original grant agreement may be made only by a subsequent, written amendment, approved by the director, and signed by all parties to the original agreement.

**KEY: outdoor recreation, grants**

**Date of Last Change: 2023**

**Authorizing, and Implemented or Interpreted Law: 79-8-303**

**NOTICE OF PROPOSED RULE**

**TYPE OF FILING:** Amendment

<b>Rule or Section Number:</b>	<b>R651-700</b>	<b>Filing ID:</b> <b>55647</b>
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**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

**Please address questions regarding information on this notice to the persons listed above.**

**General Information**

**2. Rule or section catchline:**

R651-700. Administrative Procedures for Real Property Management

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

The Division of State Parks (Division) is proposing to update the Real Property Rule to better serve the Division, public and private partners, and future applicants for easements, rights-of-ways, and other real property documents and contracts.

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

The Division is proposing to update this rule in order to:

- 1) remove provisions already set out in the Utah Code; clarify or eliminate ambiguous, duplicative, or unnecessary language or terminology;
- 2) eliminate language that potentially contradicts or is inconsistent with other areas of Utah law;

3) simplify application procedures for certain easements, rights-of-way, leases, and special use leases, and to simplify the processes applicable to the Division's evaluation of those applications; and

4) to allow for the issuance of temporary use permits for construction activities on State Parks' property.

The changes also give the Division the discretion to consider real property valuation methods other than appraisals, broker's estimate, or market analyses when real property is transferred to another state agency or political subdivision and that entity maintains the public's right to use the land for public recreation.

**Fiscal Information**

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

**A) State budget:**

There are no anticipated costs or savings to the state budget as these proposed changes are clerical in nature and simply serve to clarify and simplify real property management processes and procedures addressed by the prior version of this rule.

**B) Local governments:**

There are no anticipated costs or savings to the local governments as these proposed changes are clerical in nature and simply serve to clarify and simplify real property management processes and procedures addressed by the prior version of this rule.

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

There are no anticipated costs or savings to the small businesses as these proposed changes are clerical in nature and simply serve to clarify and simplify real property management processes and procedures addressed by the prior version of this rule.

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

There are no anticipated costs or savings to the non-small businesses as these proposed changes are clerical in nature and simply serve to clarify and simplify real property management processes and procedures addressed by the prior version 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 are no anticipated costs or savings to persons other than small businesses, non-small business, state, or local government entities as these proposed changes are clerical in nature and simply serve to clarify and simplify

real property management processes and procedures addressed by the prior version 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 costs or savings to compliance costs for affected persons as these proposed changes are clerical in nature and simply serve to clarify and simplify real property management processes and procedures addressed by the prior version 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**

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 Department of Natural Resources, Joel Ferry, 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:**

Title 79, Chapter 4	Section 79-4-203	Subsection 79-4-203.5(a)
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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.)

**A) Comments will be accepted until:** 10/16/2023

**9. This rule change MAY become effective on:** 10/23/2023

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>	Jeff Rasmussen, Director	<b>Date:</b>	08/10/2023
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**R651. Natural Resources, State Parks[-and Recreation].**

**R651-700. Administrative Procedures for Real Property Management.**

**R651-700-1. Authority.**

[These rules]This rule establishes administrative procedures for real property under the management and[or] ownership of the [State of Utah,]Division of State Parks[-and Recreation ("State Parks") real property], as set forth in [Utah Code Ann.]Title 79, Chapter 4 State Parks. The Division of State Parks, through the Board of State Parks[-Board], may establish rules for the acquisition, planning, protection, operation, maintenance, development, and wise use of scenic beauty, recreation utility, historic, archaeological, or scientific interest, to the end that the health, happiness, recreational opportunities, and wholesome enjoyment of life may be preserved.

**R651-700-2. Purpose.**

[These rules]This rule is[-are] intended:

(1) [F]to establish standards and procedures for acquisition, disposal, and exchange of [D]division lands consistent with the laws of the [S]state[-of Utah];

(2) [F]to provide procedures for granting [of]rights-of-way, easements, leases, special use leases, temporary land use permits, and[-and special use permits, and] other non-recreational use of [D]division lands[-];

(3) [F]to ensure consistency and efficiency of division land management[-in order] to maximize benefits to the [D]division and to provide accountability to the citizens of the state[Utah]; and

(4) [F]to protect real property assets[-, which are fixed assets of the State of Utah,] in compliance with applicable laws, rules, and policies.

### R651-700-3. Application.

~~[These rules]~~ This rule applies ~~[are applicable]~~ statewide for real property transactions ~~and [but they]~~ shall be liberally construed to permit the ~~[D]division to carry out [effectuate]~~ the purposes of Utah law.

### R651-700-4. Definitions As Used in This Section.

(1) ~~[“]Applicant[“]~~ means any person applying for a ~~[R]right-[O]f-[W]way~~ (ROW), ~~[E]easement~~, ~~[L]lease~~, or ~~[S]special [U]se [L]ease, [and Special Use Permit.]~~

(2) ~~[“]Agriculture[“]~~ means the cultivation of land to grow crops or ~~[the]raise[ing of]~~ livestock.

(3) ~~[“]Appraised [V]alue[“]~~ means an estimate of the current fair market value of property derived by disinterested persons of suitable qualifications, ~~including [for example,]~~ a licensed independent appraiser.

(4) ~~[“]Authorized [A]rea[“]~~ means ~~an [is the]~~ area of ~~[D]division [owned]~~ land, ~~where[ieh] the [D]division~~ allows a development ~~[to]or occupancy, or where the division allows [person to] use of division land through a ROW, [E]easement, [L]lease[-], [S]special [U]se [L]ease, temporary land use permit, [and Special Use Permit]or other written authorization.~~

(5) ~~[“]Board of State Parks [and Recreation] [is] means~~ the policy making body of the Division of State Parks ~~[and Recreation] created by Title 79, Chapter 4, Part 3, Board Creation an Duties.~~

(6) ~~[“]Communications [F]acility[“]~~ means towers, antenna[s], dishes, buildings, and associated equipment used to transmit or receive radio, microwave, wireless communications, ~~[and]or other electronic signals. [The roads, pipes, conduits, and fiber optic, electrical, and other cables that cross over of under State Parks to serve a communications facility shall be governed by the administrative rules for granting Easements as set forth in R651-700].~~

(7) ~~[“]Department[“]~~ means the Department of Natural Resources.

(8) ~~[“]Development[“]~~ means any structure, improvement, or facility built on [State Parks]division land.

(9) ~~[“]Director[“] [is] means~~ the ~~[agency head of the Division in whom ultimate legal authority is vested or their designee]Director of the Division of State Parks or the director's designee.~~

(10) ~~[“]Division[“] [is] means~~ the Division of State Parks [and Recreation, also referred to as "State Parks", Division and State Parks may be used interchangeably, as appropriate].

(11) ~~[“]Division [L]and[“] [is] means~~ land owned and ~~[or]~~ managed by the ~~[D]division~~ or its agents.

(12) ~~[“]Easement[“]~~ means ~~a less than fee[-an] interest in land owned by another party, entitling the holder of said interest to limited use of enjoyment of [the others]division land.~~

(13) ~~[“]Executive [D]irector[“]~~ means the executive ~~[D]director of the [Utah]Department of Natural Resources.~~

(14) ~~[“]Fair [M]arket [R]ental [V]alue[“] [is] means~~ the annual cash amount ~~[in cash-]a willing tenant would pay, and a willing landlord would [charge-]accept for the highest and best use of the same or similar lands [for the highest and best use of the property].~~

(15) ~~[“]Lands and Environmental Coordinator[“] [is] means~~ the ~~[D]division~~ employee responsible for real property planning, documentation, analysis, reports, agreements, databases, and coordination.

(16) ~~[“]Lease[“]~~ means an agreement that authorizes use of real property for a specific term and purpose, under specified conditions for a fee.

~~[“]Paleontological Resources[“]~~ means the remains or traces of organisms, plant or animal, which have been preserved by ~~various means.~~

(1~~[8]~~7) ~~[“]Park [M]anager[“] [is] means~~ the management official for one or more state parks.

(1~~[9]~~8) ~~[“]Right[s]-of-[W]way" or [“]ROW[“]~~ means the right or privilege, acquired through contract or other ~~[legally accepted means]written agreement~~, to pass over a designated portion of ~~[the property of another]division land.~~

(20~~[1]~~9) ~~[“]Real [P]roperty[“] [is] means~~ land under water, upland, and all other property commonly or legally defined as real property ~~[“]as set forth in [Utah Code Ann.]Section 79-4-203[“].~~

(2~~[4]~~0(a) ~~[“]Real [P]roperty [A]sset[“]~~ means the land surface, air above, and ground below division land, including all appurtenances to ~~[the]division land~~, including buildings, structures, fixtures, fences and improvements erected on or attached to the same.

~~(b) Real property assets include any [and all the] interests, benefits, and rights inherent in the ownership of real estate.~~

(2~~[2]~~1) ~~[“]Region[“]~~ means a geographical group~~[ing] of state parks as defined by the division. [for management purposes. There are four state park regions: northwest, northeast, southwest, and southeast. Park Managers report to their respective region manager.]~~

(2~~[3]~~2) ~~[“]Region [M]anager[“] [is] means~~ a manager of a geographic group~~[assemblage] of state parks. [There are four state park regions: northwest, northeast, southwest, and southeast. Park Managers report to their respective region manager.]~~

~~(24) "Resource Management Plan" is a plan prepared for the current and future management of a state park or recreational resource such as trails, boating safety, or off highway vehicles.]~~

(2~~[5]~~3) ~~[“]Special [U]se [L]ease[“] [is] means~~ a written authorization issued by the ~~[D]division~~, to a person to use a specific area of ~~[D]division [L]and~~ for a special use under ~~[specific-]terms and conditions the division specifies for a term of [one (1) to fifteen (15)]up to 30 years.~~

(2~~[6]~~4) ~~[“]State [P]ark[“]~~ means unique Utah areas or Utah real property ~~[in Utah-]set aside by the [Utah State Government]Legislature or the division for the [to-]preserv[er]ation of scenic beauty, recreational utility, or historic, archaeological, or scientific interest, to the end that the health[y], happiness, recreational opportunities, and wholesome enjoyment of life may be preserved.~~

(25) Temporary land use permit means a permit issued by the division that allows the permit holder to engage in temporary, non-depleting uses of division property relating to construction or other real property improvement activities.

~~[“]Special Use Permit[“] means a temporary authorization for a specific, non-depleting land use including but not limited to seismic or land surveys, research sites, or time certain physical access o Division Lands. This contract vehicle is of a lesser order than a lease or Easement, is generally associated with a temporary event of short duration, and does not convey any proprietary or other rights or the use to the holder other than those specifically granted in the permit authorization.~~

~~(28) "Structure" means anything placed, constructed, or erected on Division Land.]~~

### R651-700-5. Obtaining an Opinion of Value.

(1) When acquiring, exchanging, or selling ~~[D]division [L]and[s]~~, the ~~[D]division~~ may determine the value of real property using one or more of [utilizing any or all of]the following methods:



(a) ~~[B]~~a broker's ~~[E]~~estimate;  
 (b) ~~[M]~~a market ~~[A]~~analysis, including ~~[but not limited to]~~ an appraisal, broker's estimate, market conditions analysis, and market demand analysis; and  
 (c) ~~[A]~~an appraisal.  
 (2) An ~~[A]~~appraisal, ~~[B]~~broker's ~~[E]~~estimate, or ~~[M]~~market ~~[A]~~analysis may not be required if:  
 (a) ~~[T]~~the transaction[s] involves a water right[s];  
 (b) ~~[T]~~the transaction[s] involves federal lands or federal funding, ~~[where]if federal law or regulations[guidelines take precedence over the provisions of]~~ mandate another method of valuation~~[this rule]~~;  
 (c) ~~[T]~~the division estimates the market value of the subject property interest is less than ~~[One Hundred Thousand Dollars (\$100,000)]~~, as estimated by the Division;  
 (d) ~~[T]~~the division estimates the asking price for the property interest is considerably below prevailing market conditions~~[as estimated by the Division]~~;  
 (e) ~~[T]~~the division determines it will lose the opportunity to purchase the property if time is taken to conduct an appraisal, market analysis, or acquire a broker's estimate before making an offer and the division estimates the asking price for the property interest is reasonable based upon prevailing market conditions~~[but the Division will lose the opportunity to purchase the property if time is taken to conduct an appraisal or acquire a real estate broker's estimate of value prior to making an offer]~~;  
 (f) ~~[A]~~an appraisal has been conducted on the subject property interest within the past ~~[twelve]~~12 months;  
 (g) ~~[T]~~the subject property interest is being conveyed through an auction;  
 (h) ~~[T]~~the real property interest is a gift, contribution, or donation to the ~~[D]~~division; or  
 (i) the real property interest will be transferred to or exchanged with another state agency or political subdivision and that agency will keep the public's right to use the property for public recreation;  
 (j) ~~[T]~~the real property interest is a less[-] than[-] fee interest or is otherwise not perpetual; or  
 (k) ~~[W]where[n]~~ the ~~[D]~~director has determined, through[-] by a written finding, that the cost of obtaining the appraisal is not justified~~[or]~~ in the best interest of the ~~[S]~~state~~[of Utah]~~.  
 (3) The division shall create and keep a memo-to-file describing the division's rationale in the consideration of the proposed price and other terms of the purchase, sale, or exchange when:  
 (a) the division considers values other than market value in addition to or in place of an appraisal; or  
 (b) the division considers values other than market value in addition to, or in place of, an opinion of value provided by a broker or sales agent.  
~~[(3) When values other than market value are considered in addition to or in place of an appraisal; or are considered in addition to, or in place of, an opinion of value rendered by a broker or sales agent; the Division shall create and keep a memo-to-file describing the Division's rationale in said consideration relative to the proposed price and other terms of the purchase, sale, or exchange.]~~

#### **R651-700-6. Land Acquisition.**

(1) The ~~[D]~~division may acquire real property through ~~[any and]~~ all legal means~~[in order to fulfill its mission and legislative mandate.]~~

(2) For purposes of this Section R651-700-6, an acquisition of land shall constitute acquiring fee or other title to land.  
~~[(2) Acquisition of real property may be made by all legal and proper means, including purchase, gift, devise, eminent domain, lease, exchange, or otherwise, subject to the approval of the Director, Executive Director and the Governor of the State of Utah.]~~

(3) Only the ~~[D]~~division ~~[D]~~director or ~~[D]~~deputy ~~[D]~~director, if designated by the division director, ~~[is authorized to]~~ may sign~~[closing papers,]~~ real property contracts~~[and]~~ ~~[or]~~ deeds.

(4) The director shall designate a team of division employees to conduct an on-site inspection of real property the division proposes to purchase or acquire by donation.

~~[(4) Eminent domain acquisition shall be in the manner authorized by Utah Code Ann. Title 78B, Chapter 6, Part 5.]~~

~~[(5) The Division shall prepare an analysis of the proposed acquisition that provides the Director with the benefits of the acquisition to the Division, including an opinion as to whether or not the Division is the appropriate manager of the resource to be acquired.]~~

~~[(6) The due diligence according to CERCLA procedures shall be performed in order for the property to be warranted free from hazardous materials or geological hazards.]~~

~~[(7) The Division shall make every effort to acquire subsurface mineral, water and any other rights attached to the land.]~~

~~[(8) Pursuant to Utah Code Ann. Subsection 79-4-203.5(a), before acquiring any real property, the Division shall notify the county legislative body of the county where the property is situated of its intention to acquire the property. If the county legislative body requests a hearing within ten days of the receipt of the notice, the board shall hold a public hearing in the county concerning the matter.]~~

~~[(9) Pursuant to Utah Code Ann. Section 23-21-1.5, the Division shall notify the Resource Development and Coordinating Committee (RDCC) for its review and approval by the Governor.]~~

~~[(10) Proposed purchases of real property, or donations of such, shall be inspected on-site by a team consisting of the local park manager, region manager, Lands and Environmental Coordinator and others as]~~ state parks employees designated by the ~~[D]~~director.

~~[(11) When acquiring lands the Division may determine the value of real property according to the policies contained in R651-700-5.]~~

~~[(12)]~~5 The director may, at the director's discretion, request preparation of a ~~[A]~~ title report ~~[and/or land survey]~~ ~~[may be performed on]~~ for all proposed ~~[all]~~ land acquisitions~~[at the discretion of the Director]~~.

~~[(13)]~~6 After receiving the preliminary title report, the Lands and Environmental Coordinator may request a review by the Attorney General's office.

~~[(14)]~~7(a) A title company may conduct ~~[T]~~the closing of a real property transaction~~[may be conducted at a title company]~~.

(b) If a title company conducts the closing~~[is used for closing]~~, the ~~[D]~~division shall instruct the title company to record the deed~~[and]~~ ~~[after recording,]~~ send the recorded deed~~[it]~~ to the Lands and Environmental Coordinator.

#### **R651-700-7. Disposal of Real Property.**

(1) The ~~[D]~~division may dispose of real property~~[in order to fulfill its mission and legislative mandate.]~~

(2) Unless otherwise directed by the ~~[H]~~Legislature~~[all]~~:

(a) any land disposal[s shall] may be brought before the ~~[Parks]~~Board of State Parks for consultation~~[or]~~; and



~~(b) a land disposal under Subsection (a) shall have [the final] approval of the [D]irector.~~

~~(3) [Only the Division Director or Deputy Director, if designated, is authorized to sign closing papers, real property contracts, and/or deeds.] For purposes of Section R651-700-7, a disposal of land shall constitute a sale or other disposition of land in which the division transfers title to the land that is the subject of the disposal to another person or entity.~~

~~[(4) The State Historic Preservation Officer shall be provided a reasonable opportunity to review and comment on the proposed sale as required by Utah Code Section 9-8-404.]~~

~~[(5)4] [The Division shall make every effort to -] To the extent required by law, the division shall retain subsurface mineral, water, and any other rights attached to the land.~~

~~(5) If title to any subsurface mineral, water, or any other rights attached to the land [of these rights] are transferred with [the] any real property, the [D]ivision shall receive full compensation for the rights conveyed unless the land is transferred to another state agency or subdivision in compliance with Subsection R651-700-5(2)(i).~~

~~[(6) When selling real property the Division may determine a minimum selling price according to the policies contained in R651-700-5.]~~

~~(7) Prior to completion of sale, lessees and permittees shall be notified an leases and permits cancelled or amended in accordance with the terms of the lease or permit may be cancelled or amended.~~

~~(8) The Division may sell real property to the public, upon approval of the Parks Board, through a competitive bid process to achieve the Division's goals.~~

~~(a) The Division may announce the sale of real property to the public by commercially feasible methods, to include publication in one or more newspapers of general circulation in the county in which the sale is proposed, at least 30 days or more in advance of the deadline for bid submittals.~~

~~(b) Notification and advertising shall include a general description of the parcel including township, range, and section, and any other information, which may create interest in the sell. The Division shall also identify the desired form of compensation, whether monetary, in kind or both.~~

~~(c) Sealed bids shall be accepted no sooner than 14 days following the first sale notice. Competing bids shall be evaluated and the highest bid selected unless the highest bid does not meet the minimum value. In the case of a tie bid, the highest bidders shall be offered the opportunity to participate in an oral bidding process.~~

~~(d) Once a successful bidder has been determined, a certificate of sale shall be prepared by the Lands and Environmental Coordinator and reviewed by the Assistant Attorney General assigned to represent the Division. A title company may provide the final closing arrangements, at the cost of the purchaser.~~

~~(e) The successful bidder shall pay the remaining balance at the time of closing and shall be responsible for all closing costs.~~

~~(f) When there are no successful bidders on the property, the unsold parcels may be:~~

~~(i) Listed with a realtor~~

~~(ii) Offer the property on a "first come first served" basis for a period of up to three years following the bid opening date; or~~

~~(iii) Auction the property.]~~

#### **[R651-700-8. Land Exchanges.**

~~(1) The Division may exchange real property in order to fulfill its mission and legislative mandate.~~

~~(2) Pursuant to Utah Code Ann. Subsection 79-4-203.5(a), before acquiring any real property through exchange, the Division shall notify the county legislative body of the county where the property is situated of its intention to acquire the property. If the county legislative body requests a hearing within ten days of the receipt of the notice, the board shall hold a public hearing in the county concerning the matter.~~

~~(3) Only the Division Director or Deputy Director, if designated, is authorized to sign closing papers, real property contracts, and/or deeds.~~

~~(4) Pursuant to Utah Code Ann. Section 23-21-1.5, the Division shall notify the Resource Development and Coordinating Committee (RDCC) for its review and approval by the Governor.~~

~~(5) The State Historic Preservation Officer shall be provided a reasonable opportunity to review and comment on the proposed exchange as required by Utah Code Section 9-8-404.~~

~~(6) Prior to completion of exchanges, lessees and permittees shall be notified and leases and permits cancelled or amended in accordance with the terms of the lease or permit may be cancelled or amended.~~

~~(7) When exchanging lands the Division may determine the value of real property according to the policies contained in R651-700-5.~~

~~(8) The criteria for exchange proposals are evaluated as follows:~~

~~(a) Real property owned by the Division may be exchanged for private and/or public properties of equal or greater recreation or monetary value in both acreage and monetary worth if the exchange shall benefit the Division's park system. The Division may exchange real property for other assets if the exchange benefits the park system.~~

~~(b) Verification shall be made that the exchange shall not result in an unmanageable and/or uneconomical parcel of Division Land, nor eliminate access to a remnant holding, without appropriate remuneration or compensation.~~

~~(c) Proposed exchanges of real property shall be inspected on site by a team consisting of the local Park Manager, Region Manager, Lands and Environmental Coordinator and others as designated by the Director.~~

~~(d) The due diligence according to CERCLA procedures shall be performed in order for the property to be warranted free from hazardous materials or geological hazards.~~

~~(e) The Division shall make every effort to retain subsurface mineral, water and any other rights attached to the land. If any of these rights are transferred with the property, the Division shall receive full compensation for the rights conveyed.~~

~~(f) The Division, at its discretion, may at any time cancel any and all negotiations for a land exchange.~~

~~(9) If the Division is offered a land exchange, an application shall be filed with the Division, and evaluated by the Division with the follow additional criteria:~~

~~(a) A completed application form shall be submitted with an application processing fee established by the Division.~~

~~(b) Incomplete applications may be denied and the application fee forfeited to the Division.~~

~~The Applicant shall provide a property description, preferably a metes and bounds survey, a county plat map of all properties to be considered for the exchange. A map shall be provided indicating the relationship of the properties to Division Land.~~

~~(d) The due diligence according to CERCLA procedures shall be performed in order for the property to be warranted free from hazardous materials or geological hazards.~~

~~(e) Other essential information required by the Lands and Environmental Coordinator and/or the Division.~~

~~(f) Upon receipt of an exchange application, the Division may solicit competing exchange property or assets. Competing applications may be solicited through publication, at least once a week for three consecutive weeks, in one or more newspapers of general circulation in the county in which the park is located. The Division may allow all applicants at least 20 days from the date of mailing of notice to submit a sealed bid containing their proposal for the subject parcel.~~

~~(g) The Director may approve or disapprove any exchanges based on information solicited through the application process. The Director may also waive the application for good cause.~~

~~(h) If competing proposals are received, the Division shall choose the successful applicant by evaluating each proposal for its contribution toward attainment of Division management objectives.~~

~~(i) The successful applicant may be charged an amount equal to all appraisal, appraisal reviews, advertisement, staff time, and other costs to the Division. The Director, for good cause shown by the applicant, may waive such costs.~~

**R651-700-[9]8. Right-Of-Way (ROW), Easements, Leases, and Special Use Leases~~], and/or Special Use Permit~~].**

~~(1) The [D]division may enter into real property transactions involving rights-of-way, easements, leases, and special uses leases[~~in order to fulfill its mission and legislative mandate~~].~~

~~(2) Only the [D]division [D]director or [D]deputy [D]director, if designated by the division director, [is authorized to] may sign[~~closing papers, real property contracts, and/or deeds~~] documents granting a ROW, easement, lease, or special use lease.~~

~~(3) Potential applicants for ROW, Easements, Special Use Lease, Special Use Permit may contact the park manager or regional manager prior to making a formal application to the Lands and Environmental Coordinator.]~~

~~[(4)]3 To apply for a ROW, [E]easement, [S]special [U]use [L]ease a person shall:~~

~~(a) [E]complete and submit to the Lands and Environmental Coordinator an application on a form provided by the [D]division[~~to the Lands and Environmental Coordinator, unless it is an application for a Special Use Permit, in which case it shall be submitted to the appropriate park manager~~];~~

~~(b) [P]pay an[~~non refundable~~] application fee;~~

~~(c) [H]if the ROW, easement, or special use lease is for [the purpose of] construction on or occupancy of an authorized area, submit the application and application fee at least 120 days [prior to] before the proposed construction or occupancy date, unless otherwise specified by rule;~~

~~(d) at the request of the division, [P]provide a map, aerial photograph, or metes and bounds survey showing property or boundary lines of the ROW, easement, or special use lease area[~~or other guide to the project area~~. Map scale may be larger but must identify township and range sections, UTM coordinates, and give appropriate scale.~~

~~(i) Anyone desiring to perform a survey on Division Land with the intent of filing an application for an ROW, Easement or Special Use Lease shall prior to entry for surveying activities, file with the agency an application for a Special Use Permit. The permit shall include a description of the proposed survey project, including the purpose, general location, and potential resource disturbances of~~

~~the proposed survey. The appropriate park manager or his delegate shall review the application.]~~

~~(e) if the purpose of the ROW, easement, or special use lease is to facilitate development of a real property estate adjacent to the ROW easement, or special use lease area, [P]provide evidence of an ownership or leasehold interest in the adjacent estate; and[~~where development of that estate is the purpose for applicants seeking a ROW or Easement~~].~~

~~(f) [H]include with the application a cover letter detailing the proposed[a project] land use purpose and scope, including any maps that will assist in orienting division staff to the land use's plan and footprint,[with the following information:~~

~~(i) Project alternatives, including alternatives not affecting the Division;~~

~~(ii) Project alternatives not affecting Division Land which were considered but rejected, and the specific reasons those alternatives were rejected;~~

~~(iii) A description of the proposed activity, structures, and/or infrastructure, including site location, construction footprint, above and below ground construction, infrastructure's functional relationship to existing or future infrastructure, etc. the description shall be sufficiently detailed as to provide an accurate and complete representation of the proposed actions;~~

~~(iv) Identification of adverse impacts to public recreation and scenic values associated with the proposed use and how they shall be avoided, minimized, or mitigated;]~~

~~([v])4 If requested by the division, a person apply for a ROW, easement, or special use lease shall provide the division with a written report that includes additional [Other essential]information [required by]that may assist the Lands and Environmental Coordinator [and/]or the [D]division[~~]~~ staff in evaluating the proposed land use, including:~~

~~(a) land use alternatives, including alternatives not affecting the division;~~

~~(b) land use alternatives not affecting division land that the applicant considered but rejected, including specific reasons the alternatives were rejected;~~

~~(c) a description of the proposed activity, structures, or infrastructure, including site location, construction footprint, and above and below ground construction, and how the proposed land use will affect existing or planned infrastructure; and~~

~~(d) identification of adverse impacts to public recreation and scenic values associated with the proposed use and how those adverse impacts will be avoided, minimized, or mitigated.~~

~~(5) Within 60 days of receiving [Upon receiving the]an application, application fee, and the information required in Subsection (4)[~~above~~], and, if requested, Subsection (5), the Lands and Environmental Coordinator may either deny the application or grant a conditional approval[~~within 60 days~~].~~

~~(6) If the application is denied, the Lands and Environmental Coordinator shall provide a written notice to the applicant.~~

~~(7) If the Lands and Environmental Coordinator grants conditional approval, [Before final approval is granted]the [D]division may require the applicant to provide the[~~following additional~~] information described in Subsections (7)(a) through (i) before granting final approval:~~

~~(a) [A]a certified copy of a survey of the authorized area[~~affected by the proposed project~~] prepared by a licensed surveyor[~~]~~;~~

~~(b) [A]a centerline survey describing the proposed easement, ROW, or special use lease and its width [is adequate for]if~~

the authorized area is for use as a pipeline, road, power line, or similar use[~~;~~];

(~~[b]~~~~c~~) [~~A~~]an electronic file that depicts the easement, ROW, or special use lease area and that requires no editing for accurate downloading into geographic systems information software used by the division~~[depicting the Easement, ROW or Special Use Lease Area that is compatible with, and requires no editing for accurate downloading into geographic systems information software used by the Division];~~

(~~[e]~~~~d~~) [~~E~~]evidence that the applicant has~~[d given]~~ provided the State Historic Preservation Office~~[f]~~ a reasonable opportunity to review and comment on the proposed ~~[project]~~land use as required by~~[Utah Code]~~ Section 9-8a-404~~[;]~~;

(~~[d]~~~~e~~) [~~A~~]an impact assessment that analyzes~~[ing]~~ the potential direct, indirect, and cumulative effects the proposed ~~[project]~~land use may have on public recreation opportunities, scenic values, wildlife, and wildlife habitat~~[;]~~;

(~~[e]~~~~f~~) [~~A~~]a survey of threatened, endangered and candidate plant and animal species,~~[Utah wildlife]~~ sensitive species, and ~~[Utah]~~species of special concern, conducted on and adjacent to the proposed ~~[project]~~authorized area;

(~~[f]~~~~g~~) [~~P~~]proof that the applicant has secured all ~~[the]~~permits and authorizations for the proposed land use that are required by state, federal, and local laws~~[for the project under State, Federal and local laws];~~

(~~[g]~~~~h~~) [~~P~~]proof that the applicant has complied with~~[the provisions of]~~ the National Environmental Policy Act, where applicable, including preparation of all environmental assessments, environmental impact statements, or other reports required by the administering federal agency~~[;]~~; or

(~~[h]~~~~i~~) [~~A~~]a survey of the ~~[project]~~land use to determine ~~[if]~~ wetland~~[s shall be]~~ impact~~[ed]~~.

~~(8)~~ The ~~[project]~~applicant ~~[is responsible for]~~shall obtain~~[ing]~~ all required federal Clean Water Act Section 404 permits.

~~(9)~~ If wetlands are within the authorized area~~[found]~~, the applicant shall~~must~~ provide sufficient mitigation to offset any damage to the wetland area.

## **R651-700-[40]2. Division Assessment of the Applications for ROWs, Easements, and Special Use Leases.**

(1) Upon receipt of an application for a ROW, [~~E~~]easement or [~~S~~]special [~~U~~]use [~~E~~]lease, the [~~D~~]division shall determine;

(a) [~~H~~]whether the application is complete;

(b) [~~H~~]whether the subject area is available for the requested use; and

(c) [~~F~~]the method the division will~~[to be]~~ use~~[d]~~ to determine the amount of compensation payable to the [~~D~~]division.

(2) The [~~D~~]division shall ~~[then]~~advise the applicant of its determinations required under Subsection (1)~~[concerning each of the three factors in Section (1). Applications determined by the Division to be incomplete, or for an area in which the use would be incompatible shall be returned to the applicant with a written explanation of the reason(s) for rejection].~~

~~[(3) If an application rejected for incompleteness is resubmitted within ninety (90) calendar days for the date the Division returned it to the applicant (as determined by the date of postmark), no additional application fee will be assessed.]~~

(~~[4]~~~~3~~) The [~~D~~]division may, ~~[reject]~~at its sole discretion, elect to consider an application~~[s]~~ for a ROW~~[s]~~ or [~~E~~]easement~~[s]~~ as an application for a special use lease if the division determines~~[that would be more appropriately authorized by a Special Use Lease].~~

~~(a) a special use lease would be more appropriate than a ROW or easement;~~

~~(b) the application meets the requirements of this rule; and~~

~~(c) the applicant verifies it is willing to enter into a special use lease instead of a ROW or easement.~~

(~~[5]~~~~4~~) [~~Upon acceptance by the Division, the]~~To the extent permitted by law, the division may circulate accepted applications ~~[may be circulated to various]~~to local, state, and federal government agencies and to other interested persons, including tribal governments, adjacent property owners~~[holders]~~, affected lessees, and other division permittees, and [~~E~~]easement holders, for review and comment.~~[As part of this review, the Division shall specifically request comments concerning:~~

~~\_\_\_\_\_ (a) The presence of state or federal listed threatened and endangered species (including candidate species) and archaeological and historic resources within the requested area that may be disturbed by the proposed use;~~

~~\_\_\_\_\_ (b) Conformance of the proposed use with other local, state, and federal laws and rules;~~

~~\_\_\_\_\_ (c) Conformance of the proposed use with a state park comprehensive land use plan, resource management plan, operation plan, business plan, and/or zoning ordinances;~~

~~\_\_\_\_\_ (d) Conformance with existing state park rules, policies, and guidelines;~~

~~\_\_\_\_\_ (e) Potential conflicts of the proposed use with existing leases, permits or Easement holders.~~

~~\_\_\_\_\_ (6) If the application is for a communications facility, the Division may request comments from the Federal Communications Commission, Public Utility Commission, and any other person's owning/leasing communications facilities that advise the Division that they want to receive such applications.~~

~~\_\_\_\_\_ (7) After receipt of agency and public comment concerning the proposed use, the Division shall advise the applicant in writing:~~

~~\_\_\_\_\_ (a) If changes in the use or the requested lease or permit area are necessary to respond to agency or public comment;~~

~~\_\_\_\_\_ (b) If additional information is required from the applicant, including but not limited to a survey of:~~

~~\_\_\_\_\_ (i) State or federal listed threatened and endangered species (including candidate species) within the requested area;~~

~~\_\_\_\_\_ (ii) Archeological and historic resources within the requested area; and/or~~

~~\_\_\_\_\_ (iii) Wetlands.~~

~~\_\_\_\_\_ (c) In the case of a Special Use Lease, if the area requested for lease will be authorized for use by the applicant through a Special Use Lease, or be made available to the public through competitive bidding pursuant to R651-700-12.]~~

~~(5) Roads, pipes, conduits, and fiber optic, electrical, and other cables that cross over or under division land to serve a communications facility shall be subject to the provisions to easements as set forth in this rule.~~

## **R651-700-[44]10. Compensation for ROW, Easements, Leases, and Special Use Leases.**

(1) In establishing the amount of ~~[annual]~~compensation due the division for a ROW, easement, lease, or special lease~~[, or minimum bid at auction]~~, the [~~D~~]division shall:

(a) [~~A~~]adhere to the provisions~~[policies]~~ contained in Section R651-700-5~~[of these rules]~~;

(b) [~~W~~]when~~[ever]~~ practicable, base the amount of annual compensation on the fair market rental value~~[received by property owners for similar property used in a similar manner]; and~~

~~\_\_\_\_\_ (c) Require the holder of a Special Use Lease for a communications facility to annually remit to the Division both;~~

~~\_\_\_\_\_ (i) The full amount of the base annual compensation required by their lease, and~~

~~\_\_\_\_\_ (ii) A payment, the amount to be determined by the Division on a case-by-case basis, of the rental received by the lessee during the previous calendar year from the sublessees using the subject facility authorized by the lease.]~~

~~\_\_\_\_\_ (d)2) [In the event] If [that] reliable data concerning fair market rental values are not available, [the Division shall] select another method [of] for determining the amount of [annual] compensation due, or minimum bid at auction, such as a percent of the appraised value of the requested authorized area, percent of crop value, or percent of product produced.~~

~~\_\_\_\_\_ (e) Rents for ROW, Easements, and leases are based on the costs incurred by the Division and fair market value. Fees are based on the current fee schedule that can be obtained from the Lands and Environmental Coordinator.]~~

**~~R651-700 12. Competitive Bidding Process for Special Use Leases.~~**

~~\_\_\_\_\_ (1) The Division shall determine on a case-by-case basis if an area requested for a Special Use Lease shall be offered to the public through competitive bidding. This decision shall be made after consulting:~~

~~\_\_\_\_\_ (a) Whether the area requested for a Special Use Lease or permit is Division Land;~~

~~\_\_\_\_\_ (b) The nature of the use and length of authorization requested;~~

~~\_\_\_\_\_ (c) The availability of reliable data regarding the fair market rental value of the subject parcel for the proposed use; and~~

~~\_\_\_\_\_ (d) Whether other applications are received by the Division to use the same area requested for the same or competing uses.~~

~~\_\_\_\_\_ (2) If the Division determines that the greatest benefit to the public recreation and/or the Division would be achieved by offering the subject area through competitive bidding, it shall give Notice of Leasehold Availability and provide an opportunity for applications to be submitted.~~

~~\_\_\_\_\_ (3) The Notice of Leasehold Availability shall state;~~

~~\_\_\_\_\_ (a) The location and size of the subject area;~~

~~\_\_\_\_\_ (b) The user(s) approved by the Division for the subject area;~~

~~\_\_\_\_\_ (c) The type of auction and minimum acceptable bid amount;~~

~~\_\_\_\_\_ (d) What developments, if annex on the subject area the applicant must purchase from the existing lessee, and a general estimate of the present value of said developments as determined by the Division; and~~

~~\_\_\_\_\_ (e) The deadline for submitting a completed application to the Division.~~

~~\_\_\_\_\_ (4) The Notice of Leasehold Availability shall be:~~

~~\_\_\_\_\_ (a) Published at the applicant's expense not less than once each week for two (2) successive weeks in a newspaper of general circulation in the county(ies) in which the subject parcel is located;~~

~~\_\_\_\_\_ (b) Posted on the Division Internet website; and~~

~~\_\_\_\_\_ (c) Sent to persons indicating an interest in the subject parcel.~~

~~\_\_\_\_\_ (5) The highest qualified bidder shall be awarded the lease at auction subject to satisfaction of the requirements of R651-700 (9 and 10) of these rules. The Division, however, shall have the right to reject any and all bids submitted.~~

~~\_\_\_\_\_ ]~~

**R651-700-[13]11. Right-Of-Way[~~(ROW)~~], Easements, and Special Use Leases - Final Determination.**

(1) The [D]director may deny any application for a ROW, easement, or special use lease if:

(a) [F]the application does not include all the information required or requested by the division pursuant to this rule;

(b) [F]the division determines that the potential impact to public recreation, cultural[~~4~~] or historic resources, view shed, wildlife habitat, or water quality is unacceptable;

(c) [F]the proposed [project]land use contravenes any applicable [the Recreation Management]division [P]plan, current or proposed development plan or [site]master plan;

(d) [F]the division determines that the applicant has not[, in the opinion of the Division,] adequately considered ways to avoid or minimize impacts or that the applicant has failed to propose[d] adequate compensatory mitigation plans for unavoidable impacts, including cumulative impacts;

~~\_\_\_\_\_ (e) There are, in the opinion of the Division, alternative locations reasonably available on lands not owned by the Division for the requested use including organized events that may harm public recreation, wildlife, wildlife habitat, utilities, telecommunications structures, transmission lines, canals, ditches, pipelines, tunnels, fences, roads, and trails;]~~

[(f)]e [F]the proposed[application's project] land use affects real property in which a third party has contractual or other legal [oversight]rights and the [project]land use is rejected by that party; or

[(g)]f [F]the applicant is in default on any previous obligation to the [D]division.

(2) If the application is rejected, the [D]division shall provide a written notice of the rejection to the applicant.

(3) A ROW, [E]easement or [S]special [U]use [L]lease may include provisions requiring the applicant to:

(a) [R]restore to the division's satisfaction all structures impacted by the proposed land use, including[~~-but not limited to~~] fences, roads, and existing facilities, and to [regard]regrade the authorized area as nearly as practical to its [the pre-project]original grade and contour, and to re-vegetate the authorized area impacted by the land use[area to Division specifications];

(b) [A]dhere to the terms of the applicant's approved [project]land use plan prescribed in [s]Subsections R651-700-[9]8(3) and (4)[(f)];

(c) [P]pay [for surveys, environmental assessments, environmental impact statements, appraisals, restoration, re-vegetation,]compensatory mitigation and all other expenses associated with the [project]land use; and

(d) [P]provide all permits and clearances for the [project]land use.

(4) [Prior to]Before the division issues[~~ance of~~] an [E]easement, ROW, [Special Use Permit] or [S]special [U]use [L]lease, or for good cause shown at any time during the term of such [the]agreement, and upon 30 days written notice, the division may require the applicant or grantee[, as the case may be, may be required] to post [with the agency]a bond in the form and amount as may be determined by the division[agency] to assure compliance with all terms and conditions of the [E]easement, ROW, [Special Use Permit] or [S]special [U]use [L]lease.

\_\_\_\_\_ (5) Easements, ROW, Special Use Permits and Special Use Leases issued by the Division shall be on a form supplied by the Division that has been approved for legal sufficiency.

~~(6) If the Division decides to issue a ROW, Easement, or Special Use Lease to the applicant without competitive bidding, the written notice will also indicate;~~

~~(a) The amount of compensation that the applicant shall remit to the Division to obtain authorization;~~

~~(b) Any insurance and/or surety bond required by the Division pursuant to the requirements of R651-700-16; and~~

~~(c) A draft copy of the ROW, Easement, or Special Use Lease.~~

~~(7) The Division shall not grant an Easement, ROW, Special Use Permit or Special Use Lease to the applicant until it has received all fees and compensation specified in these rules, and evidence of any required insurance and/or surety bond.~~

~~(8) The Director may refer any applications for a Special Use Lease to the Parks Board for review and approval.]~~

#### **R651-700-[45]12. Easement, ROW, Temporary Land Use Permit [~~Special Use Permit~~] or Special Use Lease - General Terms and Conditions.**

(1) A ROW, ~~or E~~ easement, or special use lease may be granted for a maximum of ~~[thirty (30)]~~ years, ~~[from the date of the signing. The Division may grant such real property interests for shorter time periods. The Director may provide an exception, in whole or in part, to the rules for use of Division land and other recreational areas for an Easement, ROW, Special Use Permit, or Special Use Lease granted pursuant to this section. The exception may be provided by a written decision issued by the Director and shall be effective for the term or such lesser period of time specified by the Director.]~~

(2) The initial term of a [S]special [U]se [L]ease may ~~[shall]~~ not exceed ~~[fifteen (15)]~~ years.

(3) The [D]division shall determine the length of a special use lease based on the nature of the intended use ~~[intended for the requested site]~~ of the authorized area.

(4) The [D]division may, at its discretion and subject to the provisions of this rule, ~~[provide as a provision of the lease that it may be-include in a special use lease a provision that allows for renew[ed]al for a term to be determined by the [D]division.~~

~~[(3) The term of a Special Use Permit shall not exceed one (1) year. A Special Use Permit may, at the discretion of the Division, be renewed up to two (2) times for a maximum term of ninety (90) days each time.]~~

~~[(4)5] The division may offer [S]special [U]se [L]leases[ and Special Use Permits shall be offered by the Division] for the minimum amount of area the division determine[d]s ~~[by the Division to be-]~~is required for the requested use.~~

(6) The division may grant a temporary land use permit, on terms acceptable to the division, for temporary, non-depleting uses of division property relating to construction or other real property improvement activities.

~~[(5)7] The lessee, grantee, or permittee may request the [D]division[ to] close all or portions of the authorized area to public entry, or that the division restrict recreational use by the public, to protect[ the] persons[;] or property[; and/or crops] from harm.~~

~~[(6)8] The [D]division or its authorized representative[s] shall have the right to enter into and upon the authorized area at any time for the purposes of inspection or management, or to conduct noxious weed or pest abatement, or to conduct ~~[for-]~~wildfire control and mitigation activities.~~

~~[(7)9] The lessee[;] or grantee, or permittee shall dispose of all waste in a proper manner and ~~[shall]may~~ not permit debris,~~

garbage, or other refuse to ~~[either]~~ accumulate within the authorized area or to be discharged into any waterway.

~~[(8)10] A lessee[;] or grantee, or permittee may not interfere with lawful public use of an authorized area, or obstruct free transit across [D]division [L]and[;], or intimidate or otherwise threaten or harm public users of [D]division [L]and.~~

~~[(9)11](a) Upon the expiration or termination of a ROW, [E]easement, lease, or [S]special [U]se [L]ease, or temporary land use [P]permit, the holder shall remove from the authorized area any or all[ developments] improvements and personal property ~~[as directed by the Division-]~~within sixty (60) calendar days of the date of termination of[the time specified in the [E]easement, ROW, [L]lease, or special use lease.[or permit.]~~

~~(b) Any [developments remaining on the area authorized by the Easement, Row, lease or permit after the sixty (60) day period ]improvements or personal property remaining on the area authorized by the easement, ROW, lease, special use lease, or temporary land use permit after the removal period has expired shall become the property of the [D]division.~~

~~(c) If the grantee, lessee, or permittee ~~[refuse]~~fails to remove ~~[the subject developments,]any improvements or personal property with the specified time period,~~ the [D]division may remove them and charge the grantee, lessee or permittee for ~~[doing so]~~the reasonable costs of removal.~~

~~[(1)0]2) The holder of a [S]special [U]se [L]ease or permit ~~[shall]may~~ not allow any other use to be made of the authorized area, or any use to occur on the ~~[site or vicinity]~~authorized area, that is not specifically authorized:~~

~~(a) [B]by that special use lease or permit; or~~

~~(b) in writing [B]by the [D]division if the use is not authorized by the special use lease or permit[ in writing prior to the use].~~

#### **R651-700-[46]13. Insurance and Bonding - Easement, ROW, Special Use Lease, and Temporary Land Use Permits [~~Special Use Permit~~].**

(1) The [D]division may require a grantee, lessee, or permittee to obtain insurance in a specified amount if, in the division's opinion, the proposed land use, ~~in the opinion of the Division~~, constitutes a risk to public safety[;] or to the [S]state's interest ~~[of Utah]~~.

(2) Pursuant to Subsection R37-1-7(2)(c), ~~[F]the [D]division may request that the applicant, grantee, lessee, or permittee provide information concerning the use of the area to the Division of Risk Management, [which may-]so that the Division of Risk Management may assist the [D]division in determining the appropriate amount of insurance coverage[ based on the nature of the use]~~ the grantee, lessee, or permittee must obtain.

(3) ~~[All bonds posted on Easements, leases, ROW, or permits may be used for payment of all monies, rentals, and royalties due to the grantor, also for costs of reclamation and for compliance with all other terms and conditions of the Easement, and rules pertaining to the Easement. The]Until the grantee fully satisfies its obligations under a ROW, easement, or special use lease, or until the bond is replaced with a new bond posted by a sublessee or assignee. Any required bond shall ~~[be]remain~~ in effect even if the grantee or lessee has conveyed all or part of ~~its[the Easement]~~ interest to a sub lessee, assignee, or subsequent operator[ until the grantee fully satisfies the Easement obligations, or until the bond is replaced with a new bond posted by the sublessee or assignee].~~

(4) The division may at any time increase the amount of any [B]bond[s may be increased] in reasonable amounts, ~~[at any time]~~

~~as the Division may decide, provided grantor first gives grantee~~ upon 30 days written notice ~~to the grantee, lessee, or permittee~~ stating the amount of the increase and the reasons~~(s)~~ for the increase.

(5) ~~The division may, at its discretion, accept [B] bonds [may be accepted] in any of the following forms[at the discretion of the Division]:~~

(a) ~~a [S] surety bond [with] issued by an approved corporate surety that is registered in Utah;~~

(b) ~~a [C] cash deposit[. However, the Division shall not be responsible for any investment returns on cash deposits]; or~~

(c) ~~a [C] certificate of deposit that:~~

(i) ~~is issued in the name of "The Division of State Parks[and Recreation] and applicant, c/o Applicant's address"[.with];~~

(ii) ~~is issued by an approved state or federally insured banking institution registered in Utah.[The certificate of deposit must]~~

(iii) ~~has a maturity date of no greater than 12 months; be~~

(iv) ~~is automatically renewable; and[.and be]~~

(v) ~~is deposited with the division.[agency, the grantee shall be entitled to and receive the interest payments. All certificates of deposit must be endorsed by the applicant prior to acceptance by the Director; or]~~

(6) ~~If the division accepts a bond in the form of a certificate of deposit pursuant to Subsection (5)(c), the applicant shall be entitled to and receive the interest payments.~~

~~([d]7) All certificates of deposit must be endorsed by the applicant before acceptance by the director or must be in [O] other forms of surety as may be acceptable to the [D] division at its sole discretion.~~

~~(8) If division accepts a bond in the form of a cash deposit pursuant to Subsection (5)(b), the division may not provide to the grantee, lessee, or permittee any investment returns earned on the cash deposit.~~

#### **R651-700-[47]14. Assignment of ROW, Easement, or Special Use Leases and[Special Use Permits] Subleasing.**

(1) ~~Subject to approval by the division, and unless the terms of the [A] ROW, [E] easement or [S] special [U] use [L] lease provide otherwise, a ROW, easement or special use lease in good standing is freely assignable.~~

~~[ (2) Special Use Permits are non-assignable.]~~

~~([3]2) To assign a ROW, [E] easement or [S] special [U] use [L] lease, the lessee shall[submit a:~~

~~(a) Notice.] notify the division in writing of the proposed assignment[on a form provided by the Division; and~~

~~(b) Non-refundable assignment processing fee payable to the Division.]~~

~~([4]3) Upon receiving written notice of the proposed assignment, t[F]he [D] division shall[make every effort to complete its] review [of such] the proposed assignment[s within thirty (30) calendar days of receipt of the notice. The Division] and may request additional information concerning the proposed assignment.~~

~~([5]4) A sublease or assignment may be made only to:~~

~~(a) a person, firm, governmental agency, association, or corporation qualified to do business in the [S] state[ of Utah, and];~~

~~(b) a person, firm governmental agency, association, or corporation which is not in default under the laws of the [S] state[ of Utah] relative to qualification to its qualification to do business within the state[.]; and~~

~~(c) a person, firm, governmental agency, association, or corporation that is not in default on any previous obligation to the [D] division.~~

~~([6]5) A lessee wanting to offer a sublease to another person shall:~~

~~(a) Obtain prior written authorization from the [D] division before offering the sublease to another person[by applying to the Division on a form provided by the Division.]; and~~

~~(b) at the end of the calendar year, s[S]ubmit rent to the [D] division[rent], in an amount to be determined by the [D] division[on a case-by-case basis, at the end of the calendar year].~~

~~([7]6) A sublease or assignment [shall] may not take effect [the date of the approval of the assignment. On the effective date of any assignment,] until approved by the division.~~

~~(7) Notwithstanding any conditions in the assignment to the contrary, the assignee shall be[is] bound by the terms of the lease to the same extent as if the assignee were the original grantee[. or lessee[. any conditions in the assignment to the contrary not withstanding].~~

~~(8) A sublease or assignment [must] shall:~~

~~(a) be set out in a sufficient legal instrument, properly executed and acknowledged[. and should]~~

~~(b) [be] clearly set forth the lease or contract number, land involved, and the name and address of the assignee; and~~

~~(c) [shall] include any agreement which transfers control of the lease to a third party.~~

~~(9) A copy of the documents subleasing or assigning the interest shall be given to the [D] division.~~

~~[ (9) A sublease or assignment shall be executed according to Division procedures.~~

~~(10) A sublease or assignment is not effective until approved by the Division.]~~

#### **[R651-700-18. ROW, Easement, Special Use Leases and Special Use Permits—Unauthorized Uses and Penalties.**

~~(1) Uses and developments subject to, but not authorized by a ROW, Easement, Special Use Lease or Special Use Permit issued by the Division constitute a trespass and must be removed as directed unless otherwise authorized in writing by the Division.~~

~~(2) In addition to any other penalties provided or permitted by law, the placement of any development on, or use of Division Land without the required Division authorization as described in these rules, or which is otherwise not in compliance with these rules shall constitute a trespass and be prosecuted pursuant to governing law.~~

#### **R651-700-19. Termination of a Special Use Lease or Special Use Permit for Default.**

~~(1) If the lessee or permittee fails to comply with these rules or other lease terms and conditions, or otherwise violates laws covering the use of his/her authorized area, the Division shall notify the lessee or permittees in writing of the default and demand correction within a specified time frame.~~

~~(2) If the lessee or permittee fails to correct the default within the time frame specified, the Division may:~~

~~(a) Modify or terminate the lease or permit, and/or~~

~~(b) Request the Attorney General to take appropriate legal action against the lessee or permittee.~~

#### **R651-700-20. Abandonment or ROW, Easement, or Lease.**

~~(1) If within 365 days of the date of execution of a ROW, Easement or lease a grantee/lessee fails to construct and install the infrastructure which necessitate the grantee/lessee's acquisition of a~~

ROW, Easement or lease, or the grantee/lessee otherwise fails to use all of any portion of a ROW, Easement or lease, that portion of the ROW, Easement or lease so unused shall be deemed abandoned and the grantee/lessee's leasehold interest in said portion of the ROW or lease shall be terminated with no compensation due from the Division.

(2) If proof of grantee/lessee's use of all or portion of the ROW, Easement or lease cannot be provided for any continuous three year period, that portion of the ROW, Easement or lease shall be deemed abandoned and the grantee/lessee's leasehold interest in said portion of the ROW, Easement or lease cannot be provided for any continuous three year period, that portion of the ROW, Easement or lease shall be deemed abandoned and the grantee/lessee's leasehold interest in said portion of the ROW, Easement or lease shall be terminated with no compensation due from the Division.

#### **~~R651-700-21. ROW, Easement, Special Use Leases and Special Use Permits—Reconsideration of Decision.~~**

(1) An applicant or any other person adversely affected by the issuance of denial may request that the Director or the parks Board, depending upon which entity made the decision, reconsider the decision:

(a) Such a request shall be received by the Director no later than thirty (30) calendar days after the date of delivery of the decision.

(b) If the Director made the decision of concern, she/he may affirm the decision, issue a new or modified decision, or request the applicant to submit additional information to support the appeal.

(c) If the decision was made by the parks Board, the Director may recommend to the parks Board either that the Special Use Lease or permit issuance or denial be modified based on the merits of the request.

#### **~~R651-700-22. Water Rights.~~**

(1) It is the policy of the Division of Parks and Recreation to use its water resources for beneficial purposes in support of public recreation, including but not limited to, protecting scenic attractions and recreational values for the present and future citizens of Utah.]

**KEY:** property

Date of Last Change: **2023**~~[October 27, 2009]~~

Notice of Continuation: July 10, 2023

Authorizing, and Implemented or Interpreted Law: 79-4; 79-4-203; 79-4-203.5(a)

#### **NOTICE OF PROPOSED RULE**

**TYPE OF FILING:** Repeal and Reenact

<b>Rule or Section Number:</b>	<b>R655-5</b>	<b>Filing ID:</b> <b>55705</b>
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#### **Agency Information**

<b>1. Department:</b>	Natural Resources
<b>Agency:</b>	Water Rights
<b>Room number:</b>	220
<b>Street address:</b>	1594 W North Temple
<b>City, state and zip:</b>	Salt Lake City, UT 84116

#### **Contact persons:**

<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Marianne Burbidge	801-538-7370	marianneburbidge@utah.gov

**Please address questions regarding information on this notice to the persons listed above.**

#### **General Information**

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

R655-5. Maps Submitted to the Division of Water Rights

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

The purpose of this filing is to update code citations within this rule and make adjustments to map submittal that align with the advancements in technology since this rule was last updated.

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

The reenacted text allow professionals to submit maps electronically. The updated text provides better definitions and solidifies current map receipt practices by the state engineer.

#### **Fiscal Information**

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

###### **A) State budget:**

No fiscal impact because those effected have the equipment to submit and process electronically.

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

No fiscal impact because local governments have the equipment to submit and process electronically.

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

No fiscal impact because small businesses have the equipment to submit and process electronically.

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

No fiscal impact because non-small businesses have the equipment to submit and process electronically.

###### **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**):

No fiscal impact because other persons have the equipment to submit and process electronically.



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

Enactment of this rule change likely will not result in direct, measurable costs because impacted entities will likely have the equipment to submit and process electronically.

**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	Fiscal Cost	Fiscal Cost	Fiscal Cost
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 Natural Resources, Joel Ferry, 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 73-2-1	Section 73-3-2	Section 73-3-3
Section 73-3-5.6	Section 73-3-8	Section 73-3-16

**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:** 10/16/2023

**9. This rule change MAY become effective on:** 10/23/2023

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>	Teresa Wilhelmsen, Director	<b>Date:</b>	08/30/2023
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**R655. Natural Resources, Water Rights.**

**R655-5. Maps Submitted to the Division of Water Rights.**

**[R655-5-1. Purpose.**

~~These rules are promulgated pursuant to Subsection 73-2-1(3)(b)(i) and Sections 73-3-2, 73-3-3 and 73-3-16. The purpose of these rules is to establish when maps must be submitted and the minimum standards that must be met for the maps to be accepted by the State Engineer.~~

**R655-5-2. Definitions.**

~~2.1 APPLICATION MAP a map filed in support of an Application to Appropriate, Temporary Application to Appropriate, Application to Exchange Water, Application for Permanent Change of Water, or Application for Temporary Change of Water.~~

~~2.2 COMPETENT SURVEY a survey performed by or under the direction of either a Utah licensed professional land surveyor or a Utah licensed professional engineer. It must be based on measured ties (metes and bounds) to a regularly established and monumented section corner or quarter corner. The survey shall be conducted to produce location specifications within a one foot positional tolerance. It may be submitted in support of a Proof of Beneficial Use, Diligence Claim, or Evidence of Pre-statutory Water Use.~~

~~2.3 HEREAFTER in an Application for Permanent Change or Application for Temporary Change, the term "hereafter" means the conditions of authorized use of a perfected or approved water right proposed under the application, including point(s) of diversion, place(s) of beneficial use, nature of beneficial use, and period of use.~~

~~2.4 HERETOFORE in an Application for Permanent Change or Application for Temporary Change, the term "heretofore" means the conditions of authorized use of a perfected or approved water right existing prior to the proposed changes, including point(s) of diversion, place(s) of beneficial use, nature of beneficial use, and period of use.~~

~~2.5 MUTUAL IRRIGATION COMPANY~~ an incorporated non profit entity properly registered with the Department of Commerce, Division of Corporations, specifically established for the purposes of providing construction, operation, maintenance, and administration of water systems designed to deliver water to its shareholders.

~~2.6 PARCEL OF LAND~~ a tract or tracts of land held in undivided ownership by one or more persons. Its legal description may be described by a metes and bounds description, as a lot or subdivision of a section, or entire sections. The place of beneficial use of water is located on the parcel of land and may occupy the entire parcel or only a portion of the parcel.

~~2.7 PLACE OF BENEFICIAL USE~~ place of beneficial use that must be located on maps as required in the following rules is defined under one of the two following headings:

~~2.7.1 Specific Location~~ for most privately owned water rights, the place of beneficial use is the specific location (identified by a legal description by metes and bounds) of the point, facility, or area where water is placed to a recognized type of beneficial use. The area to be located is described below for each type of beneficial use.

~~Irrigation~~ specific location where water will be applied on a parcel of land.

~~Domestic~~ specific location of the residence(s).

~~Stockwater~~ specific location where stock will be watered or area where stock are impounded or grazed.

~~Instream~~ specific location of the reach of stream where flows are to occur.

~~Fish culture~~ specific location of the pond, lake, reach of stream, or facility.

~~Mining~~ specific location or area where water will be used for mining purposes.

~~Oil well development~~ specific location of the oil field described in the developing entity's mineral rights or other development authority or the specific location of the facility or area where beneficial use occurs.

~~Power, commercial, industrial, or other~~ specific location of the facility or area where beneficial use occurs.

~~2.7.2 Service Area~~ in the case of mutual irrigation companies, the federal government, state agencies, municipalities, water conservancy districts, special service districts, and qualifying water companies that serve subdivisions, the place of beneficial use is the water using entity's service area. The service area boundaries shall be described in sections or 40-acre tracts of each section, township, and range. Service areas are not required to be continuous nor consist of entirely contiguous parcels, i.e., there may be tracts within the described service area that are excluded as well as service area "islands" outside the main service area. Because of the changeable nature of their water service areas, municipalities are not required to define their service area boundaries. The boundaries of platted subdivisions would define the service areas for qualifying water companies.

~~2.8 PROOF MAP~~ a map submitted in conjunction with the filing of a Proof of Beneficial Use of Water under Section 73-3-16.

~~2.9 QUALIFYING WATER COMPANY~~ a mutual non-profit or private for profit water entity properly registered with the Department of Commerce, Division of Corporations (if a corporation) or with the Division of Public Utilities (either as a regulated utility or as holding a letter of exemption). Such companies shall have been established for the purposes of providing construction, operation, maintenance, and administration of water systems specifically designed to serve one or more legally platted and

recorded subdivisions. Such entities shall be bound by their articles of incorporation or bylaws to monitor water use within their designated service areas and report annually that use to the State Engineer/Division of Water Rights.

### **~~R655-5-3. When Maps Must Be Submitted.~~**

~~3.1 Waiver of Map Requirement.~~ The State Engineer may waive the filing of maps if in his opinion the written application or proof adequately describes the location of the point of diversion, the diverting works, the location of the place of beneficial use, and the nature and extent of beneficial use.

~~3.2 Application to Appropriate.~~

~~3.2.1 General requirements.~~ Application maps must be submitted with applications for new appropriations showing the parcel of land, the proposed place of beneficial use, and the proposed point of diversion.

~~3.2.2 Application maps are not required for applications for new appropriations filed by mutual irrigation companies, the federal government, state agencies, municipalities, water conservancy districts, special service districts, and qualifying water companies that serve subdivisions. However, if a map is not submitted, the application must include a description of the service area where the water is proposed to be used.~~

~~3.3 Application for Permanent Change of Water.~~

~~3.3.1 General requirements.~~ Application maps must be submitted with change applications on both perfected and pending water rights. The map must show the parcel of land and the place of beneficial use where the water was used heretofore and the parcel of land and the proposed place of beneficial use where the water will be used hereafter. The map must also show the proposed point of diversion. If the change application is filed on a perfected water right that is inactive under a currently approved Application for Nonuse of Water, no map of the heretofore place of use will be required.

~~3.3.2 Application maps of the location of the heretofore place of use will not be required on change applications for water rights owned by mutual irrigation companies, the federal government, state agencies, municipalities, water conservancy districts, special service districts, and qualifying water companies that serve subdivisions, provided that the heretofore use was also occurring pursuant to the water right and within the defined place of use of the qualifying applicant. Application maps showing the hereafter place of use will be required only of mutual irrigation companies and qualifying water companies serving subdivisions. The mapping requirement for mutual irrigation companies and qualifying water companies serving subdivisions may be waived if the State Engineer determines the written description of the hereafter place of use is sufficiently clear. If the change application involves a change in the nature of use (e.g., irrigation to domestic), a map of the hereafter place of use will be required even if the hereafter place is within the existing service area.~~

~~3.4 Application for Temporary Change of Water and Temporary Application to Appropriate Water.~~

~~3.4.1 General Requirements.~~ An application map must be submitted with each temporary change application or application for temporary appropriation. The map shall show the proposed point of diversion, the parcel of land, and the place of beneficial use. For temporary change applications, the map shall also show the parcel of land and the place of beneficial use where the water was used heretofore.

~~3.4.2 Requirements for mutual irrigation companies.~~ For temporary change applications on irrigation company water shares, the State Engineer may waive the mapping requirements for the

heretofore and/or the hereafter place of beneficial use. The determination to allow a waiver will be based on the State Engineer's evaluation of the facts described in the temporary change application.

3.5 Application to Exchange Water. Application maps must be submitted with an application to exchange water showing the parcel of land and the place of beneficial use. The map must also show the proposed point of diversion.

3.6 Proof of Beneficial Use of Water.

3.6.1 General Requirements. Maps are required when a proof is submitted on an approved Application to Appropriate Water (permanent or fixed time), on an approved Application for Permanent Change of Water, or on an approved Application to Exchange Water. Proof maps must show the specific point(s) of diversion, the place of beneficial use, and the extent of use. Proof maps shall also clearly show any specific information required in the approval of the application (e.g., water metering devices) or information necessary to make clear the manner in which water is diverted, measured, conveyed, and used.

3.6.2 Municipalities. Proof maps are not required on water rights issued for municipal uses unless the State Engineer determines that the written description inadequately describes the location of the point of diversion, the diverting works, the location of the place of beneficial use, and the nature and extent of beneficial use.

3.7 Diligence Claims and Evidence of Pre-statutory Water Use. Maps shall accompany the Diligence Claim or Evidence of Pre-Statutory Water Use showing the specific location and/or area where the water was first diverted, conveyed, and placed to beneficial use.

#### **R655-5.4. Mapping Standards.**

4.1 Acceptability of Maps. The State Engineer will determine the suitability of any proof map or application map submitted to the Division of Water Rights.

4.2 Standards for Maps to be Submitted with Proof of Beneficial Use of Water, Diligence Claims, or Evidence of Pre-Statutory Water Use.

4.2.1 Maps shall be prepared by a Utah-licensed professional engineer or a Utah-licensed professional land surveyor and must be based on a competent survey. The professional engineer or professional land surveyor shall affix his/her seal and shall sign and date the map.

4.2.2 Standard mapping conventions must be used in completing the map, including the following: there must be a north arrow, the scale must be indicated in both written and graphic form, and there must be a legend describing any symbols used on the map. All information included on the map must be legible. The line quality used on the drawings must be distinct. Shading or hatching may be used to show irrigated acreage; however, the boundary of the irrigated area must be delineated.

4.2.3 All surveys must be tied to a section corner (NE, SE, SW, NW) or a quarter section corner (N1/4, E1/4, S1/4, W1/4) of the section township range survey for the area of use, and the map must indicate the basis of bearing for the bearings shown. Any public roads adjacent to or near the property surveyed should be shown on the map. If within a legally platted subdivision, the subdivision name and lot/block designations of the subject parcels shall also be shown.

4.2.4 The title block must include the following: water right number, application number, date of the survey, name of the applicant, name and license number of the professional engineer/land surveyor, and the section, township, and range where the parcel in question is located.

4.2.5 Maps must be submitted on standard drafting medium that is durable and reproducible. All information shown on

the map must be in black permanent drafting ink or other media of equivalent durability and opacity.

4.2.5.1 Small-sized maps. The preferred map sizes are 8 1/2 x 11 inches or 8 1/2 x 14 inches. Maps of this size should be used whenever possible and particularly for all irrigated acreage of five acres or less. Small-sized maps may be created on material that is translucent or opaque. Maps of small parcels shall be drawn to the largest scale practical. The smallest scale allowable on small maps is 1"=300' (1:3600). There must be a margin of at least 1 1/4 inches at the top and 1/2 inch on the sides and bottom. The title block shall appear on the lower right hand side of the page (the short side being the bottom). For mailing or transport, smaller maps must not be folded.

4.2.5.2 Large-sized maps. If a larger-sized map is needed, the dimensions shall be 24 x 36 inches. Maps of this size must be created on a translucent drafting medium. The title block shall appear in the lower right hand corner (the long side of the map being the bottom). Larger maps shall be rolled for mailing or transport. If mailed, a protective mailing tube or box shall be used.

4.3 Standards for Maps to be Submitted with Applications to Appropriate, Temporary Applications to Appropriate, Applications for Permanent Change of Water, Applications for Temporary Change of Water, or Applications to Exchange Water.

4.3.1 The application map may be based upon any of the following:

- 1) A map based on a competent survey as defined herein;
- 2) All or part of a County Recorder's ownership plat map;
- 3) All or part of a USGS topographic quadrangle map;
- 4) All or part of a recorded subdivision plat map;
- 5) An aerial photograph with adequate land location information (section township range);
- 6) All or part of a previously filed proof map;
- 7) All or part of a hydrographic survey map prepared by the Division of Water Rights in a general adjudication;
- 8) Any other type of reference map that adequately depicts the land location and provides the necessary location information (section township range).

4.3.2 The water user is responsible for the accuracy of the map. After the map is filed, any corrections or adjustments are the responsibility of the applicant. Amendments may be made at the time proof is filed, or earlier by filing an amended map. Amended maps filed prior to proof shall be prepared in accordance with the standards governing the initial submittal, shall be clearly labeled as "amended," and shall bear the date of amendment.

4.3.3 Standard mapping conventions should be used in completing the map, including the following: there should be a north arrow, the scale should be indicated, and there must be a legend describing any symbols used on the map. All information included on the map must be legible. The line quality used on the drawings must be distinct. Shading or hatching may be used to show irrigated acreage; however, the boundary of the irrigated area must be delineated.

4.3.4 Any referenced land boundaries must be tied to a section corner (NE, SE, SW, NW) or a quarter section corner (N1/4, E1/4, S1/4, W1/4) of the section township range survey for the area of use. Any public roads adjacent to or near the depicted place(s) of beneficial use should be shown on the map. If the place of beneficial use is within a legally platted subdivision, the subdivision name and the lot/block designations of the subject parcels shall also be shown. The map must contain, at minimum, adequate information to determine the quarter-quarter section(s) (i.e., 40-acre tracts) for the places of beneficial use.

~~4.3.5 A signed applicant's certificate shall be included upon or attached to each application map submitted. The certificate shall read: "I/we, ....., hereby acknowledge that this map (or, the map attached to this application), consisting of .... pages numbered .... to ....., was prepared in support of Application ....., I/we hereby accept and submit this map as a true representation of the facts shown thereon to the best of my/our knowledge and belief."~~

~~4.3.6 Map Sizes.~~

~~4.3.6.1 Small sized maps. The preferred map sizes are 8 1/2 x 11 inches or 8 1/2 x 14 inches. Maps of this size should be used whenever possible and particularly for all irrigated acreage of five acres or less. Maps of small parcels shall be drawn to the largest scale practical. The smallest scale allowable on small maps is 1"=300' (1:3600).~~

~~4.3.6.2 Large sized maps. If a larger sized map is needed, the dimensions shall be 24 x 36 inches.]~~

**R655-5-1. Purpose.**

This rule is promulgated pursuant to Subsection 73-2-1(5)(i) and Sections 73-3-2, 73-3-3, and 73-3-16. The purpose of this rule is to establish when maps must be submitted and the minimum standards that must be met for the State Engineer to accept the maps. This rule does not apply to Affidavits of Beneficial Use filed under Section 73-3-5.6.

**R655-5-2. Definitions.**

2.1 "Application Map" means a map filed in support of an Application to Appropriate, Temporary Application to Appropriate, Application to Exchange Water, Application for Permanent Change of Water, or Application for Temporary Change of Water.

2.2 "Competent Survey" means a survey performed by or under the direction of either a Utah-licensed professional land surveyor or a Utah-licensed professional engineer. It must be based on measured ties, metes, and bounds, to a regularly established and monumented section corner or quarter corner. The survey shall be conducted to produce location specifications within a one-foot positional tolerance. It may be submitted in support of a Proof of Beneficial Use or Diligence Claim.

2.3 "Basis of Bearing" means the bearing in degrees, minutes and seconds, or equivalent, of a line between two physical monuments or two monumented corners that serves as the reference bearing for all other lines on the survey. The absence of a basis of bearing does not invalidate a survey or legal description, however the datum used must be identified.

2.4 "Hereafter" in an Application for Permanent Change or Application for Temporary Change, means the conditions of authorized use of a perfected or approved water right proposed under the application, including point of diversion, place of beneficial use, nature of beneficial use, and period of use.

2.5 "Heretofore" in an Application for Permanent Change or Application for Temporary Change, the term "heretofore" means the conditions of authorized use of a perfected or approved water right existing before the proposed changes, including point of diversion, place of beneficial use, nature of beneficial use, and period of use.

2.6 "Mutual Irrigation Company" means an incorporated non-profit entity properly registered with the Department of Commerce, Division of Corporations, specifically established to provide construction, operation, maintenance, and administration of water systems designed to deliver water to its shareholders.

2.7 "Parcel of Land" means a tract or tracts of land held in undivided ownership by one or more persons. Its legal description may be described by a metes and bounds description, as a lot or

subdivision of a section, or entire sections. The place of beneficial use of water is located on the parcel of land and may occupy the entire parcel or only a portion of the parcel.

2.8 "Place of Beneficial Use" means place of beneficial use located on maps as required in this rule and defined under one of the two following headings:

2.8.1 Specific Location means, for most privately owned water rights, the place of beneficial use is the specific location, identified by a legal description by metes and bounds, of the point, facility, or area where water is placed to a recognized type of beneficial use. The area to be located is described in this rule for each type of beneficial use.

(1) Irrigation - specific location where water will be applied on a parcel of land.

(2) Domestic - specific location of the residence.

(3) Stockwater - specific location where stock will be watered or area where stock are impounded or grazed.

(4) Instream - specific location of the reach of stream where flows are to occur.

(5) Fish culture - specific location of the pond, lake, reach of stream, or facility.

(6) Mining - specific location or area where water will be used for mining purposes.

(7) Oil well development - specific location of the oil field described in the developing entity's mineral rights or other development authority or the specific location of the facility or area where beneficial use occurs.

(8) Power, commercial, industrial, or other - specific location of the facility or area where beneficial use occurs.

2.8.2 "Service Area" means--The place of beneficial use that a qualifying entity may, and physically capable of, providing water to. The service area shall be described in sections or 40-acre tracts of each section, township, and range, or by a previously established place of use defined for a public water supplier, irrigation company, or other qualifying water company. Service areas are not required to be continuous nor consist of entirely contiguous parcels.. There may be tracts within the described service area that are excluded as well as service areas outside of the main service area. The boundaries of platted subdivisions would define the service areas for qualifying water companies.

2.9 "Proof Map" means a map submitted in conjunction with the filing of a Proof of Beneficial Use of Water under Section 73-3-16.

2.10 "Qualifying Water Company" means a mutual non-profit or private for-profit water entity properly registered with the Department of Commerce, Division of Corporations, if a corporation, or with the Division of Public Utilities, either as a regulated utility or as holding a letter of exemption. Such company shall have been established to provide construction, operation, maintenance, and administration of water systems specifically designed to serve one or more legally platted and recorded subdivisions. Such entities shall be bound by their articles of incorporation or bylaws to monitor water use within their designated service areas and report annually that use to the Division of Water Rights.

**R655-5-3. When Maps Must Be Submitted.**

3.1 The requirement of filing maps may be waived, if in the opinion of the State Engineer, the written application or proof adequately describes the location of the point of diversion, the diverting works, the location of the place of beneficial use, and the nature and extent of beneficial use.

3.2 Application maps must be submitted with applications for new appropriations showing the parcel of land, the proposed place of beneficial use, and the proposed point of diversion.

3.2.1 Application maps are not required for applications for new appropriations filed by mutual irrigation companies, the federal government, state agencies, municipalities, water conservancy districts, special service districts, and qualifying water companies that serve subdivisions. However, if a map is not submitted, the application must include a description of the service area where the water is proposed to be used.

3.3 Application maps must be submitted with change applications on both perfected and pending water rights. The map must show the parcel of land and the place of beneficial use where the water was previously used. If the change application is filed on a water right where the beneficial use requirement is excused under Subsection 73-3-8(6)(c)(ii), no map of the heretofore place of use will be required. The applicant shall provide information as to which excuse is being used to excuse the nonuse of water and may be required to provide a map of the historical place of use. The map must also show the proposed parcel of land, place of beneficial use, and point of diversion.

3.3.1 Application maps of the heretofore place of use will not be required on change applications if the previous use was also occurring pursuant to the water right and within the defined place of use for water rights owned by mutual irrigation companies, the federal government, state agencies, municipalities, water conservancy districts, special service districts, and qualifying water companies that serve subdivisions. Application maps showing the hereafter place of use will be required only of mutual irrigation companies and qualifying water companies serving subdivisions. The mapping requirement for mutual irrigation companies and qualifying water companies serving subdivisions may be waived if the State Engineer determines the written description of the hereafter place of use is sufficiently clear.

3.4 An application map must be submitted with each temporary change application or application for temporary appropriation, this includes fixed time applications. The map shall show the proposed point of diversion, the parcel of land, and the place of beneficial use. For temporary and fixed time change applications, the map shall also show the parcel of land and the place of beneficial use where the water was previously used.

3.4.1 For temporary change applications on mutual irrigation company water shares, the State Engineer may waive the mapping requirements for the heretofore or the hereafter place of beneficial use. The determination to allow a waiver will be based on the State Engineer's evaluation of the facts described in the temporary change application.

3.5 Application maps must be submitted with an application to exchange water showing the parcel of land, the place of beneficial use, and the proposed point of diversion.

3.6 Maps are required when a proof is submitted on an approved Application to Appropriate Water, approved Application for Permanent Change of Water, or an approved Application to Exchange Water. The proof map must show the specific point of diversion, the place of beneficial use, and the extent of use. The proof map shall also clearly show any specific information required in the approval of the application or information necessary to make clear the manner in which water is diverted, measured, conveyed, and used.

3.6.1 Proof maps are not required on water rights issued for municipal uses unless the State Engineer determines that the written description inadequately describes the location of the point of

diversion, the diverting works, the location of the place of beneficial use, or the nature and extent of beneficial use.

3.7 Maps shall accompany the Diligence Claim showing the specific location and area where the water was first diverted, conveyed, and placed to beneficial use.

#### **R655-5-4. Mapping Standards.**

4.1 The State Engineer will determine the suitability of any proof map or application map submitted to the Division of Water Rights.

4.2 Maps for proof of beneficial use of water or diligence claims submitted to the State Engineer shall meet certain standards.

4.2.1 Maps shall be prepared by a Utah-licensed professional engineer or a Utah-licensed professional land surveyor and must be based on a competent survey. The professional engineer or professional land surveyor shall affix their seal and shall sign and date the map.

4.2.2 Standard mapping conventions must be used in completing the map and shall include:

- (1) a north arrow;
- (2) a scale in both written and graphic form;
- (3) a legend describing any symbols used on the map;
- (4) legible information;
- (5) distinct line quality;
- (6) shading or hatching of the irrigated acreage; and
- (7) a clearly delineated boundary of the irrigated area.

4.2.3 Surveys must be tied to a section corner, for example, Northeast, Southeast, Southwest, Northwest or a quarter section corner, for example, North quarter, East quarter, South quarter, West quarter, of the section, township, and range survey for the area of use. The map must show the basis of bearing when metes and bounds descriptions are utilized. A basis of bearing may be omitted from the map when descriptions are based solely on the Public Land Survey System (PLSS) nomenclature. Any public roads adjacent to or near the property surveyed should be shown on the map. If within a legally platted subdivision, the subdivision name and lot and block designations of the subject parcels shall also be shown.

4.2.4 The title block must include the following: water right number, application number, date of the survey, name of the applicant, name and license number of the professional engineer or land surveyor, and the section, township, and range where the parcel in question is located.

4.2.5 Maps must be submitted on standard drafting medium that is durable and reproducible.

4.2.5.1 Small sized maps. The preferred map sizes are eight and a half x 11 inches or eight and a half x 14 inches. Maps of this size should be used when possible and particularly for irrigated acreage of five acres or less. Maps of small parcels shall be drawn to the largest scale practical. The smallest scale allowable on small maps is one inch = 300 feet or one:3600.

4.2.5.2 Large sized maps. If a larger sized map is needed, the dimensions shall be 24 x 36 inches. If a larger map is submitted a digital copy must be submitted in conjunction with the larger map. The title block shall appear in the lower right-hand corner, with the long side of the map being the bottom. Larger maps shall be rolled for mailing or transport. If mailed, a protective mailing tube or box shall be used. Large sized maps shall be accompanied by a small sized map, to be placed on the associated water right file with a note stating a large sized map was submitted as the official map of the application or proof.

4.3 Maps submitted with applications for use of water may be based upon any of the following:

(1) A map based on a competent survey as defined in Subsection R655-5-2(2.2);

(2) All or part of a County Recorder's ownership plat map;

(3) All or part of a USGS topographic quadrangle map;

(4) All or part of a recorded subdivision plat map;

(5) An aerial photograph with adequate land location information using the PLSS;

(6) All or part of a previously filed proof map;

(7) All or part of a hydrographic survey map prepared by the Division of Water Rights in a general adjudication; or

(8) Any other type of reference map that adequately depicts the land location and provides the necessary location information using the PLSS.

4.3.2 The water user is responsible for the accuracy of the map. After the map is filed, any corrections or adjustments are the responsibility of the applicant. Amendments may be made when proof is filed, or earlier by filing an amended map. Amended maps filed before proof shall be prepared in accordance with the standards governing the initial submittal, shall be clearly labeled as amended, and shall bear the date of amendment.

4.3.3 Standard mapping conventions should be used in completing the application map, including the following:

(1) a north arrow;

(2) a scale should be indicated both written and graphically;

(3) a legend describing any symbols used on the map;

(4) legible information;

(5) distinct line quality;

(6) shading or hatching of the irrigated acreage; and

(7) a clearly delineated boundary of the irrigated area.

4.3.4 Any referenced land boundaries must be tied to a section corner for example, Northeast, Southeast, Southwest, Northwest or a quarter section corner, for example, North quarter, East quarter, South quarter, West quarter, of the section, township, and range survey for the area of use. Any public road adjacent to or near the depicted place of beneficial use should be shown on the map. If the place of beneficial use is within a legally platted subdivision, the subdivision name and the lot or block designation, and parcel number of the subject parcel shall also be shown. The map must contain, at minimum, adequate information to determine the quarter-quarter section or government lot, for the place of beneficial use.

4.3.5 A signed applicant's certificate shall be included upon or attached to each application map submitted. The certificate shall read: "I, ....., hereby acknowledge that this map or, the map attached to this application, consisting of .... pages numbered .... to ....., was prepared in support of Application ....., I hereby accept and submit this map as a true representation of the facts shown thereon to the best of my/our knowledge and belief."

4.3.6 Map Sizes. See Subsections R655-5-4(4.2.5.1) and (4.2.5.2).

**KEY: water right, proof, maps, applications**

**Date of Last Change: 2023|October 24, 2012|**

**Notice of Continuation: October 19, 2022**

**Authorizing, and Implemented or Interpreted Law: 73-3-2; 73-3-3; 73-3-8; 73-3-16**

## NOTICE OF PROPOSED RULE

**TYPE OF FILING:** New

**Rule or Section Number:**

**R746-316**

**Filing ID:**  
**55689**

### 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

#### 2. Rule or section catchline:

R746-316. Electrical Power Delivery Quality Plans

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

On 03/14/2023, H.B. 389, Electrical Power Delivery Quality Act (Act) was signed into law, codified at Sections 54-25-101, 54-25-102, and 54-25-201.

Section 54-25-201 requires qualified electric utilities to submit electrical power delivery quality plans (EPDQPs) to the Public Service Commission (PSC) for the PSC's review.

Section 54-25-102 directs the PSC to establish rules to implement the Act, including rules to require submission of EPDQPs, the PSC's review of EPQDPs, and the PSC's review of utilities' subsequent implementation of their approved EPDQPs.

This new rule is proposed to comply with the Act's requirements.

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

This rule institutes a requirement for qualified utilities to submit EPDQPs to the PSC for review and processes for the PSC's review and approval of submitted EPDQPs and the PSC's review of utilities' implementation of their EPDQPs, as the statute requires.

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

The rule is not anticipated to affect the state budget. The Division of Public Utilities and Office of Consumer Services will have an opportunity to participate in any dockets arising out of the PSC's review of EPDQPs and their implementation, but the costs of such participation are expected to be nominal and subsumed within the costs these agencies incur in their frequent and ordinary participation in PSC dockets.

**B) Local governments:**

This rule does not pertain in any manner to local governments and is not anticipated to affect local governments.

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

This rule could potentially affect small businesses who are concerned about electrical power delivery quality and choose to participate in dockets arising out of this rule, but any such costs will be voluntary and a consequence of the small business choosing to participate.

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

This rule will affect qualified utilities that are now required by statute to submit and implement EPDQPs.

This rule has been crafted to allow these utilities and stakeholders flexibility in determining the components and parameters of EPDQPs, therefore, the costs a utility incurs in preparing its EPDQP will be contingent on the requirements the utility proposes.

This rule imposes no additional costs beyond what is expressly required under the Act.

This rule may also affect non-business commercial customers who are concerned about electrical power delivery quality and choose to participate in dockets arising out of this rule, but any such costs will be voluntary and a consequence of the commercial customer's decision to participate.

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

This rule could potentially affect residential customers who are concerned about electrical power delivery quality and choose to participate in dockets arising out of the rule, but any such costs will be voluntary and a consequence of the person choosing to participate.

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

This rule imposes no compliance costs on qualified utilities other than any costs for compliance that stem from obligations expressly created in the Act.

**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 Chair of the Public Service Commission, Thad LeVar, 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:**



## 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>	10/16/2023
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<b>9. This rule change MAY become effective on:</b>	10/23/2023
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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>	Thad LeVar, PSC Chair	<b>Date:</b>	08/24/2023
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## R746. Public Service Commission, Administration.

### R746-316. Electrical Power Delivery Quality Plans.

#### R746-316-1. Authority.

This rule establishes requirements pertaining to the submission, review, and implementation of Electrical Power Delivery Quality Plans pursuant to Sections 54-25-101, 54-25-102, and 54-25-201.

#### R746-316-2. Definitions.

(1) "Commission" means the Utah Public Service Commission.

(2) "Electrical corporation" is defined as in Section 54-2-1.

(3) "Electrical power delivery quality" is defined as in Section 54-25-101.

(4) "Electrical Power Delivery Quality Plan" is defined as in Section 54-25-101.

(5) "Industry Standards" means performance standards related to power quality and reliability promulgated by the North American Electric Reliability Corporation, the American National Standards Institute, the Institute of Electrical and Electronics Engineers, or other entity that promulgates standards that are widely adopted and accepted among electrical corporations in the United States.

(6) "Interconnection request" is defined as in Section 54-25-101.

(7) "Power Quality" refers to the quality of characteristics of electricity delivered to a qualified utility's customers, including voltage level, range, balance, harmonic distortion, flicker, disturbances, and frequency.

(8) "Qualified utility" is defined as in Section 54-17-801.

(9) "Utility-scale energy generation system" is defined as in Section 54-25-101.

### R746-316-3. Submission of an Electrical Power Delivery Quality Plan.

(1) A qualified utility shall submit an Electrical Power Delivery Quality Plan to the Commission on or before April 1, 2024 and biennially thereafter with subsequent Electrical Power Delivery Quality Plans due on or before April 1 of each even-numbered year.

(2) A qualified utility's Electrical Power Delivery Quality Plan must include:

(a) a description of the metrics a qualified utility uses to assess Power Quality against applicable Industry Standards;

(b) a description of the equipment the qualified utility uses to assess Power Quality and to otherwise comply with this rule;

(c) a description of the procedures and standards the qualified utility will use to assess an interconnection request to decrease the risk that the interconnected utility-scale generation facility will adversely affect electrical power delivery quality to customers;

(d) a description of the procedures and standards the qualified utility will use to address adverse effects to electrical power service quality that are caused by interconnected customer-owned generation systems, including instances where the adverse effects are discovered after the time of interconnection; and

(e) a description of proposed modifications or upgrades to facilities and preventive programs the qualified utility will implement to address any electrical power delivery quality issues that do not meet the qualified utility's interconnection policy or relevant Industry Standards.

### R746-316-4. Review of an Electrical Power Delivery Quality Plan.

(1) Upon filing of an Electrical Power Delivery Quality Plan, the Commission shall promptly issue a public notice of filing and comment period, inviting any interested person to submit written comments to the Commission within 30 days of the date the Commission issues the notice.

(2) From the date public comments are due, the qualified utility shall have 21 days to file a written response with the Commission.

(3) The Commission shall issue an order within 120 days of the date a qualified utility submits an Electrical Power Delivery Quality Plan:

(a) approving the Electrical Power Delivery Quality Plan; or

(b) declining to approve the Electrical Power Delivery Quality Plan and providing recommendations to the qualified utility regarding changes required to get the Commission's approval.

(4) Notwithstanding Subsections R746-316-4(1) through R746-316-4(3), the Commission may extend the time for public comment, the time for a qualified utility to respond to public comment, or the time allowed for the Commission to issue an order provided the Commission determines that additional time or process is warranted and in the public interest.

### R746-316-5. Review of the Implementation of an Electrical Power Delivery Quality Plan.

(1) On October 1, 2025, and by the same date each year thereafter, a qualified utility shall file a status report with the Commission regarding the qualified utility's implementation of its Electrical Power Delivery Quality Plan.

(2) Upon filing of the status report, the Commission shall promptly issue a public notice of filing and comment period, inviting any interested person to submit written comments to the Commission within 30 days of the date the Commission issues the notice.

(3) From the date public comments are due, the qualified utility shall have 21 days to file a written response with the Commission.

(4) Within 90 days of the date a qualified utility submits a status report regarding its Electrical Power Delivery Quality Plan, the Commission shall:

(a) issue a letter acknowledging the qualified utility's status report satisfies and complies with the requirements of this rule;

(b) issue a letter indicating the Commission declines to acknowledge the status report complies with the requirements of this rule and explaining the basis for the Commission's determination; or

(c) issue an order directing any further process the Commission finds necessary and in the public interest to ensure a qualified utility is reasonably implementing its approved Electrical Power Delivery Quality Plan.

(5) Notwithstanding Subsections R746-316-5(1) through R746-316-5(4), the Commission may extend the time for public comment, the time for a qualified utility to respond to public comment, or the time allowed for the Commission to act on a status report provided the Commission determines that additional time or process is warranted and in the public interest.

**KEY:** public utilities; electrical power delivery quality

**Date of Last Change:** 2023

**Authorizing, and Implemented or Interpreted Law:** 54-25-101; 54-25-102; 54-25-201

## NOTICE OF PROPOSED RULE

**TYPE OF FILING:** New

<b>Rule or Section Number:</b>	<b>R765-606</b>	<b>Filing ID:</b> <b>55702</b>
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### Agency Information

<b>1. Department:</b>	Higher Education (Utah Board of)	
<b>Agency:</b>	Administration	
<b>Building:</b>	Utah Board of Higher Education Building, The Gateway	
<b>Street address:</b>	60 S 400 W	
<b>City, state and zip:</b>	Salt Lake City, UT 84101	
<b>Contact persons:</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Kevin V. Olsen	801-556-3461	kvolsen@agutah.gov
Alison A. Adams	801-643-5535	Alison.Adams@ushe.edu
Geoffrey T. Landward	801-321-7136	glandward@ushe.edu

**Please address questions regarding information on this notice to the persons listed above.**

### General Information

#### 2. Rule or section catchline:

R765-606. USHE Employee Partner Scholarship

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

The purpose of this rule is to implement the "Utah Promise Program".

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

This rule provides the process and application procedures for employees of a USHE institution to receive a scholarship to attend another USHE institution.

### Fiscal Information

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

##### A) State budget:

Enactment of this rule likely will not materially impact state revenue because this rule is being enacted to provide a process for a USHE institution to seek and receive approval from the board to become a promise partner, including providing funds for tuition and fees to be distributed under the Utah Promise Program

##### B) Local governments:

Enactment of this rule likely will not result in direct, measurable costs for local governments because this rule does not apply to or affect local governments.

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

Enactment of this rule likely will not result in direct expenditures from tax or fee changes for small businesses.

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

Enactment of this rule likely will not result in direct expenditures from tax or fee changes for non-small businesses.

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

Enactment of this rule likely will not change the regulatory burden for persons other than small businesses, non-small businesses, state, or local government entities because this rule applies only to the administration of the Utah Promise Program.

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

The rule does not create any compliance costs for affected persons since it provides only for the administration of the Utah Promise Program.

**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 Commissioner of Higher Education of the Utah Board of Higher Education, Dave Woolstenhulme, 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 53B-13a-106(6)		
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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.)

**A) Comments will be accepted until:** 10/16/2023

**9. This rule change MAY become effective on:** 10/23/2023

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>	Kevin V. Olsen, Designee and Assistant Attorney General	<b>Date:</b>	08/29/2023
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**R765. Higher Education (Utah Board of), Administration.**

**R765-606. USHE Employee Partner Scholarship.**

**R765-606-1. Purpose.**

This rule outlines the process and application procedures for employees of a USHE institution to receive a scholarship to attend another USHE institution.

**R765-606-2. Authority.**

This rule is authorized by Subsection 53B-13a-106(6).

**R765-606-3. Definitions.**

(1) "Board" means Utah Board of Higher Education.

(2) "Commissioner" means Commissioner of Higher Education.

(3) "OCHE" means Office of the Commissioner of Higher Education.

(4) "USHE Employee Partner Scholarship" means a scholarship award available to employees of a USHE institution or the Office of the Commissioner of Higher Education.

(5) "USHE Employee Scholarship Advisory Committee" or "Committee" means a committee comprised of representatives appointed by the Commissioner of Higher Education to provide recommendations for awarding scholarships.

(6) "USHE institution" means an institution of higher education described in Section 53B-2-101.

(7) "Fiscal Year" means the calendar year starting July 1, and ending June 30. For degree-granting USHE institutions, this includes Summer, Fall, and Spring semesters of the corresponding academic year.

**R765-606-4. Scholarship Award.**

(1) The Commissioner, or the Commissioner's designee, may award a one-year USHE Employee Partner Scholarship to an individual employed at a USHE institution for up to 50% of tuition and fees if the employee:

- (a) is employed at a USHE institution full-time;
- (b) has been admitted to a USHE institution other than the one at which the employee is employed, and has declared intention to enroll; and
- (c) intends to pursue a program of study leading to a certificate, degree or other credential related to the employee's current job duties or a related career progression.

#### **R765-606-5. Application Procedures.**

- (1) An eligible employee must submit a scholarship application by a deadline set by OCHE.
- (2) Annually, the scholarship application shall be made available to the human resource director of each USHE institution, or the director's identified equivalent, who is responsible for notifying USHE employees at the director's institution about this program.
- (3) Each applicant must receive, and include in the application, written approval of a dean, assistant vice president or equivalent, or any other employee more senior, that the applicant's educational pursuit is related to the applicant's current job duties or related career progression.
- (4) Each applicant must submit the scholarship application published by OCHE.

#### **R765-606-6. Scholarship Administration.**

- (1)(a) The Commissioner, or the Commissioner's designee, shall annually determine the available funds to be applied to this program, the maximum scholarship award amount, and each applicant that may receive an award.
- (b) When determining scholarship awards under this policy, the Commissioner, or the Commissioner's designee, shall consider recommendations submitted by the USHE Employee Scholarship Advisory Committee.
- (2) A scholarship award cannot exceed 50% of tuition and fees during the fiscal year for which the award is made or for the total duration of the program in which the recipient is enrolled, whichever occurs first.
- (3) OCHE shall transfer award funds to the appropriate USHE institution on behalf of each recipient.
- (4) Each USHE institution shall return any unexpended funds awarded to a recipient during the fiscal year and accompanying expenditure documentation by June 30 of the corresponding fiscal year.

#### **R765-606-7. USHE Employee Scholarship Advisory Committee.**

- (1) Annually, each USHE president shall identify one employee for consideration to serve on the Committee.
- (2) Annually, the Commissioner shall appoint up to six employees from any USHE institution from nominees identified by USHE presidents to serve on the Committee.
- (3) A nominee may not apply for a scholarship award for the year in which the nominee serves on the Committee.
- (4) The Committee shall recommend to the Commissioner, or the Commissioner's designee, the proportion of scholarship awards to be awarded for any certificate or degree type offered at a USHE institution.
- (5) The Committee shall use the available information to inform its recommendation, including:
  - (a) available funds;
  - (b) programs of study current applicants intend to pursue;
  - (c) programs considered to most advance the skills of current applicants; and

- (d) the extent current applicants will fulfill the strategic objectives of the board by receiving an award.
- (6) The Committee shall submit its recommendation to the Commissioner, or the Commissioner's designee, by June 30 annually.

#### **R765-606-8. Scholarship Administration.**

- (1) After providing a recipient notice and an opportunity to respond, a USHE institution may rescind a recipient's scholarship if it determines the recipient has not met the requirements of Section (4).
- (2)(a) A recipient may reapply for the scholarship annually.
- (b) Each recipient who receives the scholarship during the previous year shall be given priority in the application and award process.
- (3) Recipients may receive a scholarship award for up to five consecutive years in a single program, subject to the requirements of this subsection.

#### **R765-606-9. Transfers.**

- (1) Each recipient may transfer to the same program at another eligible USHE institution and keep the scholarship if the recipient meets the requirements in Section (4).
- (2)(a) Each transfer student is ultimately responsible for communication with financial aid offices at each USHE institution and OCHE well in advance.
- (b) Each transfer student must maintain full-time employment status at the same institution at which the student was as employed at the time of application.
- (3)(a) The receiving institution is responsible to make any adjustments in a recipient's award.
- (b) Higher cost of tuition and fees at the new institution are subject to available funding in this program at the time of transfer.

#### **R765-606-10. Reporting.**

- (1) As specified by OCHE, each USHE institution shall provide, as part of an annual institutional financial aid file submission by February 28 of each year, data pertaining to applications, awards, program enrollments, utilization, funding, and other scholarship information for the most recently completed fiscal year.
- (2) OCHE may, at any time, request additional documentation or data related to the scholarship program and may review or formally audit an institution's documentation and compliance with this rule.

#### **KEY: Utah Board of Higher Education, Scholarship, USHE Employee Partner Scholarship**

**Date of Last Change: 2023**

**Authorizing, and Implemented or Interpreted Law: 53B-13a-106(6)**

#### **NOTICE OF PROPOSED RULE**

**TYPE OF FILING:** New

**Rule or Section Number:**

**R765-607**

**Filing ID:**  
**55703**

#### **Agency Information**

**1. Department:** Higher Education (Utah Board of)

**Agency:** Administration

<b>Building:</b>	Utah Board of Higher Education Building, The Gateway	
<b>Street address:</b>	60 S 400 W	
<b>City, state and zip:</b>	Salt Lake City, UT 84101	
<b>Contact persons:</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Kevin V. Olsen	801-556-3461	kvolsen@agutah.gov
Alison A. Adams	801-643-5535	Alison.Adams@ushe.edu
Geoffrey T. Landward	801-321-7136	glandward@ushe.edu
<b>Please address questions regarding information on this notice to the persons listed above.</b>		

## General Information

<b>2. Rule or section catchline:</b>
R765-607. PRIME Program Grant
<b>3. Purpose of the new rule or reason for the change:</b>
The purpose of this rule is to implement the "PRIME Program Grant".
<b>4. Summary of the new rule or change:</b>
This rule outlines the requirements of and application process for the PRIME Program Grant, a grant for a qualified applicant who earns a TRANSFORM certificate from the Utah State Board of Education.

## Fiscal Information

<b>5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:</b>
<b>A) State budget:</b>
Enactment of this rule likely will not materially impact state revenue because this rule is being enacted to provide a process for the PRIME Program Grant, a grant for a qualified applicant who earns a TRANSFORM certificate from the Utah State Board of Education.
<b>B) Local governments:</b>
Enactment of this rule likely will not result in direct, measurable costs for local governments because this rule does not apply to or affect local governments.
<b>C) Small businesses</b> ("small business" means a business employing 1-49 persons):

Enactment of this rule likely will not result in direct expenditures from tax or fee changes for small businesses.

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

Enactment of this rule likely will not result in direct expenditures from tax or fee changes for non-small businesses.

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

Enactment of this rule likely will not change the regulatory burden for persons other than small businesses, non-small businesses, state, or local government entities because the rule applies only to the administration of the PRIME Program Grant.

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

The rule does not create any compliance costs for affected persons since it provides only for the administration of the PRIME Program Grant.

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

<b>Regulatory Impact Table</b>			
<b>Fiscal Cost</b>	<b>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 Higher Education of the Utah Board of Higher Education, Dave Woolstenhulme, 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 53E-10-309(6).		
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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>	10/16/2023
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<b>9. This rule change MAY become effective on:</b>	10/23/2023
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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>	Kevin V. Olsen, Designee and Assistant Attorney General	<b>Date:</b>	08/29/2023
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**R765. Higher Education (Utah Board of), Administration.**

**R765-607. PRIME Program Grant.**

**R765-607-1. Purpose.**

This rule outlines the requirements of and application process for the PRIME Program Grant, a grant for a qualified applicant who earns a TRANSFORM certificate from the Utah State Board of Education.

**R765-607-2. Authority.**

This rule is authorized by Subsection 53E-10-309(6).

**R765-607-3. Definitions.**

(1) "Board" means the Utah Board of Higher Education described in Section 53B-1-402.

(2) "Eligible institution" means:

(a) a degree-granting institution of higher education or a technical college within the state system of higher education, as identified in subsection 53B-2-101(1); or

(b) a private, nonprofit college or university in the state that is accredited by the Northwest Commission on Colleges and Universities.

(3) "Excusable neglect" means failure to take proper steps at the proper time, not as result of willful disregard of the scholarship application process, but as result of some unexpected or unavoidable circumstances.

(4) "Good cause" means the applicant's failure to meet a scholarship application process requirement was due to circumstances beyond the student's control or circumstances that are compelling and reasonable.

(5) "OCHE" means the Office of the Commissioner of Higher Education.

(6) "Opportunity Scholarship" means the scholarship program described in Rule R765-608, Opportunity Scholarship.

(7) "Scholarship staff" means staff in OCHE assigned to administer state scholarships on behalf of the board.

(8) "Substantial compliance" means the applicant, in good faith, demonstrated clear intent to comply with the scholarship application requirements and has demonstrated likely eligibility, but failed to precisely comply with the application specifics.

(9) "USBE" means the Utah State Board of Education, as described in Title 53E, Chapter 1. Title Provisions.

**R765-607-4. Private and Nonprofit College and University Eligibility.**

To participate in this program, a private or nonprofit college or university must enter into an agreement with OCHE.

**R765-607-5. Award Requirements.**

(1) To qualify for the PRIME Program Grant, an applicant shall:

(a) be awarded a TRANSFORM certificate by the USBE;

(b) complete the scholarship application provided by the board;

(c) complete the FAFSA in accordance with the board's policy R623, Free Application for Federal Student Aid; and

(d) enroll at an eligible institution full time, as defined by the institution, beginning with the fall semester after high school graduation.

(2) The institution at which the student attends shall verify the recipient has met the enrollment requirements before disbursing payment.

**R765-607-6. Application Process.**

(1) An applicant shall submit an official scholarship application no later than February 1st of the year that the applicant graduates from high school.

(2)(a) The board may establish a priority deadline each year.

(b) An applicant who meets the priority deadline may be given first priority or consideration based on the date the application was completed.

(3) Additional criteria to prioritize awarding may be established by the board.

(4) The application deadline for the 2023-24 academic year shall be July 1, 2023.

(5) Scholarship staff shall verify TRANSFORM certificate recipients with USBE before funds are awarded.

#### **R765-607-7. Grant Amount.**

(1) Subject to available funding, the board shall award each qualified applicant a one-time grant of \$500 to be used at an eligible institution.

(2)(a) A student may receive both the PRIME Program Grant and the Opportunity Scholarship.

(b) The PRIME Grant shall be applied first to tuition and fees before an Opportunity Scholarship may be awarded.

#### **R765-607-8. Deferral or Leave of Absence.**

Awardees may obtain an approved deferral or leave of absence of up to three years after the date of their high school graduation.

#### **R765-607-9. Appeals Process.**

(1)(a) Each applicant has the right to appeal an adverse decision.

(b) Upon request by the applicant, the scholarship staff shall provide an opportunity for the applicant to appeal an adverse decision to a committee of at least three impartial persons.

(c) Each appeal request must be submitted in writing within 30 days of the application notice.

(2) An appeal filed before the applicant receives official notification from scholarship staff of its decision may not be considered.

(3)(a) If an applicant fails to file their appeal on time, scholarship staff shall notify the applicant of the late filing and give the applicant an opportunity to provide a written explanation of the reasons for failing to file the appeal by the deadline.

(b) An appeal committee may not have jurisdiction to consider the merits of an appeal that is filed beyond the deadline unless it determines the applicant established excusable neglect.

(4) The appeal committee shall review the appeal to determine if the award decision was made in error or if the applicant demonstrated substantial compliance with the scholarship application requirements but failed to meet one or more requirements for good cause.

(5)(a) Scholarship staff and the appeal committee do not have the authority to consider, adjust, or award a TRANSFORM certificate.

(b) A request for consideration for TRANSFORM certificate eligibility should be submitted by applicant through USBE.

(6) The appeal committee decision represents the final agency action. An applicant who disagrees with the decision may seek judicial review in accordance with Section 63G-4-402.

#### **R765-607-10. Reporting.**

(1) As specified by OCHE, each institution shall provide, as part of an annual institutional financial aid file submission by February 28 of each year, data pertaining to applications, awards, program enrollments, utilization, funding, and other scholarship information for the most recently completed fiscal year.

(2) OCHE may, at any time, request additional documentation or data related to the scholarship program and may review or formally audit an institution's documentation and compliance with this rule.

**KEY: Utah Board of Higher Education, Grant, PRIME Program Grant**

**Date of Last Change: 2023**

**Authorizing, and Implemented or Interpreted Law: 53E-10-309(6)**

#### **NOTICE OF PROPOSED RULE**

**TYPE OF FILING:** New

<b>Rule or Section Number:</b>	<b>R765-617</b>	<b>Filing ID:</b> <b>55704</b>
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#### **Agency Information**

<b>1. Department:</b>	Higher Education (Utah Board of)	
<b>Agency:</b>	Administration	
<b>Building:</b>	Utah Board of Higher Education Building, The Gateway	
<b>Street address:</b>	60 S 400 W	
<b>City, state and zip:</b>	Salt Lake City, UT 84101	
<b>Contact persons:</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Kevin V. Olsen	801-556-3461	kvolsen@agutah.gov
Alison A. Adams	801-643-5535	Alison.Adams@ushe.edu
Geoffrey T. Landward	801-321-7136	glandward@ushe.edu

**Please address questions regarding information on this notice to the persons listed above.**

#### **General Information**

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

R765-617. Karen Mayne Public Safety Officer Scholarship Program

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

The purpose of this rule is to implement the "Karen Mayne Public Safety Officer Scholarship Program".

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

This rule outlines requirements, awardee responsibilities, and application procedures for the Karen Mayne Public Safety Officer Scholarship Program.

#### **Fiscal Information**

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



**A) State budget:**

Enactment of this rule likely will not materially impact state revenue because this rule is being enacted to provide a process for the Karen Mayne Public Safety Officer Scholarship Program.

**B) Local governments:**

Enactment of this rule likely will not result in direct, measurable costs for local governments because this rule does not apply to or affect local governments.

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

Enactment of this rule likely will not result in direct expenditures from tax or fee changes for small businesses.

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

Enactment of this rule likely will not result in direct expenditures from tax or fee changes for non-small businesses.

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

Enactment of this rule likely will not change the regulatory burden for persons other than small businesses, non-small businesses, state, or local government entities because the rule applies only to the administration of the Karen Mayne Public Safety Officer Scholarship Program.

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

The rule does not create any compliance costs for affected persons since it provides only for the administration of the Karen Mayne Public Safety Officer Scholarship Program.

**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 Higher Education of the Utah Board of Higher Education, Dave Woolstenhulme, 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 53B-8-112.5		
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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>	10/16/2023
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**9. This rule change MAY become effective on:**

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>	Kevin V. Olsen, Designee and Assistant Attorney General	<b>Date:</b>	08/29/2023
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### **R765. Higher Education (Utah Board of), Administration.**

#### **R765-617. Karen Mayne Public Safety Officer Scholarship Program.**

##### **R765-617-1. Purpose.**

This rule outlines requirements, awardee responsibilities, and application procedures for the Karen Mayne Public Safety Officer Scholarship Program.

##### **R765-617-2. Authority.**

This rule is authorized by Subsection 53B-8-112.5(9).

##### **R765-617-3. Definitions.**

(1) "Academic Year" means the calendar year starting July 1 and ending June 30.

For degree-granting institutions, this includes Fall, Summer, and Spring semesters.

(2) "Board" means the Utah Board of Higher Education described in Section 53B-1-402.

(3) "Eligible institution" means:

(a) a degree-granting institution of higher education or a technical college within the state system of higher education, as identified in Subsection 53B-2-101(1); or

(b) a private, nonprofit college or university in the state that is accredited by the Northwest Commission on Colleges and Universities that enter into agreement with OCHE to participate in this program.

(4) "OCHE" means the Office of the Commissioner of Higher Education.

(5) "Peace officer" means the same as that term is defined in Section 53B-8c-102.

(6) "POST" means the Peace Officer Standards and Training Division created in Section 53-6-103.

(7) "Qualifying post-secondary program" means criminal justice, police administration, criminology, social sciences, or other program approved by the board.

(8) "Scholarship staff" means OCHE staff assigned to administer state scholarships on behalf of the board.

##### **R765-617-4. Award Requirements.**

(1) To qualify for the Karen Mayne Scholarship, an applicant shall:

(a) be a Utah high school graduate;

(b) complete a Karen Mayne Scholarship application, published by OCHE;

(c) when eligible, enroll in a basic training course at a state certified academy as defined in Section 53-6-202;

(d) enroll in a qualifying post-secondary program at an eligible institution starting the Fall semester after high school graduation; and

(e) commit to working as a peace officer in Utah for no less than five years after the day on which POST certifies the scholarship recipient.

(2) A recipient who does not enroll immediately as a student shall obtain an approved deferral from their institution.

(3) A student who receives the Public Safety Officer Career Advancement Grant, as described in Section 53B-8-112, is not

eligible to participate in the Karen Mayne Public Safety Officer Scholarship Program.

##### **R765-617-5. Awardee Responsibilities.**

(1) A scholarship recipient shall:

(a) notify the board regarding POST certification within 15 days after the day on which POST certifies the scholarship recipient;

(b) submit verification of employment with a Utah law enforcement agency to the board within 15 days after the day on which the scholarship recipient is employed as a peace officer, including:

(i) the employer's name, address, and telephone number;

(ii) the date of the scholarship recipient's hiring; and

(iii) the scholarship recipient's job title; and

(c) notify the board of any employment changes within 15 days after the day on which the change is made.

##### **R765-617-6. Application Process.**

(1) An applicant shall submit an official scholarship application no later than June 30 before the fiscal year during which scholarship awards are made.

(2) An applicant shall submit the following documents to be considered for the Karen Mayne Public Safety Officer Scholarship:

(a) the completed Karen Mayne Public Safety Officer Scholarship Program application published by OCHE;

(b) high school transcripts that verify graduation from a Utah high school;

(c) a description of the applicant's public safety career objectives;

(d) a declaration of the applicant's admission to and intention to enroll in an eligible post-secondary program described in Section R765-617-8 at an eligible institution;

(e) proof of completion of the FAFSA in accordance with board's policy R623, Free Application for Federal Student Aid; and

(f) other documentation as outlined on the annual scholarship application or requested by scholarship staff.

(3) Requirements in Subsections (2)(b) through (2)(f) may be included in the scholarship application described in Subsection (1).

(4) Students must reapply and meet the requirements for the scholarship each academic year. After an initial application is approved, a high school transcript is not required to be resubmitted.

##### **R765-617-7. Grant Amount.**

(1) Subject to available funding, a qualified applicant shall be awarded a scholarship that does not exceed the combined cost of tuition, fees, required textbooks, and POST training and certification.

(2) The board may establish a maximum scholarship amount annually.

(3) A student may participate in Karen Mayne Scholarship for a maximum of four academic years.

(4) If the legislative appropriation is insufficient to cover the costs associated with the Karen Mayne Scholarship, the board may:

(a) reduce the amount of a grant; or

(b) distribute a grant on a pro rata basis to each eligible applicant who submitted all application material, as described in Section R765-617-6, before the application deadline.

(5) Each eligible institution shall combine state or federal loans or grants, internships, student employment, and family and individual contributions toward financing the cost of attendance.

**R765-617-8. Board Responsibilities.**

- (1) The board shall:
- (a) collaborate with POST and other law enforcement and correction agencies to provide high school students with information on law enforcement careers;
  - (b) notify POST when a student receives a scholarship under the program; and
  - (c) include a disclosure on all applications and materials related to the program that the amount of the awarded scholarship may be subject to funding availability or reduction.
- (2) If the scholarship recipient fails to adhere to responsibilities in Sections R765-617-4 through R765-617-6, the board may cancel an award and require a scholarship recipient to repay the full amount of the scholarship award that the scholarship recipient received under the program, including money paid for:
- (a) tuition;
  - (b) fees; and
  - (c) required textbooks.

**R765-617-9. Appeals Process.**

- (1)(a) An applicant has the right to appeal an adverse decision.
- (b) Upon request by the student, the scholarship staff shall provide an opportunity for the student to appeal an adverse decision to a committee of at least three impartial persons.
- (c) Each appeal request must be submitted in writing within 30 days of the application notice.

**R765-617-10. Reporting.**

- (1) As specified by OCHE, each eligible institution shall provide, as part of an annual institutional financial aid file submission by February 28 of each year, data pertaining to applications, awards, program enrollments, utilization, funding, and other scholarship information for the most recently completed fiscal year.
- (2) OCHE may, at any time, request additional documentation or data related to the scholarship program and may review or formally audit an institution's documentation and compliance with this rule.

**KEY: Utah Board of Higher Education, scholarship, Karen Mayne Public Safety Officer Scholarship Program**  
**Date of Last Change: 2023**  
**Authorizing, and Implemented or Interpreted Law: 53B-8-112.5(9)**

**NOTICE OF PROPOSED RULE**

TYPE OF FILING: New

Rule or Section Number:	R873-22M-43	Filing ID: 55709
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**Agency Information**

1. Department:	Tax Commission
Agency:	Motor Vehicle
Building:	Utah State Tax Commission
Street address:	210 N 1950 W
City, state and zip:	Salt Lake City, UT 84134

**Contact persons:**

Name:	Phone:	Email:
Chantay Asper	801-297-3901	casper@utah.gov

**Please address questions regarding information on this notice to the persons listed above.**

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

R873-22M-43. Documentation and Procedures for the Titling and Registration of a Vehicle, Vessel, or Outboard Motor Owned or Leased by a Documented Tribal Member of a Federally Recognized Tribe in Utah Pursuant to Utah Code Ann. Section 41-1a-104

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

The purpose of this filing is to clarify the documentation and procedures that are applicable when a documented tribal member of a federally recognized tribe in Utah requests to title or register a vehicle in the state without the payment of sales and use tax or the age based fee in lieu.

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

This proposed rule amendment defines certain terms related titling, registering, and renewing the registration of vehicles by a documented tribal member.

The rule amendment addresses the procedures and requirements for a documented tribal member of a federally recognized tribe in Utah to be issued a certificate of title for a vehicle without the payment of sales and use taxes.

The rule amendment also addresses the procedures and requirements for a documented tribal member of a federally recognized tribe in Utah to register or renew the registration of a vehicle without the payment of a statewide uniform fee in lieu of property taxes.

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

This rule is not expected to impact the state budget because it merely establishes the documentation required and procedures that must be followed for a documented tribal member to claim an exemption on their vehicle from Utah sales and use tax and the fee-in-lieu of property tax as required under federal statute and case law.

**B) Local governments:**

This rule is not expected to impact local governments because it merely establishes the documentation required and procedures that must be followed for a documented

tribal member to claim an exemption on their vehicle from Utah sales and use tax and the fee-in-lieu of property tax as required under federal statute and case law.

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

This rule is not expected to impact small businesses because it merely establishes the documentation required and procedures that must be followed for a documented tribal member to claim an exemption on their vehicle from Utah sales and use tax and the fee-in-lieu of property tax as required under federal statute and case law.

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

This rule is not expected to impact non-small businesses because it merely establishes the documentation required and procedures that must be followed for a documented tribal member to claim an exemption on their vehicle from Utah sales and use tax and the fee-in-lieu of property tax as required under federal statute and case law.

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

This rule is not expected to impact persons other than small businesses, non-small businesses, state, or local government entities because it merely establishes the documentation required and procedures that must be followed for a documented tribal member to claim an exemption on their vehicle from Utah sales and use tax and the fee-in-lieu of property tax as required under federal statute and case law.

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

This rule is not expected to impose compliance costs on affected persons because the documentation required under this rule to verify eligibility is expected to be readily available to a documented tribal member who qualifies.

**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>

**H) Department head comments on fiscal impact and approval of regulatory impact analysis:**

Commissioner Rebecca L. Rockwell of the Utah State Tax Commission 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 41-1a-104

**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:** 10/16/2023

**9. This rule change MAY become effective on:** 10/23/2023

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>	Rebecca Rockwell, Commissioner	<b>Date:</b>	08/31/2023
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**R873. Tax Commission, Motor Vehicle.****R873-22M. Motor Vehicle.****R873-22M-43. Documentation and Procedures for the Titling and Registration of a Vehicle, Vessel, or Outboard Motor Owned or Leased by a Documented Tribal Member of a Federally Recognized Tribe in Utah Pursuant to Utah Code Ann. Section 41-1a-104.**

(1) For purposes of this section:

(a) "Documented tribal member" means a person:

(i) who is a member of a federally recognized tribe in Utah; and

(ii) whose name appears in tribal records or other documentation of the federally recognized tribe in Utah that is used to officially record membership or citizenship in the federally recognized tribe in Utah.

(b) "Federally recognized tribe in Utah" means the:

(i) Confederated Tribes of the Goshute Reservation;

(ii) Navajo Nation;

(iii) Northwestern Band of Shoshone Nation;

(iv) Paiute Indian Tribes of Utah;

(v) San Juan Southern Paiute Tribe;

(vi) Skull Valley Band of Goshute Indians of Utah;

(vii) Ute Indian Tribe of the Uintah and Ouray Reservation; and

(viii) Ute Mountain Ute Tribe.

(c) "Recognized tribal land" means land within the state that is recognized by federal statute, regulation, or final unappealable court order, as the tribal land of a federally recognized tribe in Utah.

(d) "Utah trust land" means land within the state that is held in trust by the United States for the benefit of a federally recognized tribe in Utah.

(2) Notwithstanding Section 41-1a-510, the division shall issue a certificate of title for a vehicle, vessel, or outboard motor without the payment of sales or use tax, if the applicant:

(a) makes an application for title as required under Section 41-1a-512;

(b) provides the division satisfactory evidence of title or ownership to the vehicle, vessel, or outboard motor;

(c) obtains an identification number inspection for the vehicle, vessel, or outboard motor as required under Section 41-1a-511;

(d) remits the title document fee as required under Section 41-1a-1210;

(e) certifies in writing on a form prescribed by the division that to the best of the applicant's knowledge, the applicant purchased or took delivery of the vehicle, vessel, or outboard motor on:

(i) Utah trust land of which the applicant is a documented tribal member; or

(ii) recognized tribal land of the federally recognized tribe in Utah of which the applicant is a documented tribal member; and

(f) certifies in writing on a form prescribed by the division under penalty of perjury:

(i) the applicant's name;

(ii) the name of the federally recognized tribe in Utah of which the applicant is a documented tribal member;

(iii) the applicant's tribal enrollment or membership number in the tribe described in Subsection (2)(f)(ii); and

(iv) the address where the applicant purchased or took delivery of the vehicle, vessel, or outboard motor.

(3) Notwithstanding Section 41-1a-206, the division shall register or renew the registration of a vehicle, vessel, or outboard motor without the payment of the statewide uniform fee in lieu of the ad valorem property tax described in Section 59-2-405, 59-2-405.1, 59-2-405.2, or 59-2-405.3, if the applicant:

(a) has or applies for a valid certificate of title or has a valid lease agreement in the applicant's name;

(b) obtains an identification number inspection as required under Section 41-1a-204;

(c) obtains a certificate of emissions inspection, if required in the current year, as provided under Section 41-6a-1642;

(d) pays all registration fees required under Title 41, Chapter 1a, Part 2, Registration;

(e) certifies in writing on a form prescribed by the division that to the best of the applicant's knowledge, the applicant resides on:

(i) Utah trust land of which the applicant is a documented tribal member; or

(ii) recognized tribal land of the federally recognized tribe in Utah of which the applicant is a documented tribal member; and

(f) certifies in writing on a form prescribed by the division under penalty of perjury:

(i) the applicant's name;

(ii) the name of the federally recognized tribe in Utah of which the applicant is a documented tribal member;

(iii) the applicant's tribal enrollment or membership number in the tribe identified in Subsection (3)(f)(ii); and

(iv) the address where the documented tribal member resides.

(4) On or before August 31, of each year, the executive director shall annually investigate and report to the commission any boundary changes or boundary dispute resolutions relating to Utah trust land, recognized tribal land, or the exemptions provided in this section.

**KEY:** taxation, motor vehicles, aircraft, license plates

**Date of Last Change:** ~~2023~~**[November 15, 2024]**

**Notice of Continuation:** November 9, 2021

**Authorizing, and Implemented or Interpreted Law:** 41-1a-102; 41-1a-104; 41-1a-108; 41-1a-116; 41-1a-211; 41-1a-215; 41-1a-214; 41-1a-401; 41-1a-402; 41-1a-411; 41-1a-413; 41-1a-414; 41-1a-416; 41-1a-418; 41-1a-419; 41-1a-420; 41-1a-421; 41-1a-422; 41-1a-522; 41-1a-701; 41-1a-1001; 41-1a-1002; 41-1a-1004; 41-1a-1005; 41-1a-1009 through 41-1a-1011; 41-1a-1101; 41-1a-1209; 41-1a-1211; 41-1a-1220; 41-6-44; 53-8-205; 59-12-104; 59-2-103; 72-10-109 through 72-10-112; 72-10-102

**NOTICE OF PROPOSED RULE**

**TYPE OF FILING:** Amendment

**Rule or Section Number:**

**R884-24P-20**

**Filing ID:**  
**55713**

**Agency Information**

<b>1. Department:</b>	Tax Commission
<b>Agency:</b>	Property Tax
<b>Building:</b>	Utah State Tax Commission
<b>Street address:</b>	210 N 1950 W
<b>City, state and zip:</b>	Salt Lake City, UT 84134



<b>Contact persons:</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Chantay Asper	801-297-3901	casper@utah.gov
Please address questions regarding information on this notice to the persons listed above.		

General Information

<b>2. Rule or section catchline:</b>
R884-24P-20. Construction Work in Progress Pursuant to Utah Constitution Art. XIII, Section 2 and Utah Code Ann. Sections 59-2-201 and 59-2-301
<b>3. Purpose of the new rule or reason for the change:</b>
The purpose of this filing is to clarify the appraisal methodologies and calculations that are applicable to locally assessed and centrally assessed improvements while the improvement is under construction.
<b>4. Summary of the new rule or change:</b>
This proposed rule amendment defines "centrally assessed property" and "locally assessed property" consistent with Utah Code Ann. Sections 59-2-201 and 59-2-301, and clarifies that discount rates are not applicable to locally assessed property.

Fiscal Information

<b>5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:</b>
<b>A) State budget:</b>
This amendment is not expected to impact the state budget because the clarifications are consistent with how centrally assessed and locally assessed property is currently valued.
<b>B) Local governments:</b>
This amendment is not expected to impact local governments because the clarifications are consistent with how centrally assessed and locally assessed property is currently valued.
<b>C) Small businesses</b> ("small business" means a business employing 1-49 persons):
This amendment is not expected to impact small businesses because the clarifications are consistent with how centrally assessed and locally assessed property is currently valued.
<b>D) Non-small businesses</b> ("non-small business" means a business employing 50 or more persons):

This amendment is not expected to impact non-small businesses because the clarifications are consistent with how centrally assessed and locally assessed property is currently valued.			
<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 <i>agency</i> ):			
This amendment is not expected to impact persons other than small businesses, non-small businesses, state, or local government entities because the clarifications are consistent with how centrally assessed and locally assessed property is currently valued.			
<b>F) Compliance costs for affected persons</b> (How much will it cost an impacted entity to adhere to this rule or its changes?):			
This amendment is not expected to impose compliance costs on affected persons because the clarifications are consistent with how centrally assessed and locally assessed property is currently valued.			
<b>G) Regulatory Impact Summary Table</b> (This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts will be included in narratives above.)			
<b>Regulatory Impact Table</b>			
<b>Fiscal Cost</b>	<b>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>
<b>H) Department head comments on fiscal impact and approval of regulatory impact analysis:</b>			
Commissioner Rebecca L. Rockwell of the Utah State Tax Commission 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 59-2-201	Section 59-2-301	

**Public Notice Information**

<b>8. The public may submit written or oral comments to the agency identified in box 1.</b> (The public may also request a hearing by submitting a written request to the agency. See Section 63G-3-302 and Rule R15-1 for more information.)	
<b>A) Comments will be accepted until:</b>	10/16/2023

<b>9. This rule change MAY become effective on:</b>	10/23/2023
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>	Rebecca Rockwell, Commissioner	<b>Date:</b>	08/31/2023
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**R884. Tax Commission, Property Tax.****R884-24P. Property Tax.****R884-24P-20. Construction Work in Progress Pursuant to Utah Constitution Art. XIII, Section 2 and Utah Code Ann. Sections 59-2-201 and 59-2-301.**

[A-](1) For purposes of this [rule]section:

[1-](a) "Construction work in progress" means improvements as defined in Section 59-2-102, and personal property as defined in Section 59-2-102, that are not functionally complete, ~~as defined in A-6.~~

[2-](b) "Project" means any undertaking involving construction, expansion or modernization.

[3-](c) "Construction" means:

[a-](i) creation of a new facility;

[b-](ii) acquisition of personal property; or

[e-](iii) any alteration to the real property of an existing facility other than normal repairs or maintenance.

[4-](d) "Expansion" means an increase in production or capacity as a result of the project.

[5-](e) "Modernization" means a change or contrast in character or quality resulting from the introduction of improved techniques, methods or products.

[6-](f) "Functionally complete" or "functional completion" means capable of providing economic benefit to the owner through fulfillment of the purpose for which it was constructed. In the case of a cost-regulated utility, a project shall be ~~deemed to be~~ functionally complete when the operating property associated with the project has been capitalized on the books and is part of the rate base of that utility.

[7-](g) "Allocable preconstruction costs" means expenditures associated with the planning and preparation for the construction of a project. To be classified as an allocable preconstruction cost, an expenditure must be capitalized.

[8-](h) "Cost-regulated utility" means a power company, oil and gas pipeline company, gas distribution company or telecommunication company whose earnings are determined by a rate of return applied to rate base. Rate of return and rate base are set and approved by a state or federal regulatory commission.

(i) "Centrally assessed property" means property that is required to be assessed under Section 59-2-201.

(j) "Locally assessed property" means property that is required to be assessed under Section 59-2-301.

~~9. Residential means single family residences and duplex apartments.~~

~~10. Unit method of appraisal means valuation of the various physical components of an integrated enterprise as a single going concern. The unit method may employ one or more of the following approaches to value: the income approach, the cost approach, and the stock and debt approach.~~

[B-](2) All construction work in progress shall be valued at "full cash value" as described in this ~~rule.~~section.

[C-](3)(a) Discount Rates

(b) For purposes of this rule, discount rates ~~used in valuing all projects~~ shall be determined by the Tax Commission, and shall be consistent with market, financial and economic conditions.

[D-](4) Appraisal of Allocable Preconstruction Costs.

[4-](a) If requested by the taxpayer, preconstruction costs associated with ~~properties, other than residential properties,~~ centrally assessed property may be allocated to the value of the project in relation to the relative amount of total expenditures made on the project by the lien date. Allocation will be allowed only if the following conditions are satisfied by January 30 of the tax year for which the request is sought:

[a-](i) a detailed list of preconstruction cost data is supplied to the ~~responsible agency~~ Tax Commission; and

[b-](ii) the percent of completion of the project and the preconstruction cost data are certified by the taxpayer as to their accuracy.

[2-](b)(i) The preconstruction costs allocated ~~pursuant to D-1. of this rule~~ under Subsection (4)(a) shall be discounted using the ~~appropriate~~ rate determined ~~in C-]~~ under Subsection (3).

(ii) The discounted allocated value described in Subsection (4)(b)(i). shall ~~either~~ be added to ~~the values of properties other than residential properties determined under E-1. or shall be added to~~ the values determined under the various approaches used in the ~~unit~~ method of valuation determined under ~~[F-]~~ Subsection (6).



~~[3-](c)~~ The preconstruction costs allocated under ~~[D-]~~this Subsection (4) are subject to audit for four years. If adjustments are necessary after examination of the records, those adjustments will be classified as property escaping assessment.

~~[E-](5)~~ Appraisal of Locally Assessed Properties~~[-not Valued under the Unit Method]~~.

~~[----- 1. The full cash value, projected upon completion, of all properties valued under this section, with the exception of residential properties, shall be reduced by the value of the allocable preconstruction costs determined D. This reduced full cash value shall be referred to as the "adjusted full cash value."]~~

~~[2-](a)~~ On or before January 1 of each tax year, each county assessor ~~[and the Tax Commission]~~ shall determine~~[-, for projects not valued by the unit method and which fall under their respective areas of appraisal responsibility,]~~ the following for projects involving locally assessed property:

~~[a-](i)~~ ~~[The]~~the full cash value of the project expected upon completion~~[-];~~

~~[b-](ii)~~ ~~[The]~~the expected date of functional completion of the project currently under construction~~[-]; and~~

~~[----- (1) The expected date of functional completion shall be determined by the county assessor for locally assessed properties and by the Tax Commission for centrally assessed properties.]~~

~~[e-](iii)~~ ~~[The percent of the project completed]~~the percentage of completion of the project as of the lien date.

~~[4-](b)~~ Determination of the [percent]percentage of completion of a project for ~~[residential properties]~~locally assessed property shall be based on the following ~~[percentage]percentages~~ of completion:

~~[a-](i)~~ 10% - Excavation-foundation;

~~[b-](ii)~~ 30% - Rough lumber, rough labor;

~~[c-](iii)~~ 50% - Roofing, rough plumbing, rough electrical, heating;

~~[d-](iv)~~ 65% - Insulation, drywall, exterior finish;

~~[e-](v)~~ 75% - Finish lumber, finish labor, painting;

~~[f-](vi)~~ 90% - Cabinets, cabinet tops, tile, finish plumbing, finish electrical; and

~~[g-](vii)~~ 100% - Floor covering, appliances, exterior concrete, misc.

~~[----- (2) In the case of all other projects under construction and valued under this section the percent of completion shall be determined by the county assessor for locally assessed properties and by the Tax Commission for centrally assessed properties.]~~

~~[----- 3. Upon determination of the adjusted full cash value for nonresidential projects under construction or the full cash value expected upon completion of residential projects under construction, the expected date of completion, and the percent of the project completed, the assessor shall do the following:~~

~~----- a) multiply the percent of the residential project completed by the total full cash value of the residential project expected upon completion; or in the case of nonresidential projects,~~

~~----- b) multiply the percent of the nonresidential project completed by the adjusted full cash value of the nonresidential project;~~

~~----- c) adjust the resulting product of E.3.a) or E.3.b) for the expected time of completion using the discount rate determined under C-]~~

(c) The value of a project on January 1 shall be determined by multiplying the full cash value of the project expected upon completion by the percentage of completion of the project as determined under this Subsection (5).

~~[F-](6)~~ Appraisal of Centrally Assessed Properties~~[-Valued Under the Unit Method of Appraisal]~~.

~~[4-](a)~~ No adjustments under this rule shall be made to the income indicator of value for a project under construction that is owned by a cost-regulated utility when the project is allowed in rate base.

~~[2-](b)~~ The full cash value of a project under construction as of January 1 of the tax year, shall be determined by adjusting the cost and income approaches as ~~[follows:]~~provided in this Subsection (6)(b).

~~[a-](i)~~ Adjustments to reflect the time value of money in appraising construction work in progress valued under the cost and income approaches shall be made for each approach as ~~[follows:]~~provided in this Subsection (6)(b)(i).

~~[4-](A)(I)~~ Each company shall report the expected completion dates and costs of the projects.

~~(II)~~ A project expected to be completed during the tax year for which the valuation is being determined shall be considered completed on January 1 or July 1, whichever is closest to the expected completion date.

~~(III)~~ The Tax Commission shall determine the expected completion date for any project whose completion is scheduled during a tax year ~~[subsequent to]~~after the tax year for which the valuation is being made.

~~[2-](B)~~ If requested by the company, the value of allocable preconstruction costs determined ~~[in D-]~~under Subsection (4) shall ~~[then]~~be subtracted from the total cost of each project. The ~~[resulting sum]~~difference shall be referred to as the adjusted cost value of the project.

~~[3-](C)~~ The adjusted cost value for each of the future years ~~[prior to]~~before functional completion shall be discounted to reflect the present value of the project under construction. The discount rate shall be determined under ~~[C-]~~Subsection (3).

~~[4-](D)~~ The discounted adjusted cost value shall then be added to the values determined under the income approach and cost approach.

~~[b-](ii)~~ No adjustment will be made to reflect the time value of money for a project valued under the stock and debt approach to value.

~~[----- G. This rule shall take effect for the tax year 1985.]~~

**KEY: taxation, personal property, property tax, appraisals**

**Date of Last Change: ~~[February 9,]~~ 2023**

**Notice of Continuation: November 9, 2021**

**Authorizing, and Implemented or Interpreted Law: Art. XIII, Sec 2; 9-2-201; 11-13-302; 41-1a-202; 41-1a-301; 59-1-210; 59-2-102; 59-2-103; 59-2-103.5; 59-2-104; 59-2-201; 59-2-210; 59-2-211; 59-2-301; 59-2-301.3; 59-2-302; 59-2-303; 59-2-303.1; 59-2-305; 59-2-306; 59-2-401; 59-2-402; 59-2-404; 59-2-405; 59-2-405.1; 59-2-406; 59-2-508; 59-2-514; 59-2-515; 59-2-701; 59-2-702; 59-2-703; 59-2-704; 59-2-704.5; 59-2-705; 59-2-801; 59-2-918 through 59-2-924; 59-2-1002; 59-2-1004; 59-2-1005; 59-2-1006; 59-2-1101; 59-2-1102; 59-2-1104; 59-2-1106; 59-2-1107 through 59-2-1109; 59-2-1113; 59-2-1115; 59-2-1202; 59-2-1202(5); 59-2-1302; 59-2-1303; 59-2-1308.5; 59-2-1317; 59-2-1328; 59-2-1330; 59-2-1347; 59-2-1351; 59-2-1365; 59-2-1703**

NOTICE OF PROPOSED RULE		
TYPE OF FILING: Amendment		
Rule or Section Number:	R884-24P-33	Filing ID: 55708

**Agency Information**

<b>1. Department:</b>	Tax Commission	
<b>Agency:</b>	Property Tax	
<b>Building:</b>	Utah State Tax Commission	
<b>Street address:</b>	210 N 1950 W	
<b>City, state and zip:</b>	Salt Lake City, UT 84134	
<b>Contact persons:</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Chantay Asper	801-297-3901	casper@utah.gov
<b>Please address questions regarding information on this notice to the persons listed above.</b>		

**General Information**

2. Rule or section catchline:
R884-24P-33. 2023 Personal Property Valuation Guides and Schedules Pursuant to Utah Code Ann. Section 59-2-107
3. Purpose of the new rule or reason for the change:
The valuation guides and schedules contained in this rule are reviewed and updated annually by the Property Tax Division.
The personal property guides and schedules are used for property tax valuation and assessment of business personal property and certain motor vehicles.
4. Summary of the new rule or change:
Section 59-2-107 authorizes the State Tax Commission to make rules that define classes of items considered to be personal property and provide valuation percent good schedules to value personal property.
County assessors must use the percent good schedules as contained in this rule.
Any deviation that affects an entire class or type of personal property requires a written report documenting the schedule change to be submitted to the Tax Commission for approval prior to use.
This proposed rule amendment modifies the percent good tables for the 2024 calendar year.

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

The amount of savings or cost to state government is not affected by this rule. Tax revenue generated by taxing personal property is distributed to local governments to finance public services, programs, school districts and local districts.

No tax revenues generated by taxation of personal property will be retained by state government.

**B) Local governments:**

The amount of saving or cost to local governments is undetermined.

Local governmental entities receive tax revenue based on increased or decreased personal property values and the change in the annual property tax rate. Increases or decreases in 2024 property tax revenue cannot be determined, even if there were no changes in the percent good tables, because taxpayer acquisitions and deletions of personal property during 2024 are unknown.

The proposed personal property schedules in this amendment are raised, lowered, or remain the same for 2024 based upon the type and age of the personal property assessed. Schedules used to value business personal property increase or decrease based upon the calculation of economic trends from cost indexes published by the Marshall Valuation Service.

It is anticipated that the change in the annual property tax rate will have a larger impact on revenue than will the proposed amendments to this rule.

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

In the aggregate, the amount of savings or cost to small businesses is undetermined.

Affected businesses pay property taxes based on increased or decreased personal property values and the change in the annual property tax rate. The proposed personal property schedules in this rule are raised, lowered, or remain the same for 2024 based upon the type and age of the property.

Since some schedules are increased and some decreased, it is not possible to determine the change to affected persons without knowing the 2024 personal property mix compared to the previous year.

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

In the aggregate, the amount of savings or cost to non-small businesses is undetermined.

Affected non-small businesses pay property taxes based on increased or decreased personal property values and the change in the annual property tax rate. The proposed personal property schedules in this rule are raised, lowered, or remain the same for 2024 based upon the type and age of the property.

Since some schedules are increased and some decreased, it is not possible to determine the change to affected persons without knowing the 2024 personal property mix compared to the previous year.

**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**):

In the aggregate, the amount of savings or cost to persons other than small businesses, non-small businesses, and state or local government entities is undetermined.

Affected persons pay property taxes based on increased or decreased personal property values and the change in the annual property tax rate. The proposed personal property schedules in this rule are raised, lowered, or remain the same for 2024 based upon the type and age of the property.

Since some schedules are increased and some decreased, it is not possible to determine the change to affected persons without knowing the 2024 personal property mix compared to the previous year.

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

Local business owners and property tax practitioners will be required to be aware of new percent good figures. This is an annual occurrence; therefore, the ongoing compliance cost to complete this assessment process will not change.

The change in taxes charged for these persons depends entirely on the owner's mix of personal property since some percent good schedules are increasing and others decreasing. For example, the owner of a business may discard some personal property items and add new equipment or replace equipment which may increase or decrease personal property values.

In addition, the personal property percent good schedule percentages often change from the previous year due to current economic conditions.

**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:**

Commissioner Rebecca L. Rockwell of the Utah State Tax Commission 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 59-2-107		
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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>	10/16/2023
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<b>9. This rule change MAY become effective on:</b>	10/23/2023
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>	Rebecca Rockwell, Commissioner	<b>Date:</b>	08/31/2023
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**R884. Tax Commission, Property Tax.****R884-24P. Property Tax.****R884-24P-33. [2023]2024 Personal Property Valuation Guides and Schedules Pursuant to Utah Code Ann. Section 59-2-107.**

## (1) Definitions.

(a) "Acquisition cost" means the same as that term is defined in Section 59-2-102.

(b)(i) "Actual cost" includes the value of components necessary to complete the vehicle, such as tanks, mixers, special containers, passenger compartments, special axles, installation, engineering, erection, or assembly costs.

(ii) Actual cost does not include sales or excise taxes, maintenance contracts, registration and license fees, dealer charges, tire tax, freight, or shipping costs.

(c) "Cost new" means the actual cost of the property when purchased new.

(i) Except as otherwise provided in this rule, the Tax Commission and assessors shall rely on the following sources to determine cost new:

(A) documented actual cost of the new or used vehicle; or

(B) recognized publications that provide a method for approximating cost new for new or used vehicles.

(ii) For the following property purchased used, the taxing authority may determine cost new by dividing the property's actual cost by the percent good factor for that class:

(A) Class 6 heavy and medium duty trucks;

(B) Class 13 heavy equipment;

(C) Class 17 vessels equal to or greater than 31 feet in length; and

(D) Class 21 commercial trailers.

(d) For purposes of Sections 59-2-108 and 59-2-1115, "item of taxable tangible personal property" means a piece of equipment, machinery, furniture, or other piece of tangible personal property that is functioning at its highest and best use for the purpose it was designed and constructed and is ~~[generally]~~ capable of performing that function without being combined with other items of personal property. An item of taxable tangible personal property is not an individual component part of a piece of machinery or equipment, but the piece of machinery or equipment. For example, a fully functioning computer is an item of taxable tangible personal property, but the motherboard, hard drive, tower, or sound card are not.

(e) "Percent good" means an estimate of value, expressed as a percentage, based on a property's acquisition cost or cost new, adjusted for depreciation and appreciation.

(i) The percent good factor is applied against the acquisition cost or the cost new to derive taxable value for the property.

(ii) Percent good schedules are derived from an analysis of the Internal Revenue Service Class Life, the Marshall and Swift Cost index, other data sources or research, and vehicle valuation guides such as Penton Price Digests.

(2) Each year the Property Tax Division shall update and publish percent good schedules for use in computing personal property valuation.

(a) Proposed schedules shall be transmitted to county assessors and interested parties for comment before adoption.

(b) A public comment period will be scheduled each year and a public hearing will be scheduled if requested by ten or more interested parties or at the discretion of the Commission.

(c) County assessors may deviate from the schedules when warranted by specific conditions affecting an item of personal property. When a deviation will affect an entire class or type of personal property, a written report, substantiating the changes with verifiable data, must be presented to the Commission. Alternative schedules may not be used without prior written approval of the Commission.

(d) A party may request a deviation from the value established by the schedule for a specific item of property if the use of the schedule does not result in the fair market value for the property at the retail level of trade on the lien date, including any relevant installation and assemblage value.

(3) This rule does not apply to:

(a) a vehicle subject to the age-based uniform fee under Section 59-2-405.1;

(b) the following personal property subject to the age-based uniform fee under Section 59-2-405.2:

(i) an all-terrain vehicle;

(ii) a camper;

(iii) an other motorcycle;

(iv) an other trailer;

(v) a personal watercraft;

(vi) a small motor vehicle;

(vii) a snowmobile;

(viii) a street motorcycle;

(ix) a tent trailer;

(x) a travel trailer; and

(xi) a vessel, including an outboard motor of the vessel, that is less than 31 feet in length;

(c) a motorhome subject to the uniform statewide fee under Section 59-2-405.3; and

(d) an aircraft subject to the uniform statewide fee under Section 72-10-110.5.

(4) Other taxable personal property that is not included in the listed classes includes:

~~[(a) Supplies on hand as of January 1 at noon, including office supplies, shipping supplies, maintenance supplies, replacement parts, lubricating oils, fuel and consumable items not held for sale in the ordinary course of business. Supplies are assessed at total cost, including freight in.]~~

~~[(b)](a)~~ Equipment leased or rented from inventory is subject to ad valorem tax. Refer to the appropriate property class schedule to determine taxable value.

~~[(c)](b)~~ Property held for rent or lease is taxable, and is not exempt as inventory. For entities primarily engaged in rent-to-own, inventory on hand at January 1 is exempt and property out on rent-to-own contracts is taxable.

(5) Personal property valuation schedules may not be appealed to, or amended by, county boards of equalization.

(6) Taxable personal property, other than personal property subject to an age-based uniform fee under Sections 59-2-405.1 through 59-2-405.3, or a uniform statewide fee under Section 59-2-405, is classified by expected economic life as follows:

(a) Class 1 - Short Life Property. Property in this class has a typical life of more than one year and less than four years. It is fungible in that it is difficult to determine the age of an item retired from service.

(i) Examples of property in the class include:

- (A) barricades or warning signs;
- (B) library materials;
- (C) patterns, jigs and dies;
- (D) pots, pans, and utensils;
- (E) canned computer software;
- (F) hotel linen;
- (G) wood and pallets;
- (H) video tapes, compact discs, and DVDs; and
- (I) uniforms.

(ii) With the exception of video tapes, compact discs, and DVDs, taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

(iii) A licensee of canned computer software shall use one of the following substitutes for acquisition cost of canned computer software if no acquisition cost for the canned computer software is stated:

(A) retail price of the canned computer software;

(B) if a retail price is unavailable, and the license is a nonrenewable single year license agreement, the total sum of expected payments during that 12-month period; or

(C) if the licensing agreement is a renewable agreement or is a multiple year agreement, the present value of expected licensing fees paid pursuant to the agreement.

(iv) Video tapes, compact discs, and DVDs are valued at \$15 per tape or disc for the first year and \$3 per tape or disc thereafter.

Table 1 Short Life Property	
Year of Acquisition	Percent Good of Acquisition Cost
<del>2022</del> 2023	79%
<del>2021</del> 2022	49%
<del>2020</del> 2021 and prior	12%

(b) Class 2 - Computer Integrated Machinery.

(i) Machinery shall be classified as computer integrated machinery if the following conditions are met:

(A) The equipment is sold as a single unit. If the invoice breaks out the computer separately from the machine, the computer must be valued as Class 12 property and the machine as Class 8 property.

(B) The machine cannot operate without the computer and the computer cannot perform functions outside the machine.

(C) The machine can perform multiple functions and is controlled by a programmable central processing unit.

(D) The total cost of the machine and computer combined is depreciated as a unit for income tax purposes.

(E) The capabilities of the machine cannot be expanded by substituting a more complex computer for the original.

(ii) Examples of property in this class include:

- (A) CNC mills;
- (B) CNC lathes; or

(C) high-tech medical and dental equipment such as MRI equipment, CAT scanners, and mammography units.

(iii) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

Table 2 Computer Integrated Machinery	
Year of Acquisition	Percent Good of Acquisition Cost
<del>2022</del> 2023	97%
<del>2021</del> 2022	90%
<del>2020</del> 2021	82%
<del>2019</del> 2020	71%
<del>2018</del> 2019	58%
<del>2017</del> 2018	45%
<del>2016</del> 2017	30%
<del>2015</del> 2016 and prior	15%

(c) Class 3 - Short Life Trade Fixtures. Property in this class generally consists of electronic types of equipment and includes property subject to rapid functional and economic obsolescence or severe wear and tear.

(i) Examples of property in this class include:

- (A) office machines;
- (B) alarm systems;
- (C) shopping carts;
- (D) ATM machines;
- (E) small equipment rentals;
- (F) rent-to-own merchandise;
- (G) telephone equipment and systems;
- (H) music systems;
- (I) vending machines;
- (J) video game machines; and
- (K) cash registers.

(ii) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

Table 3 Short Life Trade Fixtures	
Year of Acquisition	Percent Good of Acquisition Cost
<del>2022</del> 2023	94%
<del>2021</del> 2022	81%
<del>2020</del> 2021	61%
<del>2019</del> 2020	42%
<del>2018</del> 2019 and prior	22%

(d) Class 5 - Long Life Trade Fixtures. Class 5 property is subject to functional obsolescence in the form of style changes.

(i) Examples of property in this class include:

- (A) furniture;
- (B) bars and sinks;
- (C) booths, tables and chairs;
- (D) beauty and barber shop fixtures;
- (E) cabinets and shelves;
- (F) displays, cases and racks;
- (G) office furniture;
- (H) theater seats;
- (I) water slides;
- (J) signs, mechanical and electrical; and
- (K) LED component of a billboard.

(ii) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

Table 5 Long Life Trade Fixtures	
Year of Acquisition	Percent Good of Acquisition Cost
<del>2022</del> 2023	97%
<del>2021</del> 2022	91%
<del>2020</del> 2021	86%
<del>2019</del> 2020	76%
<del>2018</del> 2019	66%
<del>2017</del> 2018	54%
<del>2016</del> 2017	40%
<del>2015</del> 2016	27%
<del>2014</del> 2015 and prior	14%

(e) Class 6 - Heavy and Medium Duty Trucks.

(i) Examples of property in this class include:

- (A) heavy duty trucks;
- (B) medium duty trucks;
- (C) crane trucks;
- (D) concrete pump trucks; and
- (E) trucks with well-boring rigs.

(ii) Taxable value is calculated by applying the percent good factor against the cost new.

(iii) Cost new of vehicles in this class is defined as follows:

(A) the documented actual cost of the vehicle for new vehicles; or

(B) 75% of the manufacturer's suggested retail price.

(iv) For state assessed vehicles, cost new shall include the value of attached equipment.

(v) The ~~2023~~2024 percent good applies to ~~2023~~2024 models purchased in ~~2022~~2023.

(vi) Trucks weighing two tons or more have a residual taxable value of \$1,750.

Table 6 Heavy and Medium Duty Trucks	
Model Year	Percent Good of Cost New
<del>2023</del> 2024	98%
<del>2022</del> 2023	96%
<del>2021</del> 2022	94%
<del>2020</del> 2021	91%
<del>2019</del> 2020	<del>88%</del> 80%
<del>2018</del> 2019	<del>83%</del> 76%
<del>2017</del> 2018	<del>78%</del> 72%
<del>2016</del> 2017	65%
<del>2015</del> 2016	59%
<del>2014</del> 2015	54%
<del>2013</del> 2014	48%
<del>2012</del> 2013	42%
<del>2011</del> 2012	36%
<del>2010</del> 2011 and prior	30%

(f) Class 7 - Medical and Dental Equipment. Class 7 has been merged into Class 8.

(g) Class 8 - Machinery and Equipment and Medical and Dental Equipment.

(i) Machinery and equipment is subject to considerable functional and economic obsolescence created by competition as technologically advanced and more efficient equipment becomes available. Examples of machinery and equipment include:

(A) manufacturing machinery;

- (B) amusement rides;
- (C) bakery equipment;
- (D) distillery equipment;
- (E) refrigeration equipment;
- (F) laundry and dry cleaning equipment;
- (G) machine shop equipment;
- (H) processing equipment;
- (I) auto service and repair equipment;
- (J) mining equipment;
- (K) ski lift machinery;
- (L) printing equipment;
- (M) bottling or cannery equipment;
- (N) packaging equipment; and
- (O) pollution control equipment.

(ii) Medical and dental equipment is subject to a high degree of technological development by the health industry.

Examples of medical and dental equipment include:

- (A) medical and dental equipment and instruments;
- (B) exam tables and chairs;
- (C) microscopes; and
- (D) optical equipment.

(iii) Except as provided in Subsection (6)(g)(iv), taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

(iv) Notwithstanding Subsection (6)(g)(iii), the taxable value of pollution control equipment as defined in Section 59-2-301.9, shall be calculated pursuant to Section 59-2-301.9.

Table 8 Machinery and Equipment Including Medical and Dental Equipment	
Year of Acquisition	Percent Good of Acquisition Cost
<del>2022</del> 2023	98%
<del>2021</del> 2022	94%
<del>2020</del> 2021	90%
<del>2019</del> 2020	85%
<del>2018</del> 2019	77%
<del>2017</del> 2018	67%
<del>2016</del> 2017	55%
<del>2015</del> 2016	45%
<del>2014</del> 2015	34%
<del>2013</del> 2014	23%
<del>2012</del> 2013 and prior	12%

(h) Class 9 - Off-Highway Vehicles. Because Section 59-2-405.2 subjects off-highway vehicles to an age-based uniform fee, a percent good schedule is not necessary.

(i) Class 10 - Railroad Cars. The Class 10 schedule was developed to value the property of railroad car companies. Functional and economic obsolescence is recognized in the developing technology of the shipping industry. Heavy wear and tear is also a factor in valuing this class of property. Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

Table 10 Railroad Cars	
Year of Acquisition	Percent Good of Acquisition Cost
<del>2022</del> 2023	98%
<del>2021</del> 2022	96%
<del>2020</del> 2021	94%

<del>2019</del> 2020	91%
<del>2018</del> 2019	88%
<del>2017</del> 2018	81%
<del>2016</del> 2017	71%
<del>2015</del> 2016	63%
<del>2014</del> 2015	54%
<del>2013</del> 2014	46%
<del>2012</del> 2013	38%
<del>2011</del> 2012	29%
<del>2010</del> 2011	19%
<del>2009</del> 2010 and prior	10%

(j) Class 11 - Street Motorcycles. Because Section 59-2-405.2 subjects street motorcycles to an age-based uniform fee, a percent good schedule is not necessary.

(k) Class 12 - Computer Hardware.

(i) Examples of property in this class include:

- (A) data processing equipment;
- (B) personal computers;
- (C) main frame computers;
- (D) computer equipment peripherals;
- (E) cad or cam systems; and
- (F) copiers.

(ii) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

Table 12 Computer Hardware	
Year of Acquisition	Percent Good of Acquisition Cost
<del>2022</del> 2023	62%
<del>2021</del> 2022	46%
<del>2020</del> 2021	21%
<del>2019</del> 2020	9%
<del>2018</del> 2019 and prior	7%

(l) Class 13 - Heavy Equipment.

(i) Examples of property in this class include:

- (A) construction equipment;
- (B) excavation equipment;
- (C) loaders;
- (D) batch plants;
- (E) snow cats; and
- (F) pavement sweepers.

(ii) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

(iii) ~~2023~~2024 model equipment purchased in ~~2022~~2023 is valued at 100% of acquisition cost.

Table 13 Heavy Equipment	
Model Year	Percent Good of Acquisition Cost
<del>2022</del> 2023	<del>70%</del> 73%
<del>2021</del> 2022	<del>67%</del> 71%
<del>2020</del> 2021	<del>65%</del> 69%
<del>2019</del> 2020	<del>62%</del> 67%
<del>2018</del> 2019	<del>60%</del> 65%
<del>2017</del> 2018	<del>58%</del> 63%
<del>2016</del> 2017	<del>55%</del> 61%
<del>2015</del> 2016	<del>53%</del> 59%
<del>2014</del> 2015	<del>50%</del> 57%
<del>2013</del> 2014	<del>48%</del> 55%

<del>2012</del> 2013	<del>45%</del> 53%
<del>2011</del> 2012	<del>43%</del> 51%
<del>2010</del> 2011	<del>40%</del> 49%
<del>2009</del> 2010 and prior	<del>38%</del> 47%

(m) Class 14 - Motor Homes. Because Section 59-2-405.3 subjects motor homes to an age-based uniform fee, a percent good schedule is not necessary.

(n) Class 15 - Semiconductor Manufacturing Equipment. Class 15 applies only to equipment used in the production of semiconductor products. Equipment used in the semiconductor manufacturing industry is subject to significant economic and functional obsolescence due to rapidly changing technology and economic conditions.

(i) Examples of property in this class include:

- (A) crystal growing equipment;
- (B) die assembly equipment;
- (C) wire bonding equipment;
- (D) encapsulation equipment;
- (E) semiconductor test equipment;
- (F) clean room equipment;
- (G) chemical and gas systems related to semiconductor manufacturing;

(H) deionized water systems;

- (I) electrical systems; and

(J) photo mask and wafer manufacturing dedicated to semiconductor production.

(ii) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

Table 15 Semiconductor Manufacturing Equipment	
Year of Acquisition	Percent Good of Acquisition Cost
<del>2022</del> 2023	47%
<del>2021</del> 2022	34%
<del>2020</del> 2021	24%
<del>2019</del> 2020	15%
<del>2018</del> 2019 and prior	6%

(o) Class 16 -- Long Life Property. Class 16 property has a long physical life with little obsolescence.

(i) Examples of property in this class include:

- (A) billboards, excluding LED component;
- (B) sign towers;
- (C) radio towers;
- (D) ski lift and tram towers;
- (E) non-farm grain elevators;
- (F) bulk storage tanks;
- (G) underground fiber optic cable;
- (H) solar panels and supporting equipment; and
- (I) pipe laid in or affixed to land.

(ii) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

Table 16 Long Life Property	
Year of Acquisition	Percent Good of Acquisition Cost
<del>2022</del> 2023	98%
<del>2021</del> 2022	97%
<del>2020</del> 2021	95%



<del>2019</del> 2020	92%
<del>2018</del> 2019	91%
<del>2017</del> 2018	90%
<del>2016</del> 2017	87%
<del>2015</del> 2016	81%
<del>2014</del> 2015	74%
<del>2013</del> 2014	69%
<del>2012</del> 2013	59%
<del>2011</del> 2012	58%
<del>2010</del> 2011	54%
<del>2009</del> 2010	47%
<del>2008</del> 2009	40%
<del>2007</del> 2008	33%
<del>2006</del> 2007	26%
<del>2005</del> 2006	18%
<del>2004</del> 2005 and prior	9%

(p) Class 17 - Vessels Equal to or Greater Than 31 Feet in Length.

(i) Examples of property in this class include:

- (A) houseboats equal to or greater than 31 feet in length;
- (B) sailboats equal to or greater than 31 feet in length; and
- (C) yachts equal to or greater than 31 feet in length.

(ii) A vessel, including an outboard motor of the vessel, under 31 feet in length:

- (A) is not included in Class 17;
- (B) may not be valued using Table 17; and
- (C) is subject to an age-based uniform fee under Section 59-2-405.2.

(iii) Taxable value is calculated by applying the percent good factor against the cost new of the property.

(iv) The Tax Commission and assessors shall rely on the following sources to determine cost new for property in this class:

(A) the following publications or valuation methods:

(I) the manufacturer's suggested retail price listed in the ABOS Marine Blue Book;

(II) for property not listed in the ABOS Marine Blue Book but listed in the NADA Marine Appraisal Guide, the NADA average value for the property divided by the percent good factor; or

(III) for property not listed in the ABOS Marine Blue Book or the NADA Appraisal Guide:

(aa) the manufacturer's suggested retail price for comparable property; or

(bb) the cost new established for that property by a documented valuation source; or

(B) the documented actual cost of new or used property in this class.

(v) The ~~2023~~2024 percent good applies to ~~2023~~2024 models purchased in ~~2022~~2023.

(vi) Property in this class has a residual taxable value of \$1,000.

Table 17 Vessels Equal to or Greater Than 31 Feet in Length	
Model Year	Percent Good of Acquisition Cost
<del>2023</del> 2024	90%
<del>2022</del> 2023	<del>70%</del> 83%
<del>2021</del> 2022	<del>67%</del> 80%
<del>2020</del> 2021	<del>65%</del> 78%
<del>2019</del> 2020	<del>63%</del> 76%
<del>2018</del> 2019	<del>61%</del> 73%

<del>2017</del> 2018	<del>59%</del> 71%
<del>2016</del> 2017	<del>57%</del> 68%
<del>2015</del> 2016	<del>54%</del> 66%
<del>2014</del> 2015	<del>52%</del> 64%
<del>2013</del> 2014	<del>50%</del> 61%
<del>2012</del> 2013	<del>48%</del> 59%
<del>2011</del> 2012	<del>46%</del> 57%
<del>2010</del> 2011	<del>43%</del> 54%
<del>2009</del> 2010	<del>41%</del> 52%
<del>2008</del> 2009	<del>39%</del> 49%
<del>2007</del> 2008	<del>37%</del> 47%
<del>2006</del> 2007	<del>35%</del> 45%
<del>2005</del> 2006	<del>33%</del> 42%
<del>2004</del> 2005	<del>30%</del> 40%
<del>2003</del> 2004	<del>28%</del> 38%
<del>2002</del> 2003 and prior	<del>26%</del> 35%

(q) Class 17a - Vessels Less Than 31 Feet in Length. Because Section 59-2-405.2 subjects vessels less than 31 feet in length to an age-based uniform fee, a percent good schedule is not necessary.

(r) Class 18 - Travel Trailers and Class 18a -- Tent Trailers or Truck Campers. Because Section 59-2-405.2 subjects travel trailers and tent trailers or truck campers to an age-based uniform fee, a percent good schedule is not necessary.

(s) Class 20 - Petroleum and Natural Gas Exploration and Production Equipment. Class 20 property is subject to significant functional and economic obsolescence due to the volatile nature of the petroleum industry.

(i) Examples of property in this class include:

- (A) oil and gas exploration equipment;
- (B) distillation equipment;
- (C) wellhead assemblies;
- (D) holding and storage facilities;
- (E) drill rigs;
- (F) reinjection equipment;
- (G) metering devices;
- (H) cracking equipment;
- (I) well-site generators, transformers, and power lines;
- (J) equipment sheds;
- (K) pumps;
- (L) radio telemetry units; and
- (M) support and control equipment.

(ii) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

Table 20 Petroleum and Natural Gas Exploration and Production Equipment	
Year of Acquisition	Percent Good of Acquisition Cost
<del>2022</del> 2023	98%
<del>2021</del> 2022	96%
<del>2020</del> 2021	94%
<del>2019</del> 2020	<del>91%</del> 92%
<del>2018</del> 2019	<del>85%</del> 86%
<del>2017</del> 2018	<del>77%</del> 79%
<del>2016</del> 2017	<del>68%</del> 71%
<del>2015</del> 2016	<del>58%</del> 60%
<del>2014</del> 2015	<del>49%</del> 50%
<del>2013</del> 2014	<del>39%</del> 41%

<del>2012</del> 2013	<del>30%</del> 31%
<del>2011</del> 2012	<del>20%</del> 21%
<del>2010</del> 2011 and prior	11%

(t) Class 21 - Commercial Trailers.

(i) Examples of property in this class include:

- (A) dry freight van trailers;
- (B) refrigerated van trailers;
- (C) flat bed trailers;
- (D) dump trailers;
- (E) livestock trailers; and
- (F) tank trailers.

(ii) Taxable value is calculated by applying the percent good factor against the cost new of the property. For state assessed vehicles, cost new shall include the value of attached equipment.

(iii) The ~~2023~~2024 percent good applies to ~~2023~~2024 models purchased in ~~2022~~2023.

(iv) Commercial trailers have a residual taxable value of \$1,000.

Table 21 Commercial Trailers	
Model Year	Percent Good of Acquisition Cost
<del>2023</del> 2024	95%
<del>2022</del> 2023	80%
<del>2021</del> 2022	77%
<del>2020</del> 2021	74%
<del>2019</del> 2020	71%
<del>2018</del> 2019	67%
<del>2017</del> 2018	64%
<del>2016</del> 2017	<del>61%</del> 63%
<del>2015</del> 2016	<del>60%</del> 62%
<del>2014</del> 2015	<del>57%</del> 61%
<del>2013</del> 2014	<del>53%</del> 56%
<del>2012</del> 2013	<del>50%</del> 53%
<del>2011</del> 2012	<del>47%</del> 50%
<del>2010</del> 2011	<del>43%</del> 46%
<del>2009</del> 2010	<del>40%</del> 43%
<del>2008</del> 2009	<del>37%</del> 40%
<del>2007</del> 2008 and prior	<del>33%</del> 36%

(u) Class 21a -- Other Non-Commercial Trailers. Because Section 59-2-405.2 subjects this class of trailers to an age-based uniform fee, a percent good schedule is not necessary.

(v) Class 22 - Passenger Cars, Light Trucks/Utility Vehicles, and Vans.

(i) Class 22 vehicles fall within four subcategories: domestic passenger cars, foreign passenger cars, light trucks, including utility vehicles, and vans.

(ii) Because Section 59-2-405.1 subjects Class 22 property to an age-based uniform fee, a percent good schedule is not necessary.

(w) Class 22a - Small Motor Vehicles. Because Section 59-2-405.2 subjects small motor vehicles to an age-based uniform fee, a percent good schedule is not necessary.

(x) Class 23 - Aircraft Required to be Registered With the State. Because Section 59-2-404 subjects aircraft required to be registered with the state to a statewide uniform fee, a percent good schedule is not necessary.

(y) Class 24 - Leasehold Improvements on Exempt Real Property.

(i) The Class 24 schedule is to be used only for those leasehold improvements where the underlying real property is owned by an entity exempt from property tax under Section 59-2-1101. See Tax Commission Section R884-24P-32. Leasehold improvements include:

- (A) walls and partitions;
- (B) plumbing and roughed-in fixtures;
- (C) floor coverings other than carpet;
- (D) store fronts;
- (E) decoration;
- (F) wiring;
- (G) suspended or acoustical ceilings;
- (H) heating and cooling systems; and
- (I) iron or millwork trim.

(ii) Taxable value is calculated by applying the percent good factor against the cost of acquisition, including installation.

(iii) The Class 3 schedule is used to value short life leasehold improvements.

Table 24 Leasehold Improvements on Tax Exempt Real Property	
Year of Acquisition	Percent Good of Acquisition Cost
<del>2022</del> 2023	94%
<del>2021</del> 2022	88%
<del>2020</del> 2021	82%
<del>2019</del> 2020	77%
<del>2018</del> 2019	71%
<del>2017</del> 2018	65%
<del>2016</del> 2017	59%
<del>2015</del> 2016	54%
<del>2014</del> 2015	48%
<del>2013</del> 2014	42%
<del>2012</del> 2013	36%
<del>2011</del> 2012 and prior	30%

(z) Class 25 - Aircraft Parts Manufacturing Tools and Dies. Property in this class is ~~generally~~ subject to rapid physical, functional, and economic obsolescence due to rapid technological and economic shifts in the airline parts manufacturing industry. Heavy wear and tear is also a factor in valuing this class of property.

(i) Examples of property in this class include:

- (A) aircraft parts manufacturing jigs and dies;
- (B) aircraft parts manufacturing molds;
- (C) aircraft parts manufacturing patterns;
- (D) aircraft parts manufacturing taps and gauges; and
- (E) aircraft parts manufacturing test equipment.

(ii) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

Table 25 Aircraft Parts Manufacturing Tools and Dies	
Year of Acquisition	Percent Good of Acquisition Cost
<del>2022</del> 2023	94%
<del>2021</del> 2022	82%
<del>2020</del> 2021	62%
<del>2019</del> 2020	44%
<del>2018</del> 2019	23%
<del>2017</del> 2018 and prior	4%

(aa) Class 26 - Personal Watercraft. Because Section 59-2-405.2 subjects personal watercraft to an age-based uniform fee, a percent good schedule is not necessary.

(bb) Class 27 - Electrical Power Generating Equipment and Fixtures.

(i) Examples of property in this class include:

(A) electrical power generators; and

(B) control equipment.

(ii) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

Table 27 Electrical Power Generating Equipment and Fixtures	
Year of Acquisition	Percent Good of Acquisition Cost
<del>2022</del> 2023	97%
<del>2021</del> 2022	95%
<del>2020</del> 2021	92%
<del>2019</del> 2020	90%
<del>2018</del> 2019	87%
<del>2017</del> 2018	84%
<del>2016</del> 2017	82%
<del>2015</del> 2016	79%
<del>2014</del> 2015	77%
<del>2013</del> 2014	74%
<del>2012</del> 2013	71%
<del>2011</del> 2012	69%
<del>2010</del> 2011	66%
<del>2009</del> 2010	64%
<del>2008</del> 2009	61%
<del>2007</del> 2008	58%
<del>2006</del> 2007	56%
<del>2005</del> 2006	53%
<del>2004</del> 2005	51%
<del>2003</del> 2004	48%
<del>2002</del> 2003	45%
<del>2001</del> 2002	43%
<del>2000</del> 2001	40%
<del>1999</del> 2000	38%
<del>1998</del> 1999	35%
<del>1997</del> 1998	32%
<del>1996</del> 1997	30%
<del>1995</del> 1996	27%
<del>1994</del> 1995	25%
<del>1993</del> 1994	22%
<del>1992</del> 1993	19%
<del>1991</del> 1992	17%
<del>1990</del> 1991	14%
<del>1989</del> 1990	12%
<del>1988</del> 1989 and prior	9%

~~[(cc) Class 28 - Noncapitalized Personal Property. The taxable value of noncapitalized personal property as defined in Section 59-2-108, shall be calculated pursuant to Section 59-2-108.]~~

This rule shall be implemented and become binding on taxpayers beginning January 1, ~~2023~~2024.

**KEY:** taxation, personal property, property tax, appraisals

**Date of Last Change:** ~~February 9,~~ 2023

**Notice of Continuation:** November 9, 2021

**Authorizing, and Implemented or Interpreted Law:** Art. XIII, Sec 2; 9-2-201; 11-13-302; 41-1a-202; 41-1a-301; 59-1-210; 59-2-102; 59-2-103; 59-2-103.5; 59-2-104; 59-2-201; 59-2-210; 59-2-211; 59-2-301; 59-2-301.3; 59-2-302; 59-2-303; 59-2-303.1; 59-2-305; 59-2-306; 59-2-401; 59-2-402; 59-2-404; 59-2-405; 59-2-405.1; 59-2-406; 59-2-508; 59-2-514; 59-2-515; 59-2-701; 59-2-702; 59-2-703; 59-2-704; 59-2-704.5; 59-2-705; 59-2-801; 59-2-918 through 59-2-924; 59-2-1002; 59-2-1004; 59-2-1005; 59-2-1006; 59-2-1101; 59-2-1102; 59-2-1104; 59-2-1106; 59-2-1107 through 59-2-1109; 59-2-1113; 59-2-1115; 59-2-1202; 59-2-1202(5); 59-2-1302; 59-2-1303; 59-2-1308.5; 59-2-1317; 59-2-1328; 59-2-1330; 59-2-1347; 59-2-1351; 59-2-1365; 59-2-1703

#### NOTICE OF PROPOSED RULE

**TYPE OF FILING:** Amendment

<b>Rule or Section Number:</b>	<b>R940-3</b>	<b>Filing ID:</b> <b>55692</b>
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#### Agency Information

<b>1. Department:</b>	Transportation Commission	
<b>Agency:</b>	Administration	
<b>Room no.:</b>	Administrative Suite, 1st Floor	
<b>Building:</b>	Calvin Rampton	
<b>Street address:</b>	4501 S 2700 W	
<b>City, state and zip:</b>	Taylorsville, UT 84129	
<b>Mailing address:</b>	PO Box 148455	
<b>City, state and zip:</b>	Salt Lake City, UT 84114-8455	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Name:</b>
Leif Elder	801-580-8296	lelder@utah.gov
Becky Lewis	801-965-4026	blewis@utah.gov
James Palmer	801-965-4197	jimpalmer@agutah.gov
Lori Edwards	801-965-4048	loriedwards@agutah.gov

**Please address questions regarding information on this notice to the persons listed above.**

#### General Information

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

R940-3. State Infrastructure Bank Fund, Prioritization Process, Procedures, and Standards for Making Loans or Providing Infrastructure Assistance

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

During the 2023 General Session, the Legislature passed Laws 2023, c. 22, § 9, S.B. 0185, which took effect on 05/03/2023.

The bill added "greenfield" projects to potential uses of loans from the State Infrastructure Bank. Accordingly, the Transportation Commission (Commission) decided to make changes to Rule R940-3 to consider "greenfield" projects and make additional clarifications in the definitions.

The Commission also decided to change the name of the rule to shorten it.

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

These proposed changes to the rule add "greenfield" projects to potential uses of loans from the State Infrastructure Bank.

Other changes conform this rule to the requirements of the Rulewriting Manual for Utah and Section 68-3-12, Rules of Construction for statutes.

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

The Commission believes there will be no cost or savings to the state budget since the proposed changes are administrative and will not affect the operations of the Commission or the relevant parties.

**B) Local governments:**

The Commission believes that there will be no cost or savings to local governments because the proposed changes are administrative and will not affect the operations of local governments or related parties.

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

The Commission believes there will be no cost or savings to small businesses because the proposed changes are administrative and will not affect their operations.

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

The Commission believes that there will be no cost or savings to non-small businesses because the proposed changes are administrative in nature and will not affect their operations.

**E) Persons other than small businesses, non-small businesses, state, or local government entities** ("person" means any individual, partnership, corporation,

association, governmental entity, or public or private organization of any character other than an **agency**):

The Commission believes there will be no cost or savings to the budgets of persons other than small businesses, non-small businesses, and state, or local government entities because the proposed changes are administrative.

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

Affected individuals will not suffer any compliance costs due to the proposed changes. These modifications provide more clarity to the requirements, policies, and an additional State Infrastructure Bank (SIB) loan possibility without any financial impact on other entities.

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

**Regulatory Impact Table**

<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 Transportation, Carlos M Braceras, PE, 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 72-2-202	Section 72-2-203
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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>	10/16/2023
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<b>9. This rule change MAY become effective on:</b>	10/23/2023
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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>	Carlos M Braceras, PE, Executive Director	<b>Date:</b>	08/25/2023
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#### R940. Transportation Commission, Administration.

##### **R940-3. State Infrastructure Bank Fund, ~~Prioritization process, Procedures, and Standards for Making Loans or Providing Infrastructure Assistance.~~**

##### **R940-3-1. Authority and Purpose.**

(1) Authority to make this rule is by Sections 72-2-202 and 72-2-203.

(2) The purpose of this rule is to establish procedures, standards, and a prioritization process the commission will follow to approve infrastructure loans and infrastructure assistance through the State Infrastructure Bank Fund created by Subsection 72-2-202(1) [~~"SIB"~~].

##### **R940-3-2. Definitions.**

(1) The definitions [~~stated~~] in Section 72-2-201 [~~define the same words as used in~~] apply to this rule.

(2) In addition:

(a) "Commission" means the Transportation Commission created by Section 72-1-301.

(b) "Department" means the Department of Transportation created by Section 72-1-201.

(c) "Greenfield" means the same as that term is defined in Section 17C-1-102.

~~[(c) "Public entity" means as the phrase is defined by Section 72-2-201. A public entity is eligible to receive an infrastructure loan or assistance funded by the SIB.]~~

(d) "Project" includes a transportation project or a publicly owned infrastructure project. [~~means the same as Section 72-2-201 defines transportation project. A project is eligible for funding by an infrastructure loan or assistance from the SIB.~~]

(e) "SIB" means the State Infrastructure Bank Fund.

##### **R940-3-3. Procedures and Standards for an Infrastructure Loan or Assistance from the SIB.**

(1) Procedures.

(a) Under Title 72, Chapter 2, Part 2, State Infrastructure Bank Fund, and this rule, a public entity is eligible to apply for and receive an infrastructure loan or assistance through the SIB.

~~[(a)](b)~~ A public entity must request an infrastructure loan or infrastructure assistance using an application form provided by the department.

~~[(b)](c)~~ The public entity must complete and submit the application [~~completed~~] according to the application instructions.

~~[(c)](d)~~ The public entity must state clearly if it is applying for [~~a loan or assistance~~] an infrastructure loan or infrastructure assistance. [~~as defined by Subsection 72-2-201(3) or 72-2-201(2), respectively.~~]

(e) If applicable, the public entity must state if it is applying for an infrastructure loan or infrastructure assistance in a greenfield area.

~~[(d)](f)~~ The application form with instructions is available on the department's website at [udot.utah.gov/go/SIB](http://udot.utah.gov/go/SIB).

(2) Standards.

(a) A loan from the SIB fund must bear interest at or above the market interest rate available to the state.

(b) The commission will determine the interest rate for an infrastructure loan by adding 0.5% to the rate for AAA Municipal General Obligation Bonds obtained from the state treasurer as of the date of the completed application.

(c) The public entity must begin repaying the infrastructure loan no later than the completion date of the project or the date the public entity opens the facility to traffic in the case of a highway project. Interest will accrue during the period between loan closing and the agreed[-]upon estimated project completion date and will be capitalized and added to the loan's principal balance.

(d) The repayment period for an infrastructure loan may not exceed the term identified in Title 72, Chapter 2, Part 2, State Infrastructure Bank Fund.

(e) Loan documents must state the execution date and repayment deadline date for the loan.

(f) The public entity may pledge any of a revenue source controlled by the public entity to repay the loan.

(g) The public entity must repay loans in monthly, quarterly, or yearly installments.

(h) If the applicant does not fully execute the assistance or loan within 180 days of the date the commission approves the application, the application will expire unless the applicant requests and the commission approves a continuation of the terms. Continuations are limited to a maximum of 180 days each.

##### **R940-3-4. Prioritizing Requests for an Infrastructure Loan or Infrastructure Assistance.**

(1) Criteria. The commission will follow a prioritization framework that may include the following criteria to evaluate and prioritize requests for a loan or assistance:

(a) [A]availability of money in the fund, including for a loan or assistance related to a project in a greenfield area, whether

money is available in the separate account created for projects in greenfield areas as described in Subsection 72-2-202(5);

(b) evidence the project will encourage, enhance, or create economic benefits to the state or political subdivision;

(c) the likelihood that a loan or assistance will enable the project to proceed at an earlier date than would otherwise be possible;

(d) the extent to which assistance will foster innovative public-private partnerships and attract private investment;

(e) the project demonstrates that it provides a benefit to the state highway system, including safety or mobility improvements;

(f) the proposed assistance amount as a percentage of the overall project costs with an emphasis on local and private participation;

(g) the extent to which the project provides intermodal connectivity with public transportation, pedestrian, or nonmotorized transportation facilities; or

(h) other provisions the commission considers appropriate.

(2) Scoring. The commission will apply a framework to determine the score it assigns to qualified projects for prioritization purposes. This framework is located on the department's website: [udot.utah.gov/go/SIB](http://udot.utah.gov/go/SIB) and is incorporated by reference.

#### **R940-3-5. Commission Discretion.**

The commission may approve a request for a loan or assistance ahead of another request with a higher prioritization score for good cause, as determined by the commission during a public meeting.

**KEY:** State Infrastructure Bank Fund, SIB loan, SIB assistance, SIB

**Date of Last Change:** ~~2023~~ February 7, 2022

**Notice of Continuation:** December 14, 2018

**Authorizing, and Implemented or Interpreted Law:** 72-2-203

#### **NOTICE OF PROPOSED RULE**

**TYPE OF FILING:** Amendment

<b>Rule or Section Number:</b>	<b>R990-200</b>	<b>Filing ID:</b> <b>55712</b>
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#### **Agency Information**

<b>1. Department:</b>	Workforce Services
<b>Agency:</b>	Housing and Community Development
<b>Building:</b>	Olene Walker Building
<b>Street address:</b>	140 E 300 S
<b>City, state and zip:</b>	Salt Lake City, UT 84111
<b>Mailing address:</b>	PO Box 45244
<b>City, state and zip:</b>	Salt Lake City, UT 84145-0244
<b>Contact persons:</b>	
<b>Name:</b>	<b>Phone:</b> <b>Email:</b>
Amanda B. McPeck	801-526-9653 <a href="mailto:ampeck@utah.gov">ampeck@utah.gov</a>

**Please address questions regarding information on this notice to the persons listed above.**

#### **General Information**

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

R990-200. Private Activity Bonds

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

Current housing development projects bonded through the Private Activity Bond are affected by 2023 legislation.

This rule change amends sections concerning extensions to account for delays caused by the newly enacted legislation.

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

This change grants the Private Activity Bond Board of Review the discretion to grant a developer a sixth bond extension when federal or state legislation substantially affects the project and its ability to close.

#### **Fiscal Information**

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

###### **A) State budget:**

This rule change is not expected to have any fiscal impact on state revenues or expenditures.

There are no additional state employees or resources needed to oversee this rule change. This rule change will not increase workload and can be carried out with existing budget.

This rule change does not change the current available bond cap.

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

This rule change is not expected to have any fiscal impact on local governments' revenues or expenditures because the program does not rely on local governments for funding, administration, or enforcement.

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

This rule change is expected to have indirect positive fiscal impact on small businesses because it provides for an additional bond extension in the event of a legislative occurrence.

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

This rule change is expected to have indirect positive fiscal impact on non-small businesses because it provides for an additional bond extension in the event of a legislative occurrence.



**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 fiscal impact to other persons.

This rule change requires no action or compliance by a person other than a business applying for bond funds.

**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 for affected persons because this rule change does not create any new administrative fees.

**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 Workforce Services, Casey Cameron, 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  
35A-8-2104

**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:** 10/16/2023

**9. This rule change MAY become effective on:** 10/23/2023

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>	Casey Cameron, Executive Director	<b>Date:</b>	09/01/2023
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**R990. Workforce Services, Housing and Community Development.**

**R990-200. Private Activity Bonds.**

**R990-200-3. Definitions.**

Terms used in this rule are defined in Section 35A-8-2102. Terms not defined in that section or in this rule shall be defined as used in the Private Activity Bond Program - Policies and Procedures ([Policies]), adopted October 2022, which is incorporated by reference. In addition:

(1) "Affordable" means at least 20% of the residential units in the project are set aside for families whose incomes do not exceed 50% of Area Median Income (AMI), adjusted for family size; or at least 40% of the residential units in the project are set aside for families whose incomes do not exceed 60% of AMI, adjusted for family size.

(2) "Applicant" means a borrower or issuing authority submitting an application for an allocation of volume cap or a project sponsor submitting an application on behalf of an issuing authority for an allocation of volume cap.

(3) "Available volume cap" means the unencumbered volume cap.

(4) "Application" means:

(a) the electronic federal Low-Income Housing Tax Credit consolidated application for multi-family applicants;



(b) the private activity bond authority manufacturing facility application for the manufacturing, redevelopment or exempt facility applicants; or

(c) the private activity bond authority application for single family or student loan applicants.

(5) "Closed" or "close" means the time at which bonds are exchanged for funds.

(6) "Good standing" means the applicant or recipient:

(a) has timely remitted to the Board of Review all required fees and payments at the time of application;

(b) has timely submitted to the Board of Review all required reports at the time of application;

(c) for the five years preceding the submission of the request for an allocation or extension, has not failed to close any projects for which the Board of Review has made an allocation; and

(d) for the five years preceding the submission of the request for an allocation or extension, has not made to the Board of Review any misrepresentations about an application for allocation or any previous or current project.

(7) If an applicant or recipient has previously received an allocation from the Board of Review for one or more multi-family projects, "good standing" means the applicant or recipient meets the requirements of Subsection (6) and the applicant or recipient:

(a) has not exceeded rent or income limits at any time in the immediately preceding five years;

(b) has not converted any affordable unit into a market rate unit at any time in the immediately preceding five years;

(c) has rented designated affordable units only to qualified low- and moderate-income tenants for the immediately preceding five years; and

(d) is in good standing with the Utah Housing Corporation at the time of application.

(8) "Project" means the applicant's plan for which the private activity bonds are being sought.

(9) "Recipient" means a borrower or issuing authority that has been awarded an allocation of volume cap.

(10) "Low- and moderate- income" means a household whose income upon initial occupancy does not exceed 140% of AMI adjusted for family size.

(11) "Market rate" means housing units that are not affordable.

(12) "Legislative occurrence" means federal or state legislation that becomes legally effective within one year of a project's fifth bond extension approval and which substantially affects the project and its ability to close.

#### **R990-200-7. Extensions.**

(1) Certificates of allocation shall remain in effect for a period of 90 days following the date of Board of Review approval. A recipient that has not closed its volume cap allocation within such 90-day period may request an extension from the Board of Review. A recipient requesting an extension shall submit to the Board an application for an extension no later than the 90th calendar day after the date of the Board of Review's approval of the initial allocation. The counting of the 90-day period shall be paused from the date of submission, pending the Board of Review's review of the application for extension, and the Certificate of Allocation shall remain effective until the Board of Review has voted whether to approve or deny the application for extension. The application for extension shall be approved or denied in the Board of Review's sole discretion.

(a) Manufacturing projects, qualified redevelopment projects, and exempt facility projects are not eligible to carry forward

their volume cap allocation beyond the end of the calendar year in which they received the allocation. Such bonds must close by the third Saturday in December in the same year the recipient received the allocation. Any volume cap not issued by this date is automatically relinquished back to the Board of Review.

(b) The Board of Review makes no representation as to whether an issuer will allow the allocation to be transferred to another project if the previously approved transaction fails.

(2) Unless program staff agree to a different deadline, a recipient requesting an extension of a previously approved and current volume cap allocation shall submit a completed extension form to the private activity bond program staff no later than 55 calendar days before the Board of Review meeting at which the extension request is to be considered.

(3) An extension request will not be presented to the Board of Review unless the recipient's account is in good standing.

(4) An extension request for a second or more extension will be evaluated, scored, and considered by the Board of Review, subject to Subsection R990-200-7(6).

(5) An extension approval may not exceed 90 calendar days from the date of approval or until the Board of Review holds its next meeting, whichever is sooner.

(6) Unless program staff agree to a different deadline, no later than 55 calendar days before the Board of Review meeting at which the extension is to be considered, a recipient requesting an extension shall submit a completed extension request status report and extension fee on the form provided on the website of the Board of Review, together with each request.

(a) Private activity bond program staff shall perform a comprehensive progress review before the Board of Review meeting where an extension will be considered, and shall prepare a recommendation.

(b) The applicant may be required to reapply after the third extension review if there is no substantial evidence of being able to close the bonds.

~~(7)(a) [A recipient may not receive more than five extensions.]~~ Absent a legislative occurrence, a recipient may not receive more than five extensions.

(i) In the event of a legislative occurrence, a recipient may submit a sixth extension application. A sixth extension application shall include a written explanation of why a sixth extension is necessary and how the legislative occurrence substantially affects the project's ability to close. In its sole discretion, the Board of Review may grant or deny a sixth extension.

(ii) A request for a sixth [or more] extension that omits the written explanation required in Subsection (7)(a)(i) will not be presented to the Board of Review, and the previously allocated volume cap shall be revoked.

(b) A request for a seventh extension for any reason will not be presented to the Board of Review, and the previously allocated volume cap shall be revoked.

(8)(a) Except as provided in Subsection R990-200-7(8)(c), a recipient requesting an extension shall attend, either virtually or in person, the Board of Review meeting at which the extension is considered, prepared to update the Board of Review on the progress of the development and answer any questions. If the recipient does not attend, the Board of Review will table consideration of the extension. Within 48 hours of the Board meeting at which the extension was to be considered, the recipient shall submit to the Board of Review a written explanation of its failure to attend. The extension will be considered at the following Board of Review

meeting, and the Board of Review, in its sole discretion, shall approve or deny the extension request at that time.

(b) When a recipient fails to attend a meeting, the Board of Review shall treat such a missed meeting as a granted extension request, such that the missed meeting will count as one of the five extensions a recipient is allowed under this rule.

(c) Subsections R990-200-7(8)(a) and (b) shall not apply when the Board of Review determines, in its sole discretion, that the recipient's failure to attend a meeting is the result of extraordinary circumstances beyond the recipient's control. Even in such extraordinary circumstances, though, a recipient shall make every effort to send a designee to attend and provide updates at the meeting. Any such designee shall speak on behalf of the recipient, and the recipient will be bound by the designee's representations to the Board of Review.

(9) A City or County issuer may submit a request for a Carryforward Certificate no later than 21 calendar days before the December Board of Review meeting.

(10) A City or County issued a Carryforward Certificate shall comply with the extension request requirements for each three

month period after an allocation has been made to a project, including:

(a) attendance at each Board of Review meeting, prepared to update the Board of Review on the progress of the development and answer any questions[?]; and

(b) submission of a complete comprehensive progress report.

(11) The Board of Review reserves the right to approve or reject an extension or Carryforward Certificate in accordance with the criteria established by this rule.

(12) In the event an extension or Carryforward Certificate request is untimely, denied by the Board of Review in its sole discretion, or otherwise not presented to the Board of Review in accordance with this rule, the allocation shall be revoked.

**KEY: allocation, private activity bond, volume cap**

**Date of Last Change: ~~June 7~~, 2023**

**Authorizing, and Implemented or Interpreted Law: 35A-8-2104**

### **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:	R653-12	Filing ID: 55706
Effective Date:	08/30/2023	

#### Agency Information

<b>1. Department:</b>	Natural Resources	
<b>Agency:</b>	Water Resources	
<b>Room number:</b>	310	
<b>Building:</b>	Natural Resources Building	
<b>Street address:</b>	1594 W North Temple	
<b>City, state and zip:</b>	Salt Lake City, UT 84116	
<b>Contact persons:</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Carly Payne	801-538-7235	carlypayne@utah.gov
Joel Williams	801-538-7349	joelwilliams@utah.gov
Martin Bushman	801-538-7273	martinbushman@agutah.gov

Please address questions regarding information on this notice to the persons listed above.

#### General Information

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

R653-12. 2023 Grant Money for Wasatch Front Aqueduct Resilience Projects

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

The Utah Legislature appropriated \$50,000,000 in 2023 to the Department of Natural Resources, Division of Water Resources (Division) to help fund Wasatch Front aqueduct resilience projects through loans and grants, see S.B. 3, Item 543.

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

The purpose of this new rule is to describe the eligibility requirements, limitations, conditions, and application and approval process for water providers to receive grant money from the Division for improving the resilience of major aqueducts along the Wasatch Front to withstand a major earthquake.

##### 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:**

Geologic forecasts predict a 57% chance of a 6.0 magnitude or greater earthquake along the Wasatch Front in the next 50 years.

The major aqueducts that provide culinary water to the Wasatch Front are old and not engineered to withstand a major earthquake. These aqueducts cross major hazardous faults along the Wasatch Front that, in the event of a major earthquake, will be subjected to soil shifts and movements capable of rupturing or otherwise disabling aqueducts. These aqueducts collectively provide culinary water to over 3,000,000 Utahns.

Should any one or more of them rupture or fail, hundreds of thousands to millions of Utah residents could be left without culinary water for several months. This type of disruption would impact not just households, but also infrastructure and services, such as medical care, fire response, power generation, and business operations. Businesses along the Wasatch Front at risk of losing water account for more than 75% of Utah's economy. A substantially reduced water supply for months would lead to business failures and economic breakdown that could take years or even decades to recover from.

Recognizing this peril, the Utah Legislature appropriated \$50,000,000 in 2023 to the Division to allocate in grants for purposes of hardening and protecting the Wasatch Front's aqueduct systems from potential earthquake damage. The Division needs this rule to guide the allocation of grant funds in a manner that delivers the greatest return on investment in terms of rapidly fortifying the Wasatch Front major aqueducts and securing a water supply.

While a 57% chance of a major earthquake in the next 50 years may not seem imminent in a conventional context, it certainly is in a geologic context. The fact remains that it could happen tomorrow, next week, or years from now. But when it does, it will result in catastrophic impacts to the delivery of water to millions of people for months -- unless those systems have been improved to withstand an earthquake. As such, much is to be done and time is of the essence in getting funding dispersed and aqueduct resilience projects underway immediately.

**Fiscal Information**

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

**A) State budget:**

The Legislature appropriated \$50,000,000 in one-time funding to the Division for "Wasatch Front Aqueduct Resilience" in S.B. 3, Item 543 in the 2023 General

Session. The Legislature did not provide further specifics or direction on the distribution of the appropriated funds.

This rule is necessary under Subsection 63G-3-201(2) to guide the Division and ensure consistency in its distribution of \$50,000,000 in grants. Funding is not ongoing and the grant program set forth in the proposed rule will expire. The grant program will be administered by existing staff at the Division -- no new hires or overtime pay will be required.

**B) Local governments:**

The grant program will not fiscally impact local governments negatively.

The program simply makes funding available to eligible water providers for improving and protecting major Wasatch Front aqueducts from earthquake damage and disruption.

This rule does not require water providers to make aqueduct improvements, and participation in the grant program is completely voluntary under this rule. Those that choose to participate and receive grant funding, however, will contribute at least 50% of the cost of a resilience project and at least 25% of a resilience study to receive grant funding for the remainder.

Aqueducts, once improved and secured, will provide significant benefits to the communities and citizens serviced by them, particularly in the event of an earthquake.

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

To the extent a water provider is not a local government and more closely related to a small or non-small business, it will be impacted similarly to that described in the local governments above.

A residual benefit of this rule and the grant program it implements to small and non-small businesses will be increased demand for the design, manufacture, and construction of hardened aqueduct systems. In total, the grant program will infuse \$50,000,000 in grants in addition to water providers' cost share into the planning and construction of resilience projects and studies.

**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*):**

No anticipated impacts to others different than to local governments and small businesses, see previous responses above.

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

This rule does not require water providers to improve or harden their existing aqueduct systems or to seek grant funds to do so.

Participation in the program is completely voluntary under this rule. Those that choose to participate and receive grant funding, however, must contribute at least 50% of project costs and at least 25% of study costs to receive grant funding for the remainder. The total out-of-pocket expense to a grant recipient will depend on the nature and size of the resilience project it receives grant funding for.

**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 Executive Director of the Department of Natural Resources, Joel Ferry, agrees with the responses 6A) through 6E) above and has no further comments to add.

#### 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:**

S.B. 3, Item 543, 2023 General Session	Subsection 63G-3-201(2)	
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#### Agency Authorization Information

<b>Agency head or designee and title:</b>	Candice Hasenyager, Division Director	<b>Date:</b>	08/29/2023
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#### R653. Natural Resources, Water Resources.

##### **R653-12. 2023 Grant Money for Wasatch Front Aqueduct Resilience Projects.**

###### **R653-12-1. Purpose.**

(1) The Legislature appropriated \$50,000,000 for aqueduct resilience projects located along the Wasatch Front.

(2) This rule sets forth the procedures and requirements for issuance and receipt of grant funds for aqueduct resilience projects.

###### **R653-12-2. Definitions.**

(1) As used in this section:

(2) "Applicant" means a culinary water provider who owns or operates an aqueduct which crosses the Wasatch Fault Zone.

(3) "Aqueduct" means a closed pressurized pipeline carrying culinary water supply that is buried underground, although there may be short portions that are above ground.

(4) "Director" means the Director of the Department of Natural Resources.

(5) "Division" means the Division of Water Resources.

(6) "Project" means a plan to study, design, or construct seismic resiliency improvements to an aqueduct which crosses the Wasatch Fault Zone and which supplies culinary water to a minimum of 20,000 Utah residents.

(7) "Wasatch Fault Zone" means the geographic area of Utah described on the division's website at [water.utah.gov](http://water.utah.gov).

##### **R653-12-3. Grants for Wasatch Front Aqueduct Resilience Projects.**

(1) The director may issue a grant to an applicant to fund a project for the study, design, or construction of seismic resiliency improvements to aqueducts crossing the Wasatch Fault Zone.

(2) To be eligible for a grant award, a project must propose seismic improvements to an aqueduct which:

(a) crosses the Wasatch Fault Zone; and

(b) delivers culinary water to a minimum of 20,000 people.

(3) Subject to the other provisions of this rule, a grant may not exceed the following amounts for the costs associated with the project:

(a) 75% of the total study or design costs of a project;

or

(b) 50% of the total construction costs of a project.

##### **R653-12-4. Applications for Grants.**

(1) To obtain a grant under this rule, an applicant shall submit an application to the division on or before the application deadline date established by the division.

(2) Each applicant shall apply to the division in writing upon forms available from the division.

(a) An application submitted to the division shall:

(i) be signed and dated by an authorized representative of the applicant;

(ii) include the following information:

(A) a detailed cost estimate of the proposed project study, design, or construction prepared by a licensed professional engineer;

(B) a map showing the location of the proposed project;

(C) an estimated timeline for the project, including the projected start date and expected completion date;

(D) applicant's verification that the information provided in the application is accurate and any estimates or projections submitted are based on sound professional judgment and the best available data; and

(E) additional information required on the application.

##### **R653-12-5. Application Review and Prioritization.**

(1) The division shall:

(a) review and prioritize an application submitted under Section R653-12-4; and

(b) make recommendations to the director on which applicants should be awarded a grant under this rule.

(2) In reviewing and prioritizing applications submitted under Subsection (1), the division:

(a) may contact an applicant to:

(i) verify information in the application;

(ii) seek clarifications and supplemental information; and

(iii) address and correct anomalies and inconsistencies in the application; and

(b) shall review and evaluate the applications based on the following:

(i) the grant amount requested in comparison to the number of Utah residents served by the aqueduct;

## NOTICES OF 120-DAY (EMERGENCY) RULES

(ii) the existence or lack of alternative culinary water sources or systems available to the Utah residents served by the aqueduct;

(iii) the degree of risk of seismic damage to the aqueduct and the resulting impacts to the culinary water supply;

(iv) the estimated timeline to complete needed studies for the proposed project;

(v) the estimated timeline for the design and construction of the proposed project;

(vi) the estimated risk reduction accomplished by the proposed project; and

(vii) the existence of other available funding sources to complete the project.

(3)(a) The division will prioritize each application based on its evaluation of the criteria identified in Subsection (2)(b).

(b) The prioritization will form the basis for the division's recommendation to the director.

### **R653-12-6. Grant Award and Agreement.**

(1) As a condition to receiving a grant under this section, the applicant shall enter into a contract with the division for use of the grant money.

(2) The contract with the division shall be executed no later than sixty (60) days following the grant award.

### **KEY: Wasatch front aqueduct resilience funding**

**Date of Last Change: August 30, 2023**

**Authorizing, and Implemented or Interpreted Law: S.B. 3, Item 543, 2023 General Session**

**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:	R277-704	Filing ID: 53791
Effective Date:	08/23/2023	

### 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:
R277-704. Financial and Economic Literacy: Integration into Core Curriculum
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; and Section 53E-3-505, which directs the Board to work with financial and economic experts and private and non-profit entities to develop and integrate financial and economic literacy and skills into the public school curriculum at all appropriate levels.

#### 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 provides for funding appropriated by the Legislature to develop and integrate financial and economic literacy concepts effectively into the core curriculum in various programs and at various grade levels; provides for educator professional development using business and community expertise; provides curriculum resources and assessments for financial and economic literacy; provides simple and consistent messaging to students that becomes part of the core curriculum that reinforces the importance of financial and economic literacy for students and parents; and helps students and parents to locate and use school and community resources to improve financial and economic literacy among students and families. 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>	08/23/2023
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**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

<b>Rule Number:</b>	<b>R331-20</b>	<b>Filing ID:</b>	<b>50801</b>
<b>Effective Date:</b>	<b>08/16/2023</b>		

**Agency Information**

<b>1. Department:</b>	Financial Institutions	
<b>Agency:</b>	Administration	
<b>Room number:</b>	201	
<b>Street address:</b>	324 S State St	
<b>City, state and zip:</b>	Salt Lake City, UT 84111-2393	
<b>Mailing address:</b>	PO Box 146800	
<b>City, state and zip:</b>	Salt Lake City, UT 84114-6800	
<b>Contact persons:</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Paul Allred	801-538-8855	pallred@utah.gov
<b>Please address questions regarding information on this notice to the persons listed above.</b>		

**General Information**

<b>2. Rule catchline:</b>
R331-20. Designation of Adjudicative Proceedings as Informal
<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 63G-4-202 authorizes the Department of Financial Institutions (Department) to designate categories of adjudicative proceedings.
This rule states that all proceedings which are subject to the requirements of the Utah Administrative Procedures Act are designated as informal proceedings.
<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 supporting or opposing written comments have been received by the agency concerning this rule.

**5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:**

The Department has determined that: a) the use of the informal procedures does not violate any procedural requirement imposed by law; b) the rights of the parties to the proceedings will be reasonably protected by the informal procedures; c) the Department's administrative efficiency will be enhanced by the designation; and d) the cost of formal adjudicative proceedings outweighs the potential benefits to the public of a formal adjudicative proceeding. Therefore, this rule should be continued.

**Agency Authorization Information**

<b>Agency head or designee and title:</b>	Darryle Rude, Commissioner	<b>Date:</b>	08/16/2023
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**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

<b>Rule Number:</b>	<b>R331-21</b>	<b>Filing ID:</b>	<b>50802</b>
<b>Effective Date:</b>	<b>08/16/2023</b>		

**Agency Information**

<b>1. Department:</b>	Financial Institutions	
<b>Agency:</b>	Administration	
<b>Room number:</b>	201	
<b>Street address:</b>	324 S State St	
<b>City, state and zip:</b>	Salt Lake City, UT 84111-2393	
<b>Mailing address:</b>	PO Box 146800	
<b>City, state and zip:</b>	Salt Lake City, UT 84114-6800	
<b>Contact persons:</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Paul Allred	801-538-8855	pallred@utah.gov
<b>Please address questions regarding information on this notice to the persons listed above.</b>		

**General Information**

<b>2. Rule catchline:</b>
R331-21. Rule Governing Establishment of and Participation in Collective Investment Funds by Trust Companies
<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 7-5-13 authorizes establishment of collective investment funds for persons permitted to engage in the trust business.

**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 supporting or opposing written comments have been received by the agency concerning this rule.

**5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:**

This rule authorizes the establishment of and participation in collective investment funds by trust companies subject to the jurisdiction of the Department. There is presently one trust company that must still comply with this rule. Therefore, this rule should be continued.

**Agency Authorization Information**

<b>Agency head or designee and title:</b>	Darryle Rude, Commissioner	<b>Date:</b>	08/16/2023
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**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

<b>Rule Number:</b>	<b>R331-24</b>	<b>Filing ID:</b>	<b>50804</b>
<b>Effective Date:</b>	<b>08/16/2023</b>		

**Agency Information**

<b>1. Department:</b>	Financial Institutions	
<b>Agency:</b>	Administration	
<b>Room number:</b>	201	
<b>Street address:</b>	324 S State St	
<b>City, state and zip:</b>	Salt Lake City, UT 84111-2393	
<b>Mailing address:</b>	PO Box 146800	
<b>City, state and zip:</b>	Salt Lake City, UT 84114-6800	
<b>Contact persons:</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Paul Allred	801-538-8855	pallred@utah.gov
<b>Please address questions regarding information on this notice to the persons listed above.</b>		

**General Information**

<b>2. Rule catchline:</b>
R331-24. Accounting for Accrued Uncollected Income by Banks and Industrial Loan Corporations

**3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:**

Subsection 7-1-301(14) authorizes the commissioner to require financial institutions to keep books and records of the transactions and accounts of the institutions' true pecuniary condition. These requirements must be consistent with generally accepted accounting principles for financial institutions.

This rule establishes some specific accounting requirements for accrued uncollected income.

**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 supporting or opposing written comments have been received by the agency concerning this rule.

**5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:**

This rule establishes accounting requirements for accrued uncollected income to ensure accurate accounting of the income of banks and industrial loan corporations. Therefore, this rule should be continued.

**Agency Authorization Information**

<b>Agency head or designee and title:</b>	Darryle Rude, Commissioner	<b>Date:</b>	08/16/2023
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**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

<b>Rule Number:</b>	<b>R398-4</b>	<b>Filing ID:</b>	<b>54206</b>
<b>Effective Date:</b>	<b>08/28/2023</b>		

**Agency Information**

<b>1. Department:</b>	Health and Human Services		
<b>Agency:</b>	Family Health, Children with Special Health Care Needs		
<b>Room number:</b>	3032		
<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 144610		
<b>City, state and zip:</b>	Salt Lake City, UT 84114-4610		

## FIVE-YEAR NOTICES OF REVIEW AND STATEMENTS OF CONTINUATION

Contact persons:		
Name:	Phone:	Email:
Alexis Weight	801-273-2956	abweight@utah.gov
Stephanie McVicar	801-273-6600	smcvicar@utah.gov
Please address questions regarding information on this notice to the persons listed above.		

## General Information

2. Rule catchline:
R398-4. Cytomegalovirus Public Health Initiative
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-7-105 requires this rule to clarify when a newborn infant hearing screening requires testing for Cytomegalovirus (CMV), medical practitioner reporting requirements, and under what circumstances a newborn infant may not fall under the CMV testing requirements.
4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:
No written comments were received.
5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:
Section 26B-7-105 was created to provide public education and testing for Cytomegalovirus (CMV). Therefore, this rule should be continued.

## Agency Authorization Information

Agency head or designee and title:	Tracy S. Gruber, Executive Director	Date:	08/25/2023
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## FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

Rule Number:	R655-13	Filing ID:	51722
Effective Date:	08/24/2023		

## Agency Information

1. Department:	Natural Resources
Agency:	Water Rights
Room number:	220
Street address:	1594 W North Temple

City, state and zip:	Salt Lake City, UT 84116	
Contact persons:		
Name:	Phone:	Email:
Marianne Burbidge	801-538-7370	marianneburbidge@utah.gov
Please address questions regarding information on this notice to the persons listed above.		

## General Information

2. Rule catchline:
R655-13. Stream Alteration
3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:
Subsection 73-2-1(4)(d) establishes and clarifies the procedures necessary to obtain approval by the state engineer for any project that proposes to alter a natural stream within the state. Approval does not grant access, authorize trespass, or supersede property rights.
Additional procedures may be required to comply with other governing state statute, federal law, federal regulation, or local ordinance.
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 comments have been received in 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 still required for processing and acceptance by the State Engineer. Therefore, this rule should be continued.

## Agency Authorization Information

Agency head or designee and title:	Teresa Wilhelmsen, State Engineer/Director	Date:	08/24/2023
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## FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

Rule Number:	R907-64	Filing ID:	52094
Effective Date:	08/16/2023		

## Agency Information

1. Department:	Transportation
Agency:	Administration
Room no.:	Administrative Suite, 1st Floor

<b>Building:</b>	Calvin Rampton Building	
<b>Street address:</b>	4501 S 2700 W	
<b>City, state and zip:</b>	Taylorsville, UT 84129	
<b>Mailing address:</b>	PO Box 148455	
<b>City, state and zip:</b>	Salt Lake City, UT 84114-8455	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Name:</b>
Leif Elder	801-580-8296	Leif Elder
Becky Lewis	801-965-4026	Becky Lewis
James Palmer	801-965-4197	James Palmer
Lori Edwards	801-965-4048	Lori Edwards
<b>Please address questions regarding information on this notice to the persons listed above.</b>		

**General Information**

<b>2. Rule catchline:</b>
R907-64. Longitudinal and Wireless Access to Interstate System Rights-of-Way for Installation of Telecommunication Facilities
<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 72-7-108(2)(a) allows a telecommunication facility provider longitudinal access to the right-of-way of a highway on the interstate system for the installation, operation, and maintenance of a telecommunication facility, generally. This rule facilitates that access.
<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 Transportation (Department) has not received a written comment during and since the last five-year review of this rule from interested persons supporting or opposing this rule.
<b>5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:</b>
Subsection 72-7-108(7) requires the Department to make and maintain this rule. Therefore, this rule should be continued.

**Agency Authorization Information**

<b>Agency head or designee and title:</b>	Carlos M Bracerias, PE, Executive Director	<b>Date:</b>	08/08/2023
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**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

<b>Rule Number:</b>	<b>R907-65</b>	<b>Filing ID:</b>	<b>52102</b>
<b>Effective Date:</b>	<b>08/16/2023</b>		

**Agency Information**

<b>1. Department:</b>	Transportation	
<b>Agency:</b>	Administration	
<b>Room no.:</b>	Administrative Suite, 1st Floor	
<b>Building:</b>	Calvin Rampton Building	
<b>Street address:</b>	4501 S 2700 W	
<b>City, state and zip:</b>	Taylorsville, UT 84129	
<b>Mailing address:</b>	PO Box 148455	
<b>City, state and zip:</b>	Salt Lake City, UT 84114-8455	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Name:</b>
Leif Elder	801-580-8296	Leif Elder
Becky Lewis	801-965-4026	Becky Lewis
James Palmer	801-965-4197	James Palmer
Lori Edwards	801-965-4048	Lori Edwards
<b>Please address questions regarding information on this notice to the persons listed above.</b>		

**General Information**

<b>2. Rule catchline:</b>
R907-65. Compensation Schedule for Longitudinal Access to Interstate Highway Rights-of-Way for Installation of Telecommunications Facilities
<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 72-7-108(3)(c) requires the Department of Transportation (Department) to establish a schedule of rates of compensation for longitudinal access granted

FIVE-YEAR NOTICES OF REVIEW AND STATEMENTS OF CONTINUATION

under that section and make a rule that controls the process.

**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 has not received a written comment during and since the last five-year review of this rule from interested persons supporting or opposing this rule:

**5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:**

Subsection 72-7-108(3)(c) requires the Department to make and maintain this rule. Therefore, this rule should be continued.

**Agency Authorization Information**

<b>Agency head or designee and title:</b>	Carlos M Braceras, PE, Executive Director	<b>Date:</b>	08/08/2023
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**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

<b>Rule Number:</b>	<b>R926-10</b>	<b>Filing ID:</b>	<b>52139</b>
<b>Effective Date:</b>	<b>08/16/2023</b>		

**Agency Information**

<b>1. Department:</b>	Transportation	
<b>Agency:</b>	Program Development	
<b>Room no.:</b>	Administrative Suite, 1st Floor	
<b>Building:</b>	Calvin Rampton Building	
<b>Street address:</b>	4501 S 2700 W	
<b>City, state and zip:</b>	Taylorsville, UT 84129	
<b>Mailing address:</b>	PO Box 148455	
<b>City, state and zip:</b>	Salt Lake City, UT 84114-8455	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Name:</b>
Leif Elder	801-580-8296	Leif Elder

Becky Lewis	801-965-4026	Becky Lewis
James Palmer	801-965-4197	James Palmer
Lori Edwards	801-965-4048	Lori Edwards

**Please address questions regarding information on this notice to the persons listed above.**

**General Information**

<b>2. Rule catchline:</b>
R926-10. Tollway Development Agreements
<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>
Sections 72-2-120, 72-6-118, and 72-6-204 authorize the Department of Transportation (Department) to make 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>
The Department has not received a written comment during and since the last five-year review of this rule from interested persons supporting or opposing this rule.
<b>5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:</b>
Sections 72-6-118 and 72-6-204 require the Department to make and maintain this administrative rule. Therefore, this rule should be continued.

**Agency Authorization Information**

<b>Agency head or designee and title:</b>	Carlos M Braceras, PE, Executive Director	<b>Date:</b>	08/08/2023
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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		
<b>Rule Number:</b>	<b>R940-2</b>	<b>Filing ID: 52152</b>
<b>New Deadline Date:</b>	<b>12/28/2023</b>	

### Agency Information

<b>1. Department:</b>	Transportation Commission	
<b>Agency:</b>	Administration	
<b>Room number:</b>	Administrative Suite, 1st Floor	
<b>Building:</b>	Calvin Rampton Building	
<b>Street address:</b>	4501 S 2700 W	
<b>City, state and zip:</b>	Taylorsville, UT 84129	
<b>Mailing address:</b>	PO Box 148455	
<b>City, state and zip:</b>	Salt Lake City, UT 84114-8455	
<b>Contact persons:</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Leif Elder	801-580-8296	Leif Elder
Becky Lewis	801-965-4026	Becky Lewis
James Palmer	801-965-4197	James Palmer
Lori Edwards	801-965-4048	Lori Edwards
<b>Please address questions regarding information on this notice to the persons listed above.</b>		

### General Information

<b>2. Rule catchline:</b>
R940-2. Approval of Tollway Development Agreements
<b>3. Reason for requesting the extension:</b>
This is a Transportation Commission (Commission) rule and they meet once monthly except for July. The Commission must review this rule, and it has not had space on an agenda to review this rule yet this year. The Commission needs more time to perform a proper review.

### Agency Authorization Information

<b>Agency head or designee and title:</b>	Carlos M Bracerias, PE, Executive Director	<b>Date:</b>	08/08/2023
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NOTICE OF FIVE-YEAR REVIEW EXTENSION		
<b>Rule Number:</b>	<b>R940-4</b>	<b>Filing ID: 52153</b>
<b>New Deadline Date:</b>	<b>12/28/2023</b>	

### Agency Information

<b>1. Department:</b>	Transportation Commission		
<b>Agency:</b>	Administration		
<b>Room number:</b>	Administrative Suite, 1st Floor		
<b>Building:</b>	Calvin Rampton Building		
<b>Street address:</b>	4501 S 2700 W		
<b>City, state and zip:</b>	Taylorsville, UT 84129		
<b>Mailing address:</b>	PO Box 148455		
<b>City, state and zip:</b>	Salt Lake City, UT 84114-8455		



## NOTICES OF FIVE-YEAR REVIEW EXTENSIONS

Contact persons:		
Name:	Phone:	Email:
Leif Elder	801-580-8296	Leif Elder
Becky Lewis	801-965-4026	Becky Lewis
James Palmer	801-965-4197	James Palmer
Lori Edwards	801-965-4048	Lori Edwards
Please address questions regarding information on this notice to the persons listed above.		

## General Information

<b>2. Rule catchline:</b>
R940-4. Airports of Regional Significance
<b>3. Reason for requesting the extension:</b>
This is a Transportation Commission (Commission) rule and they meet once monthly except for July. The Commission must review this rule, and it has not had space on an agenda to review this rule yet this year. The Commission needs more time to perform a proper review.

## Agency Authorization Information

<b>Agency head or designee and title:</b>	Carlos M Braceras, PE, Executive Director	<b>Date:</b>	08/08/2023
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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

#### Conservation Commission

No. 55524 (Amendment) R64-1: Agriculture Resource Development Loans (ARDL)  
Published: 07/15/2023  
Effective: 08/29/2023

#### Plant Industry

No. 55502 (Repeal) R68-16: Quarantine Pertaining to Pine Shoot Beetle, *Tomicus piniperda*  
Published: 07/15/2023  
Effective: 08/29/2023

### Commerce

#### Real Estate

No. 55454 (Amendment) R162-2f: Real Estate Licensing and Practices Rules  
Published: 07/01/2023  
Effective: 08/16/2023

### Cultural and Community Engagement

#### Pete Suazo Utah Athletic Commission

No. 55449 (New Rule) R457-1: Pete Suazo Utah Athletic Commission Act Rule  
Published: 06/15/2023  
Effective: 08/18/2023

### Education

#### Administration

No. 55515 (New Rule) R277-314: Provider-Specific Licenses  
Published: 07/15/2023  
Effective: 08/22/2023

No. 55516 (Amendment) R277-461: Elementary School Counselor Grant Program

Published: 07/15/2023  
Effective: 08/22/2023

No. 55517 (Repeal) R277-522: Entry Years Enhancements (EYE) for Quality Teaching - Level 1 Teachers

Published: 07/15/2023  
Effective: 08/22/2023

No. 55518 (Amendment) R277-618: Homeless Teen Center Grant Program

Published: 07/15/2023  
Effective: 08/22/2023

No. 55519 (Amendment) R277-721: PRIME Pilot Program

Published: 07/15/2023  
Effective: 08/22/2023

No. 55520 (Amendment) R277-750: Education Programs for Students with Disabilities

Published: 07/15/2023  
Effective: 08/22/2023

No. 55493 (Amendment) R277-920: School Improvement and Leadership Development

Published: 07/01/2023  
Effective: 08/30/2023

### Government Operations

#### Finance

No. 55521 (Amendment) R25-7: Travel-Related Reimbursements for State Travelers  
Published: 07/15/2023  
Effective: 08/22/2023

## NOTICES OF RULE EFFECTIVE DATES

### Records Committee

No. 55398 (Amendment) R35-1a: State Records Committee Definitions  
Published: 06/15/2023  
Effective: 08/23/2023

No. 55399 (Amendment) R35-2: Scheduling and Declining Hearings  
Published: 06/15/2023  
Effective: 08/23/2023

No. 55400 (Amendment) R35-4: Compliance with State Records Committee Decisions and Orders  
Published: 06/15/2023  
Effective: 08/23/2023

No. 55401 (Amendment) R35-5: Subpoenas Issued by the Records Committee  
Published: 06/15/2023  
Effective: 08/23/2023

No. 55402 (Amendment) R35-6: Expedited Hearing  
Published: 06/15/2023  
Effective: 08/23/2023

### Health and Human Services

Disease Control and Prevention, Health Promotion  
No. 55390 (Amendment) R384-415: Requirements to Sell Electronic Cigarette Products  
Published: 05/15/2023  
Effective: 09/12/2023

No. 55390 (Change in Proposed Rule) R384-415: Requirements to Sell Electronic Cigarette Products  
Published: 06/15/2023  
Effective: 09/12/2023

Population Health, Environmental Health  
No. 55392 (Repeal and Reenact) R392-302: Design, Construction and Operation of Public Pools  
Published: 06/01/2023  
Effective: 08/21/2023

Health Care Facility Licensing  
No. 55415 (Amendment) R432-13: Freestanding Ambulatory Surgical Center Construction Rule  
Published: 06/01/2023  
Effective: 08/10/2023

No. 55494 (Amendment) R432-35: Background Screening -- Health Facilities  
Published: 07/01/2023  
Effective: 08/22/2023

No. 55434 (Amendment) R432-500: Freestanding Ambulatory Surgical Center Rules  
Published: 07/01/2023  
Effective: 08/10/2023

### Insurance

#### Administration

No. 55511 (Repeal and Reenact) R590-191: Unfair Life Insurance Claims Settlement Practices Rule  
Published: 07/15/2023  
Effective: 08/22/2023

No. 55512 (Repeal and Reenact) R590-192: Unfair Accident and Health Claims Settlement Practices  
Published: 07/15/2023  
Effective: 08/22/2023

No. 55513 (Repeal) R590-248: Mandatory Fraud Reporting Rule  
Published: 07/15/2023  
Effective: 08/22/2023

#### Title and Escrow Commission

No. 55514 (Repeal) R592-15: Schedule of Minimum Charges for Escrow Services  
Published: 07/15/2023  
Effective: 08/21/2023

### Natural Resources

#### Outdoor Recreation

No. 55500 (New Rule) R650-101: Procedures for Applications to Receive Funds from the Zion National Park Support Programs Restricted Account  
Published: 07/15/2023  
Effective: 08/21/2023

No. 55445 (New Rule) R650-301: Off Highway Vehicle Recreation Grant Program  
Published: 06/15/2023  
Effective: 08/10/2023

#### Public Lands Policy Coordinating Office

No. 55457 (New Rule) R654-1: Archaeological Permits  
Published: 07/15/2023  
Effective: 09/05/2023

#### Public Lands Policy Coordination Office

##### Administration

No. 55443 (Repeal) R694-1: Archeological Permits  
Published: 07/15/2023  
Effective: 09/05/2023

### Public Safety

#### Driver License

No. 55526 (Repeal) R708-49: Temporary Identification Card  
Published: 08/01/2023  
Effective: 09/11/2023

Transportation

Administration

No. 55508 (Amendment) R907-67: Debarment of  
Contractors from Work on Department Projects -- Reasons

Published: 07/15/2023

Effective: 08/23/2023

Workforce Services

Housing and Community Development

No. 55499 (Amendment) R990-300: Review Process for  
Plan for Moderate Income Housing Reports

Published: 07/01/2023

Effective: 08/24/2023

**End of the Notices of Rule Effective Dates Section**

