

# 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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## NOTICES OF PROPOSED RULES

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A state agency may file a **PROPOSED RULE** when it determines the need for a substantive change to an existing rule. With a **NOTICE OF PROPOSED RULE**, an agency may create a new rule, amend an existing rule, repeal an existing rule, or repeal an existing rule and reenact a new rule. Filings received between October 17, 2023, 12:00 a.m., and November 01, 2023, 11:59 p.m. are included in this, the November 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 December 15, 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 March 14, 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: New		
Rule or Section Number:	R68-40	Filing ID: 55857

#### 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
Cody James	385-515-2485	codyjames@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>
R68-40. Medical Cannabis Pharmacy
<b>3. Purpose of the new rule or reason for the change:</b>
The Department of Agriculture and Food (Department) is taking over management of medical cannabis pharmacy facilities following changes passed in H.B. 72 during the 2023 General Session.
These rules will provide guidelines for the Department's management of pharmacies and are primarily based on rules formerly used by the Department of Health and Human Services under Title R383.
<b>4. Summary of the new rule or change:</b>
This new rule provides operating standards for medical cannabis pharmacies, including inventory requirements, security standards, transportation, and waste and disposal requirements.
This rule also provides requirements related to drive through and curbside service and targeted marketing related to pharmacies.

This rule details criteria the Department will follow in issuing additional pharmacy licenses and sets pharmacy agent duties and agent card application requirements.

#### 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 anticipated cost or savings to the state budget.
The costs of program management previously incurred by the Department of Health and Human Services prior to the implementation of H.B. 72 (2023) will now be incurred by the Department.
<b>B) Local governments:</b>
Local governments will not be impact by this rule because local governments do not participate in the medical cannabis program.
<b>C) Small businesses</b> ("small business" means a business employing 1-49 persons):
There is no anticipated costs or savings to small businesses.
The program is paid for by licensing fees which will continue to support the program and will not change. Fee revenue will be transferred to the Department rather than the Department of Health and Human Services.
<b>D) Non-small businesses</b> ("non-small business" means a business employing 50 or more persons):
There is no anticipated costs or savings to non-small businesses.
The program is paid for by licensing fees which will continue to support the program and will not change. Fee revenue will be transferred to the Department rather than the Department of Health and Human Services.
<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> ):
Other persons will not be impacted by this rule because they do not participate in the medical cannabis program.
<b>F) Compliance costs for affected persons</b> (How much will it cost an impacted entity to adhere to this rule or its changes?):
Compliance costs for affected persons will not change.

Program requirements will generally be the same but will be managed by the Department. Fees are not changing under this new 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 Commissioner of the Department of Agriculture and Food, Craig W Butters, 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 4, Chapter 41a	Section 4-2-103	
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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:** 12/15/2023

**9. This rule change MAY become effective on:** 12/22/2023

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>	10/16/2023
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**R68. Agriculture and Food, Plant Industry.**

**R68-40. Medical Cannabis Pharmacy.**

**R68-40-1. Authority and Purpose.**

(1) Title 4, Chapter 41a, Cannabis Production Establishments and Pharmacies and Subsection 4-2-103(1)(i) authorize this rule.

(2) This rule establishes operating and licensing standards and requirements to be followed by medical cannabis pharmacies and their employees.

**R68-40-2. Definitions.**

(1) "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) "Card" means any type of medical cannabis card or registration card, whichever applies, authorized under Title 26B, Chapter 4, Part 2 Cannabinoid Research and Medical Cannabis.

(3) "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) "Courier agent" means a medical cannabis courier agent.

(5) "Department" means the Utah Department of Agriculture and Food.

(6) "DHHS" means The Utah Department of Health and Human Services.

(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.

## NOTICES OF PROPOSED RULES

(9)(a) "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.

(b) Educational material includes:

(i) live or recorded content of an educational event; or

(ii) any printed educational material such as a placard, poster, fact sheet, book, pamphlet, flyer, or business card.

(10) "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.

(11) "Pharmacy agent" means a medical cannabis pharmacy agent.

(12) "PIC" means a pharmacist-in-charge who oversees the operation and generally supervises a medical cannabis pharmacy.

(13) "PMP" means a medical cannabis pharmacy medical provider

(14) "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.

(15) "Recreational disposition" means:

(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.

(16) "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.

(17) "State electronic verification system" means the same as the term is defined in Section 26B-4-202 and Subsection 4-41a-102(44).

(18) "Targeted marketing" means the same as the term is defined in Subsection 26B-4-201(55).

(19) "Utah resident" means an individual who has established a domicile in Utah.

### **R68-40-3. General Operating Standards.**

(1) In addition to general operating standards established in Title 4, Chapter 41a, Cannabis Production Establishments and Pharmacies, 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 that:

(i) includes employee name, department registration license classification and license number, registration expiration date, and work schedule; and

(ii) be 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, readily available and retrievable to medical cannabis pharmacy personnel:

(i) Title 4, Chapter 41a, Cannabis Production Establishments and Pharmacies;

(ii) Title 26B, Chapter 4, Part 2, Cannabinoid Research and Medical Cannabis; and

(iii) applicable administrative rules.

(2) A medical cannabis pharmacy 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 open for a cardholder to buy a medical cannabis product and medical devices 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 cardholders when the medical cannabis pharmacy will resume normal hours of operation. Procedures may include telephone system messages and conspicuously posted signs.

(5)(a) 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.

(b) A PMP or pharmacy agent shall be present to accept the delivery.

(c) 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 confidential cardholder data and information stored in the Electronic Verification System to ensure that access to and use of the data and information is limited to those individuals and purposes authorized under Title 26B, Chapter 4, Part 2, Cannabinoid Research and Medical Cannabis and this rule.

(7) A medical cannabis pharmacy may not dispense expired, damaged, deteriorated, misbranded, adulterated, or opened medical cannabis products or medical cannabis devices.

(8)(a) A medical cannabis pharmacy license may not be assigned or transferred but a licensee may make changes to its ownership or company structure.

(b) 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.

(c) When making a change to its ownership, a licensee may not:

(i) 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

(ii) 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 Subsection 4-41a-1001(3)(c) 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;
- (b) payment of an application fee that covers the cost of the application review;
- (c) a description of how the medical cannabis pharmacy maintains its compliance with the minimum standards for licensure and operation of the medical cannabis pharmacy; and
- (d) the results of any formal investigation or adverse action taken against the new owners or individuals with 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.

(10) 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) A medical cannabis pharmacy may be in the same building as a medical clinic that offers medical cannabis evaluations under the following conditions:

- (a) the building owner 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.

#### **R68-40-4. Operating Plan.**

(1) A medical cannabis pharmacy license application shall include an operating plan that at a minimum, consists of the following:

- (a) the information requested in the application;
- (b) the information listed in Section 4-41a-1004; and
- (c) a plan to comply with applicable operating standards, statutes, and administrative rules, including:
  - (i) Title 26B, Chapter 4, Part 2, Cannabinoid Research and Medical Cannabis, Title 4, Chapter 41a, Cannabis Production Establishments and Pharmacies; and
  - (ii) applicable administrative rules.

(2)(a) 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.

(b) 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)(a) Once the department issues a license, any change to a medical cannabis pharmacy's operating plan is subject to the approval of the department.

(b) 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.

#### **R68-40-5. Pharmacist-In-Charge.**

(1)(a) PICs 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) Each medical cannabis pharmacy shall have a unique email address to be used for official notices, self-audits, or alerts initiated by the department.

(b) The medical cannabis pharmacy shall identify the email address in their initial license application and inform the department within seven calendar days if the email address is changed.

(c) The email address may not be used to send any patient information.

(3) The duties of the PIC shall include:

(a) ensure that PMPs and pharmacy agents appropriately interpret and distribute a recommendation from a recommending medical provider in a suitable container appropriately labeled for 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 recommending medical provider;

(c) 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;

(d) ensure that medical cannabis pharmacy personnel receive necessary education and training;

(e) establish policies for procurement of medical cannabis products, medical cannabis devices, and educational material sold at the facility;

(f) distribute and dispose of medical cannabis products and medical cannabis devices from a medical cannabis pharmacy;

(g) ensure appropriate storage of medical cannabis products and medical cannabis devices;

(h) maintain a complete and accurate record of products and transactions of the medical cannabis pharmacy necessary to maintain accurate control and accountability for materials required by applicable state laws;

(i) establish effective control against theft or diversion of medical cannabis products or medical cannabis devices, and record of the product;

(j) ensure legal operation of the medical cannabis pharmacy, including inspections, and other requirements, of state law;

(k) implement an ongoing quality assurance program that monitors the performance of the personnel at the medical cannabis pharmacy;

(l) ensure that the point-of-sale is in working order;

(m) ensure that relevant information is submitted to the state's Inventory Control System and Electronic Verification System in a timely manner;

(n) ensure that medical cannabis pharmacy personnel have appropriate licensure and registration;

(o) 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; and

(p) 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.

(4) A PMP cannot be designated as PIC for more than two medical cannabis pharmacies at one time.

**R68-40-6. Supervision.**

(1) A medical cannabis pharmacy licensee shall ensure that the pharmacy is always under the actual charge of the medical cannabis pharmacy's PIC as well as under the direct supervision of at least one supervising PMP, who is physically present 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 available for contact within a reasonable period with the supervising PMP.

**R68-40-7. Security Standards.**

(1) A medical cannabis pharmacy shall comply with security standards established in Section 4-41a-1101 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 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, that provides coverage of entrances to and exits from limited access areas, 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 that records continuously, 24 hours a day, 7 days a week or be motion activated;

(e) a video camera at each point-of-sale and product destruction or disposal location that 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:

(i) a surveillance system storage device used for locally stored footage shall be secured in the facility in a lock box, cabinet, closet, or secured in another manner, to protect from employee tampering or criminal theft; and

(ii) access to footage stored on a remote server shall be restricted to protect from employee tampering;

(g) a failure notification system that provides an audible and visual notification of failure in the electronic monitoring system;

(h) 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;

(i) a date and time stamp embedded on video camera recordings that is set correctly; and

(j) a panic alarm in the interior of the facility that 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 or theft of products and to ensure the safety of employees and cardholders, shall include measures to:

(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) keep safes, vaults, and any other equipment or areas used for storage, including before disposal of the product, securely locked and protected during times other than the time required to remove or replace medical cannabis a product or medical cannabis devices;

(c) keep locks and security equipment in good working order and test that equipment is functioning properly at least two times per calendar year;

(d) prohibit keys from being left in locks, stored, or placed in a location accessible to any person other than specifically authorized personnel;

(e) prohibit accessibility of security measures such as combination numbers, passwords, or electronic, or biometric security systems, to any person other than specifically authorized personnel;

(f) ensure that the outside perimeter of the building is sufficiently lit to facilitate surveillance;

(g) ensure that medical cannabis products and medical cannabis devices are kept out of plain sight and are not visible from a public place;

(h) secure each product following any instance of diversion, theft, or loss of product, and conduct an assessment to determine whether additional safeguards are necessary;

(i) ensure safe cash handling and cash transportation to prevent theft, loss, and associated risk to the safety of employees, customers, and the general public at any medical cannabis pharmacy where a cash transaction is conducted; and

(j) prevent an individual from remaining on the premise of the medical cannabis pharmacy if they are not engaging in activity permitted by Title 26B, Chapter 4, Part 2, Cannabinoid Research and Medical Cannabis or Title 4, Chapter 41a, Medical Cannabis Production Establishments and Pharmacies.

(7) A medical cannabis pharmacy may display, in a securely locked case, a sample of each product offered:

(a) the display case shall be transparent; and

(b) an authorized PMP or pharmacy agent may remove an example of medical cannabis or a medical cannabis device from the case and provide it to a cardholder for inspection, provided:

(i) the patient does not consume or otherwise use the sample;

(ii) 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

(iii) the medical cannabis product is destroyed in compliance with applicable laws and the pharmacy's standard operating procedures.

(8) Inside the medical cannabis pharmacy, medical cannabis product and medical cannabis devices, shall be stored in a limited access area during non-business hours.

(9)(a) While inside the medical cannabis pharmacy, each employee shall wear an identification tag or similar form of identification, to clearly identify them to the public.

(b) The tag shall list the employees position at the medical cannabis pharmacy as a PMP or pharmacy agent.

(10) A medical cannabis pharmacy shall include the following areas:

(a) public waiting area;

(b) cardholder-only area; and

(c) limited access area.

(11) A medical cannabis pharmacy shall allow only a medical cannabis cardholder, PMP, pharmacy agent, authorized vendor, contactor, or visitor, to have access to the cardholder area of the medical cannabis pharmacy.

(12)(a) An outside vendor, contractor, or a visitor shall obtain a visitor identification badge before entering the cardholder-only, or limited access area of a medical cannabis pharmacy.

(b) The badge shall be worn at all times when on the premise of the medical cannabis pharmacy.

(c) Each visitor shall be escorted at all times by an employee authorized to enter the medical cannabis pharmacy.

(d) Each visitor shall log in and out and that log shall be available for inspection by the department.

(e) Each visitor shall return their badge to the medical cannabis pharmacy upon exit.

(13)(a) A medical cannabis pharmacy shall keep product that is inside the medical cannabis pharmacy 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 under Subsection (13)(a) shall:

(i) be identified by the posting of a sign that is a minimum of 12" x 12;" and

(ii) states: "Limited Access Area," in lettering no smaller than one inch in height.

(14) 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.

(15) Only a PMP or a pharmacy agent shall have access to the medical cannabis pharmacy when the medical cannabis pharmacy is closed to the public.

(16)(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 initial or identification code under Subsection (16)(a):

(i) shall be unique, to ensure that each PMP or pharmacy agent can be identified; and

(ii) may not be used for two or more PMPs or pharmacy agents.

#### **R68-40-8. Inventory.**

(1) A medical cannabis pharmacy shall inventory and store medical cannabis products and medical cannabis devices:

(a) in a manner to permit clear identification, separation, and easy retrieval of a product; and

(b) in an environment necessary to maintain the integrity of product inventory.

(2) A medical cannabis pharmacy shall use the ICS to establish a record of each transaction, sale, return, and disposal.

(3) A medical cannabis pharmacy shall input information regarding the purchase of medical cannabis products or medical cannabis devices into the ICS immediately following each transaction.

(4) A medical cannabis pharmacy shall establish and document daily and weekly inventory controls of medical cannabis product and medical cannabis devices to help the pharmacy detect any diversion, theft, or loss of product in a timely manner.

(5)(a) A PMP at each medical cannabis pharmacy shall conduct a monthly inventory that includes a reconciliation of each medical cannabis product and medical cannabis device stored at the pharmacy with the pharmacy's inventory record in the ICS.

(b) Pharmacy agents may assist a PMP with the monthly inventory.

(c) A monthly inventory shall include:

(i) the time and date of completing the inventory;

(ii) a summary of the inventory findings; and

(iii) 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 their inventory that is not due to a documented cause, the pharmacy shall immediately:

(a) determine where the loss occurred and take and document corrective action;

(b) inform the department of the loss by telephone; and

(c) provide written notice of the loss and the corrective action taken to the department within two business days after the 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 actual or suspected criminal activity, the medical cannabis pharmacy shall immediately make a written report identifying the circumstances surrounding the reduction to:

(a) the department; and

(b) to law enforcement with jurisdiction where the 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 inventory not due to documented causes, the medical cannabis pharmacy shall determine where the increase occurred and take and document corrective action.

(9)(a) 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.

(b) The annual comprehensive inventory shall include:

(i) the time and date of the inventory;

(ii) a summary of the inventory findings; and

(iii) the name and signature or initials of the PIC who conducted the inventory.

(10) The medical cannabis pharmacy shall keep records of each monthly inventory and comprehensive annual inventory for five years.

(11)(a) Inventory records may be electronic or physical.

(b) If physical records are kept, the physical records shall be located at the medical cannabis pharmacy where the medical cannabis products and medical cannabis devices are located.

(c) If a medical cannabis pharmacy intends to maintain records at a location other than the medical cannabis pharmacy, they send a written request to the department that contains:

(i) the medical cannabis pharmacy name and license number; and

(ii) the name and address of the alternate location.

(b) The department shall approve or deny the request through written notification.

(c) A copy of the department's approval shall be maintained by the medical cannabis pharmacy.

(d) The alternate location shall be secured and accessible only to authorized medical cannabis pharmacy employees.

## NOTICES OF PROPOSED RULES

(11) Upon request, a medical cannabis pharmacy shall provide any documentation required to be maintained in this rule to the department for review.

### **R68-40-9. Transportation.**

(1) Transport of medical cannabis from a medical cannabis pharmacy to another location may 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; or

(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) Medical cannabis product and medical cannabis devices to be returned to a cannabis production establishment shall be:

(a) logged into the ICS;

(b) stored in a locked container with clear and bold lettering: "Return"; and

(c) prepared for 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 that accepts a shipment of medical cannabis or a medical cannabis device at a medical cannabis pharmacy facility from a cannabis production establishment shall:

(a) get a copy of the transport manifest;

(b) not delete, void, or change information on the transport manifest;

(c) ensure that the medical cannabis product and medical cannabis devices received from a cannabis production establishment are as described in the transport manifest;

(d) record on the manifest:

(i) the amount received into the ICS; and

(ii) the unique initial or identification code of the medical cannabis pharmacy employee who compares the received inventory with the transport manifest;

(e) document any difference between the quantity specified in the transport manifest and the quantity received in the ICS; and

(f) log any change to medical cannabis product or medical cannabis devices that may have occurred while in transport in the ICS.

(4) A medical cannabis pharmacy may only receive medical cannabis products in their final packaging.

### **R68-40-11. Cannabis Disposal and Waste.**

(1) A medical cannabis pharmacy shall dispose of cannabis waste at the medical cannabis pharmacy location or a location of a cannabis production establishment licensed by the department.

(2) In addition to complying with standards for cannabis disposal and waste established in Subsection 4-41a-1101(11), a medical cannabis pharmacy shall:

(a) designate a location in the limited access area of the medical cannabis pharmacy where cannabis waste shall be 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 the medical cannabis product is logged in the ICS at the time of disposal with appropriate information including:

(i) a description of and reason for the disposal;

(ii) date of disposal;

(iii) method of disposal; and

(iv) name and registration identification number of the agent responsible for the disposal;

(d) ensure that wastewater generated during the cannabis waste disposal process is disposed of in compliance with applicable state laws and rules; and

(e) ensure that cannabis waste disposed of is made unusable.

(3)(a) 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.

(b) 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.

(c) 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:

(A) food waste;

(B) yard waste; or

(C) vegetable-based grease or oils.

(ii) 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.

### **R68-40-12. Product Recall.**

(1) A recall may be initiated by a cannabis production establishment, a medical cannabis pharmacy, or the department.

(2) A medical cannabis pharmacy shall maintain a recall plan that includes, 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, a requirement that the pharmacy will immediately notify the department and the cannabis production establishment from which it obtained the cannabis product in question;

(c) a requirement that notification occur within 24 hours of the pharmacy becoming aware of a complaint about the medical cannabis product or medical cannabis device;

(d) a procedure to identify and isolate recalled product to prevent or minimize distribution to patients;

(e) a procedure to retrieve and destroy recalled product; and

(f) 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 allow the department to oversee the destruction.



(5) A medical cannabis pharmacy shall notify the department before initiating a voluntary recall.

**R68-40-13. Partial Filling.**

A PMP or pharmacy agent who partially fills a recommendation for a medical cannabis cardholder shall specify in the ICS the following:

- (1) date of partial fill;
- (2) quantity supplied to the cardholder; and
- (3) quantity remaining of the recommendation partially filled.

**R68-40-14. 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 with the name, address, and department issued license number of the medical cannabis pharmacy;

(b) surrender the license issued to the medical cannabis pharmacy;

(c) provide a statement to the department attesting:

- (i) a comprehensive inventory was conducted;
- (ii) the manner in which the medical cannabis product and medical cannabis devices will be transferred or disposed of;
- (iii) the anticipated date of closing;

(iv) 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;

(v) the date when the transfer of the medical cannabis product and medical cannabis devices will occur; and

(vi) the name and address of the medical cannabis pharmacy to which the orders, including any refill information and patient records, will be transferred; and

(c) post a closing notice in a conspicuous place at the public entrance doors to the medical cannabis pharmacy that includes the closing date.

(2) If the PIC cannot provide notification 14 days before closing because the medical cannabis pharmacy is closed suddenly due to fire, destruction, natural disaster, death, property seizure, eviction, bankruptcy, they shall notify the department 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 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 words of the same or similar meaning or any graphic representation that would mislead the public that a medical cannabis pharmacy is located at the address.

**R68-40-15. Abandonment of a License.**

A medical cannabis pharmacy shall be considered to have abandoned their license if they fail to begin operations within one year after the day on which the department issues an intent to award a medical cannabis pharmacy license.

**R68-40-16. Walk-up, Drive-Thru and Curbside Service.**

(1) A medical cannabis cardholder may contact a medical cannabis pharmacy by phone or online before the time of walk-up, drive-thru, or curbside service pick-up to make an order.

(2)(a) A medical cannabis cardholder transaction may take place outside the medical cannabis pharmacy facility, but shall occur within the total property boundary of the licensed entity.

(b) Walk-up, drive-thru, and curbside service transactions shall occur at a licensed location that is owned, leased, or rented by the licensed entity and may not occur on a public sidewalk or an adjacent parking lot.

(3)(a) If a product is bought with cash, the cash must be taken into the medical cannabis pharmacy facility after each transaction.

(b) 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)(a) Medical cannabis products and medical cannabis devices, including those that are awaiting pick-up, shall be securely stored in the medical cannabis pharmacy facility until a medical cannabis cardholder arrives for pick-up.

(b) 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) A medical cannabis pharmacy's video surveillance shall enable the video recording of each medical cannabis cardholder transaction.

(b) Subsection (a) includes:

(i) video surveillance of a cardholder, cardholder vehicle, medical cannabis pharmacy employee verifying the cardholder's valid form of government issued identification; and

(ii) the transfer and dispensing of an item bought by a cardholder.

(c) Video cameras shall record points of entry and exit of a parking lot and shall be angled to ensure the capture of clear and certain identification of a cardholder and their vehicle's license plate.

(6)(a) 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 cardholder.

(b) When drive-thru service is used, the medical cannabis cardholder verifying their ID to the medical cannabis pharmacy shall be visible to cameras and to the medical cannabis pharmacy employee who is helping them.

(7) Children under age 18 may be present in a vehicle that arrives for drive-thru or curbside pick-up service.

(8)(a) 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.

(b) 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) 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 contained within a box or an opaque bag.

(10) 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 other documents between a medical cannabis pharmacy employee and a medical cannabis cardholder.

#### **R68-40-17. Targeted Marketing.**

(1) A medical cannabis pharmacy may engage in targeted marketing pursuant to Subsection 4-41a-1104(2)(f).

(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; or

(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 may not include:

(a) unsubstantiated health claims or other claims that are not supported by substantial evidence or substantial clinical data;

(b) claims that cannabis cures any medical condition; or

(c) content that has a recreational disposition.

(5) 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 list the total amount of each cannabinoid contained in the product, measured in milligrams.

#### **R68-40-18. Criteria and Process for Issuance of Additional Licenses.**

(1) The department may consider the following factors as criteria when determining if additional medical cannabis pharmacy licenses shall be issued pursuant to Subsection 4-41a-1005(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 R68-40-18(1), it shall consult with and consider input from the Utah Department of Health and Human Services, 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.

#### **R68-40-19. 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) A pharmacy agent or a PMP employed by a medical cannabis pharmacy may perform a form verification.

(b) Only a PMP may make changes or additions to a form after documenting approval of changes or additions that are communicated by an LMP.

(c) An LMP recommendation cannot be entered into the EVS by a PMP or pharmacy agent without a complete DHHS-approved form that is hand-delivered, emailed, or faxed to the medical cannabis pharmacy.

(c) When verifying the validity of the form, a medical cannabis pharmacy shall verify:

(i) the form is complete and no information on the form appears to have been adulterated;

(ii) the suffix of the state-issued professional license number matches specific numbers assigned to the provider's state-issued professional license type;

(iii) there are nine digits in the Drug Enforcement Agency (DEA) license number;

(iv) the clinic name, email address, mailing address, and telephone number appear to be legitimate; and

(v) that an LMP at that clinic completed a form for the patient named in the form.

(2)(a) If the form is missing any part of the verification, a PMP shall investigate any missing or incorrect information.

(b) If a PMP is 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 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 recorded.

(4) If the medical cannabis pharmacy believes a form to be fraudulent, the pharmacy shall notify the DHHS via email within 24 hours of the first receipt of the form.

#### **R68-40-20. Agent Duties and Responsibilities.**

(1) All medical cannabis pharmacy employees shall be registered as PMP or a medical cannabis pharmacy agent.

(2) A pharmacy agent may perform the following duties:

(a) assist a prospective cardholder with an application for a medical cannabis card;

(b) assist the cardholder with understanding available products, proper use of a medical device, medical cannabis strains, and methods of consumption or application within the dosing guidelines specified by an RMP or PMP;

(c) verify the status of an individual's medical cannabis card and dosing guidelines in a patient recommendation within the ICS;

(d) enter and retrieve information from the ICS;

(e) authorize entry of a cardholder into the cardholder counseling area;

(f) take a refill order from an RMP;

(g) provide pricing and product information;

(h) process cardholder payment, including the issuance of receipt, refund, credit, and cash;

(i) prepare labeling for a product;

(j) retrieve medical cannabis and medical cannabis devices from inventory;

(k) accept a new order of medical cannabis or a medical cannabis device, orders left on voicemail for a PMP to review;

(l) verbally offer to a cardholder, the opportunity for counseling with a PMP regarding medical cannabis, or a medical cannabis device;

(m) assist with dispensing of product to a cardholder;

(n) screen calls for a PMP;

(o) prepare an inventory of medical cannabis and medical cannabis device;

(p) transport medical cannabis, or medical cannabis device; and

(q) assist with maintaining a safe, clean, and professional environment.

(3) A pharmacy agent may 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.

#### **R68-40-21. Agent Application Procedures.**

(1) The application procedures established in this section shall govern an application for initial issuance of a pharmacy agent registration card, under Title 4, Chapter, 41a, Cannabis Production Establishments and Pharmacies

(2) Each pharmacy agent card applicant shall apply using forms available from the department.

(3) The department may issue a card to an applicant who submits a complete 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 application if the department determines that the applicant does not meet the card requirements.

(5) The department shall notify an applicant who submits an incomplete application that their application is closed unless the applicant corrects the deficiency within the time period specified in the notice and otherwise meets card requirements.

(6) The written notice of denial or incomplete application shall be sent to the applicant's last email address shown in the 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.

#### **R68-40-22. Agent 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 4, Chapter, 41a, Cannabis Production Establishments and Pharmacies.

(2) Each card applicant shall apply using 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 deny an applicant who submits a complete renewal application if the department determines that the applicant does not meet the card requirements.

(5)(a) The department shall notify an applicant who submits an incomplete application.

(b) The notice shall advise the applicant that the renewal application is incomplete and closed unless the applicant corrects the deficiency within the time specified in the notice and otherwise meets card requirements.

(6)(a) The department shall send a renewal notice to each cardholder before the expiration date shown on the cardholder's card.

(b) The notice shall include directions for the cardholder to renew the card via the department's website.

(7) Renewal notices shall be sent by email to the cardholder's last email shown in the EVS database.

(8) A renewal notice shall advise each cardholder that a card will automatically expire on the expiration date and will no longer be valid.

(9)(a) A pharmacy agent shall renew their pharmacy agent registration card with the department within one year of its expiration date.

(b) If an applicant fails to renew an expired card within one year, they will be required to submit a new online registration form.

#### **R68-40-23. Continuing Education Requirements.**

The certification standard for initial or renewal registration of a pharmacy agent card will be successful completion of a continuing education course regarding state medical cannabis law and patient privacy and federal health information privacy laws that is offered or approved by the department.

**KEY: medical cannabis, medical cannabis pharmacy, marijuana**

**Date of Last Change: 2023**

**Authorizing, and Implemented or Interpreted Law: 4-41a-1101(12), 4-41a-1104(4), 4-2-103(1)(i)**

**NOTICE OF PROPOSED RULE****TYPE OF FILING:** Repeal and Reenact

<b>Rule or Section Number:</b>	<b>R152-34</b>	<b>Filing ID:</b> <b>56105</b>
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**Agency Information**

<b>1. Department:</b>	Commerce	
<b>Agency:</b>	Consumer Protection	
<b>Building:</b>	Heber Wells	
<b>Street address:</b>	160 E 300 S	
<b>City, state and zip:</b>	Salt Lake City, UT 84111	
<b>Mailing address:</b>	PO Box 146704	
<b>City, state and zip:</b>	Salt Lake City, UT 84114-6704	
<b>Contact persons:</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Daniel Larsen	801-530-6601	dcprules@utah.gov

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

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

R152-34. Utah Postsecondary Proprietary School Act Rule

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

This rule is being repealed and reenacted as a result of S.B. 180, 2023 General Session, codified as Title 13, Chapter 34, Utah Postsecondary School and State Authorization Act (UPSSAA), which repeals and replaces Title 13, Chapter 34, Utah Postsecondary Proprietary School Act (UPPSA) and Title 13, Chapter 34a, Utah Postsecondary School State Authorization Act.

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

This rule:

- 1) defines terms; establishes the form and content of a registration statement; specifies information that must be included with a registration statement; establishes how a postsecondary school may prove its financial viability; establishes when a surety bond, certificate of deposit, or irrevocable letter of credit may be required;
- 2) establishes the form, content, and amount of a surety bond, certificate of deposit, or irrevocable letter of credit;
- 3) establishes the amount a postsecondary school may charge a student in a 12-month period to qualify for an exemption in accordance with Subsection 13-34-111(3);
- 4) specifies the electronic format in which a postsecondary school must maintain student records;
- 5) specifies the outcomes a postsecondary school must disclose to a student; establishes the type and number of

credits required to obtain a degree or diploma from an unaccredited postsecondary school;

6) establishes standards related to obtaining a state authorization certificate through a reciprocity agreement; and

7) aids the Division of Consumer Protection's (Division) administration and enforcement of the UPSSAA.

The new rule differs from the old rule in several respects that reflect the differences between the UPSSAA and UPPSA. For example, the UPSSAA incorporated several exemptions from registration that exist in the rule being repealed, so the new rule does not include those exemptions.

The new rule also establishes financial viability criteria to determine whether a postsecondary school is required to obtain surety; the rule being repealed does not.

Additionally, the new rule adheres to more recent Division rulewriting practices and the Rulewriting Manual for Utah standards.

**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 impose costs or create savings to the state budget beyond the impact described in the Fiscal Note to S.B. 180 (2023).

**B) Local governments:**

This rule is not expected to impose costs or create savings for local governments. Neither the UPSSAA or this rule applies to local governments.

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

The Division anticipates this rule will impose costs on small businesses that are regulated by the UPSSAA.

Those costs are inestimable for three primary reasons:

- 1) the number of impacted small businesses cannot be ascertained through NAICS data because the relevant NAICS classifications do not cleanly match the UPSSAA's definitions;
- 2) the costs imposed are fact dependent based on facts that vary between postsecondary schools, and that are currently unknown to the division; and
- 3) the cost to further research these issues would be unreasonably high.

The anticipated costs imposed by this rule are related to record formatting and potential surety requirements.

This rule requires that student records be maintained in text-searchable PDF. This is a very common format for records.

However, the requirement may potentially impose some development and data storage costs for regulated entities. This amount will vary based on a regulated entity's current record system and number of students. Data storage costs are highly dependent on scale, but PDF files containing only searchable text are generally small. The Division anticipates the data storage cost imposed by this rule will be minor.

This rule may impose costs with respect to obtaining a surety bond. A regulated entity may, depending on its specific circumstances that are not currently known to the Division, be required to obtain a surety bond. The Division's research suggests that the cost of a surety bond ranges between 0.5% and 10% of surety bond's face value depending on the businesses' (or its owner's) credit and other financial metrics.

Depending on a school's gross tuition revenue, the amount of the surety bond required by this rule varies between \$12,500 and \$2,500,000. Thus, the potential cost imposed by this rule could range between \$62.50 and \$250,000 per year if a school is required to obtain a surety bond.

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

The Division anticipates this rule will impose costs on non-small businesses that are regulated by the UPSSAA.

Those costs are inestimable for three primary reasons:

- 1) the number of impacted non-small businesses cannot be ascertained through NAICS data because the relevant NAICS classifications do not cleanly match the UPSSAA's definitions;
- 2) the costs imposed are fact dependent based on facts that vary between postsecondary schools, and that are currently unknown to the Division; and
- 3) the cost to further research these issues would be unreasonably high.

The anticipated costs imposed by this rule are related to record formatting and potential surety requirements.

This rule requires that student records be maintained in text-searchable PDF. This is a very common format for records.

However, the requirement may potentially impose some development and data storage costs for regulated entities. This amount will vary based on a regulated entity's current record system and number of students. Data storage costs are highly dependent on scale, but PDF files containing only searchable text are generally small. The division anticipates the data storage cost imposed by this rule will be minor.

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Depending on a school's gross tuition revenue, the amount of the surety bond required by this rule varies between \$12,500 and \$2,500,000. Thus, the potential cost imposed by the rule could range between \$62.50 and \$250,000 per year if a school is required to obtain a surety bond.

**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 have any fiscal impact on persons other than small businesses, non-small businesses, state, or local government entities.

**F) 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 impose 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**

<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

# NOTICES OF PROPOSED RULES

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 Commerce, Margaret Busse, 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 13-2-5(1)	Subsections 13-34-103(1) through (10)	

## 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>	12/15/2023

<b>9. This rule change MAY become effective on:</b>	01/01/2024
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>	Daniel Larsen, Managing Analyst	<b>Date:</b>	11/01/2023
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## R152. Commerce, Consumer Protection.

### **R152-34. Utah Postsecondary Proprietary School Act Rule.** **R152-34-1. Purpose.**

These rules are promulgated under the authority of Section 13-2-5(1) to administer and enforce the Postsecondary Proprietary School Act. These rules provide standards by which institutions and their agents who are subject to the Postsecondary Proprietary School Act are required to operate consistent with public policy.

### **R152-34-2. References.**

The statutory references that are made in these rules are to Title 13, Chapter 34, Utah Code Annotated 1953.

### **R152-34-3. Definitions in Addition to Those Found in Section 13-34-103.**

- ~~(1) "Branch" and "extension" mean a freestanding location that is apart from the main campus, where resident instruction is provided on a regular, continuing basis.~~
- ~~(2) "Correspondence institution" means an institution that is conducted predominantly through the means of home study, including online and distance education programs.~~
- ~~(3) "Course" means a unit subject within a program of education that must be successfully mastered before an educational credential can be awarded.~~
- ~~(4) "Division" means the Division of Consumer Protection.~~
- ~~(5) "Probation" means a negative action of the Division that specifies a stated period for an institution to correct stipulated deficiencies, but does not imply any impairment of operational authority.~~
- ~~(6) "Program of education" consists of a series of courses that lead to an educational credential when completed.~~
- ~~(7) "Resident institution" means an institution where the courses and programs offered are predominantly conducted in a classroom or a class laboratory, with an instructor.~~
- ~~(8) "Revocation" means a negative action of the Division that orders an institution to surrender its certificate and cease operations, including advertising, enrolling students and teaching classes, in accordance with Section 13-34-113.~~
- ~~(9) "Suspension" means a negative action of the Division that impairs an institution's operational authority for a stated period of time during which the deficiencies must be corrected or the certificate may be revoked.~~

### **R152-34-4. Rules Relating to the Responsibilities of Proprietary Schools as Outlined in Section 13-34-104.**

- ~~(1) In order to be able to award a degree or certificate, a proprietary school must meet the following general criteria:~~
  - ~~(a) Programs must meet the following generally accepted minimum number of semester/quarter credit hours required to complete a standard college degree: associate, 60/90; bachelor's, 120/180; master's, 150/225; and doctorate, approximately 200/300.~~
  - ~~(b) The areas of study, the methods of instruction, and the level of effort required of the student for a degree or certificate must be commensurate with reasonable standards established by recognized accrediting agencies and associations.~~
  - ~~(c) In order for the proprietary school to award a degree or certificate, the faculty must be academically prepared in the area of emphasis at the appropriate level, or as to vocational technical programs, must have equivalent job expertise based on reasonable standards established by recognized accrediting agencies and associations. This notwithstanding, credit may be awarded toward degree completion based on:~~
    - ~~(i) transfer of credit from other accredited and recognized institutions;~~
    - ~~(ii) recognized proficiency exams (CLEP, AP, etc.), and/or~~
    - ~~(iii) in-service competencies as evaluated and recommended by recognized national associations such as the American Council on Education. Such credit for personal experiences shall be limited to not more than one year's worth of work (30 semester credit hours/45 quarter credit hours).~~
    - ~~(d) In order to offer a program of study, either degree or non-degree, it must be of such a nature and quality as to make~~

reasonable the student's expectation of some advantage in enhancing or pursuing employment, as opposed to a general education or non-vocational program which is excluded from registration under 13-34-105(g).

~~(i) If the purpose of an offered program of study is to prepare students for entry into fields of employment which require licensure by any licensing agency or to prepare students for entry into fields of employment for which it would be impracticable to have reasonable expectations of employment without accreditation and/or certification by any trade and/or industry association and/or accrediting and/or certifying body, the entity offering, or desiring to offer, the program of study must provide the Division:~~

~~(A) information regarding the type of license, accreditation and/or certification that students completing the program of study must obtain in order to have a reasonable expectation of employment;~~

~~(B) the name and contact information of the agency, trade and/or industry association and/or accrediting and/or certifying body;~~

~~(C) evidence that the curriculum for the offered program of study has been reviewed by the appropriate entity from subsection (B) above; and,~~

~~(D) evidence that the instructors teaching students enrolled in the program of study are licensed by the appropriate agency from subsection (B) above, or have earned the accreditation and/or certification from the appropriate entity from subsection (B) above to teach and/or practice in the field for which the students are being prepared.~~

~~(2) The faculty member shall assign work, set standards of accomplishment, measure the student's ability to perform the assigned tasks, provide information back to the student as to his or her strengths and deficiencies, and as appropriate, provide counseling, advice, and further assignments to enhance the student's learning experience. This requirement does not preclude the use of computer assisted instruction or programmed learning techniques when appropriately supervised by a qualified faculty member.~~

~~(3) As appropriate to the program or course of study to be pursued, the proprietary school shall evaluate the prospective student's experience, background, and ability to succeed in that program through review of educational records and transcripts, tests or examinations, interviews, and counseling. This evaluation shall include a finding that the prospective student (1) is beyond the age of compulsory high school attendance, as prescribed by Title 53A Chapter 11, Utah Code Annotated; and (2) has received either a high school diploma or a General Education Development certificate, or has satisfactorily completed a national or industry developed competency based test or an entrance examination that establishes the individual's ability to benefit. Based on this evaluation, before admitting the prospective student to the program, the institution must have a reasonable expectation that the student can successfully complete the program, and that if he or she does so complete, that there is a reasonable expectation that he or she will be qualified and be able to find appropriate employment based on the skills acquired through the program.~~

~~(4) Each proprietary school shall prepare for the use of prospective students and other interested persons a catalog or general information bulletin that contains the following information:~~

~~(a) The legal name, address, and telephone number of the institution, also any branches and/or extension locations;~~

~~(b) The date of issue;~~

~~(c) The names, titles, and qualifications of administrators and faculty;~~

~~(d) The calendar, including scheduled state and federal holidays, recess periods, and dates for enrollment, registration, start of classes, withdrawal and completion;~~

~~(e) The admission and enrollment prerequisites, both institutional and programmatic, as provided in R152-34-8(1);~~

~~(f) The policies regarding student conduct, discipline, and probation for deficiencies in academics and behavior;~~

~~(g) The policies regarding attendance and absence, and any provision for make up of assignments;~~

~~(h) The policies regarding dismissal and/or interruption of training and of reentry;~~

~~(i) The policies explaining or describing the records that are to be maintained by the institution, including transcripts;~~

~~(j) The policies explaining any credit granted for previous education and experience;~~

~~(k) The policies explaining the grading system, including standards of progress required;~~

~~(l) The policies explaining the provision to students of interim grade or performance reports;~~

~~(m) The graduation requirements and the credential awarded upon satisfactory completion of a program;~~

~~(n) The schedule of tuition, any other fees, books, supplies and tools;~~

~~(o) The policies regarding refunds of any unused charges collected as provided in R152-34-8(3);~~

~~(p) The student assistance available, including scholarships and loans;~~

~~(q) The name, description, and length of each program offered, including a subject outline with course titles and approximate number of credit or clock hours devoted to each course;~~

~~(r) The placement services available and any variation by program;~~

~~(s) The facilities and equipment available;~~

~~(t) An explanation of whether and to what extent that the credit hours earned by the student are transferable to other institutions;~~

~~(u) A statement of the institution's surety or surety exemption status with the Division; and~~

~~(v) Such other information as the Division may reasonably require.~~

#### **R152-34-5. Rules Relating to Institutions Exempt Under Section 13-34-105.**

~~(1) Institutions that provide nonprofessional review courses, such as law enforcement and civil service, are not exempt, unless they are considered as workshops or seminars within the meaning of Section 13-34-105(1)(h).~~

~~(2) In order for the church or religious denomination to be "bona fide" such that the institution is exempt from registration, the institution may not be the church or religious denomination's primary purpose, function or asset. The institution shall submit a sworn statement in a form specified by the Division attesting to the religious nature of the education offered.~~

~~(3) Any institution which claims an accreditation exemption must furnish acceptable documentation to the Division upon request.~~

~~(4) To qualify for exemption under Section 13-34-105(1)(f):~~

~~(a) the training or instruction shall not be the primary activity of the organization, association, society, labor union, or franchise system or;~~



~~\_\_\_\_\_ (b) the organization, association, society, labor union, or franchise system shall meet the following requirements:~~

~~\_\_\_\_\_ (i) the organization, association, society, labor union, or franchise system does not recruit students;~~

~~\_\_\_\_\_ (ii) the organization, association, society, labor union, or franchise system provides courses of instruction only to students who are currently employed;~~

~~\_\_\_\_\_ (iii) the cost of the course of instruction is paid for by the employer of the student, not the student; and~~

~~\_\_\_\_\_ (iv) enrollment in each individual course of instruction is limited to those who are bona fide employees of the employer.~~

~~\_\_\_\_\_ (5) To qualify for exemption under Section 13-34-105(1)(c):~~

~~\_\_\_\_\_ (a) the profession for which the review program is offered must be recognized by a state or national licensing or certifying body;~~

~~\_\_\_\_\_ (b) the students enrolled in the review program must previously complete education and/or training in the occupation or field required to be obtained by the certifying body; and~~

~~\_\_\_\_\_ (c) the professional review program must provide only review and preparation for exams or other certifying tests that are required to be passed by the certifying body.~~

~~\_\_\_\_\_ (6) The Division shall determine an institution's status in accordance with the categories contained in this section.~~

~~\_\_\_\_\_ (7) An exempt institution shall notify the Division within thirty (30) days of a material change in circumstances which may affect its exempt status as provided in this section and shall follow the procedure outlined in Section 13-34-107.~~

~~\_\_\_\_\_ (8) An exempted institution which voluntarily applies for a certificate by filing a registration statement shall comply with all rules as though such institution were nonexempt.~~

**~~R152-34-6. Rules Relating to the Registration Statement Required under Section 13-34-106.~~**

~~\_\_\_\_\_ (1) The registration statement application shall provide the following information and statements made under oath:~~

~~\_\_\_\_\_ (a) The institution's name, address, and telephone number;~~

~~\_\_\_\_\_ (b) The names of all persons involved in the operation of the institution and a stipulation that the resumes are on file at the institution and available to the students;~~

~~\_\_\_\_\_ (c) The name of the agent authorized to respond to student inquiries if the registrant is a branch institution whose parent is located outside of the state of Utah;~~

~~\_\_\_\_\_ (d) A statement that its articles of incorporation have been registered and accepted by the Utah Department of Commerce, Division of Corporations and Commercial Code and that it has a local business license, if required;~~

~~\_\_\_\_\_ (e) A statement that its facilities, equipment, and materials meet minimum standards for the training and assistance necessary to prepare students for employment;~~

~~\_\_\_\_\_ (f) A statement that it maintains accurate attendance records, progress and grade reports, and information on tuition and fee payments appropriately accessible to students;~~

~~\_\_\_\_\_ (g) A statement that its maintenance and operation is in compliance with all ordinances, laws, and codes relative to the safety and health of all persons upon the premises;~~

~~\_\_\_\_\_ (h) A statement that there is sufficient student interest in Utah for the courses that it provides and that there is reasonable employment potential in those areas of study in which credentials will be awarded;~~

~~\_\_\_\_\_ (i) If the registration statement is filed pursuant to Section 13-34-107(3)(b), a detailed description of any material modifications to be made in the institution's operations, identification of those~~

~~programs that are offered in whole or in part in Utah and a statement of whether the student can complete his or her program without having to take residence at the parent campus;~~

~~\_\_\_\_\_ (j) A statement that it maintains adequate insurance continuously in force to protect its assets;~~

~~\_\_\_\_\_ (k) A disclosure as required by R152-34-7(1);~~

~~\_\_\_\_\_ (l) If the registrant is a correspondence institution, whether located within or without the state of Utah, a demonstration that the institution's educational objectives can be achieved through home study; that its programs, instructional material, and methods are sufficiently comprehensive, accurate, and up-to-date to meet the announced institutional course and program objectives; that it provides adequate interaction between the student and instructor, through the submission and correction of lessons, assignments, examinations, and such other methods as are recognized as characteristic of this particular learning technique; and that any degrees and certificates earned through correspondence study meet the requirements and criteria of R152-34-4(1).~~

~~\_\_\_\_\_ (2) The institution shall provide with its registration statement application copies of the following documents:~~

~~\_\_\_\_\_ (a) A sample of the credential(s) awarded upon completion of a program;~~

~~\_\_\_\_\_ (b) A sample of current advertising including radio, television, newspaper and magazine advertisements, and listings in telephone directories;~~

~~\_\_\_\_\_ (c) A copy of the student enrollment agreement; and~~

~~\_\_\_\_\_ (d) Financial information, as described in Section 13-34-107(6).~~

~~\_\_\_\_\_ (3) If any information contained in the registration statement application becomes incorrect or incomplete, the registrant shall, within thirty (30) days after the information becomes incorrect or incomplete, correct the application or file the complete information as required by the Division.~~

**~~R152-34-7. Rules Relating to the Operation of Proprietary Schools under Section 13-34-107.~~**

~~\_\_\_\_\_ (1) In accordance with U.C.A. Section 13-34-107(5), applicants shall pay registration fees established by the Division pursuant to U.C.A. Section 63J-1-504.~~

~~\_\_\_\_\_ (2) The institution shall submit to the Division its renewal registration statement application, along with the appropriate fee, no later than thirty (30) days prior to the expiration date of the current certificate of registration.~~

~~\_\_\_\_\_ (3) In addition to the annual registration fee, an institution failing to file a renewal registration application by the due date or filing an incomplete registration application or renewal shall pay an additional fee of \$25 for each month or part of a month during which the registration remains lapsed.~~

~~\_\_\_\_\_ (4) One year after issuance, an institution shall submit a review on a form provided by the Division and pay a fee as determined in Subsection (1) above. The review will evaluate an institution's financial information, surety requirements and the following statistical information:~~

~~\_\_\_\_\_ (a) The number of students enrolled for the previous one-year period of registration;~~

~~\_\_\_\_\_ (b) The number of students who completed and received a credential;~~

~~\_\_\_\_\_ (c) The number of students who terminated their registration or withdrew from the institution;~~

~~\_\_\_\_\_ (d) The number of administrators, faculty, supporting staff, and agents; and~~

~~\_\_\_\_\_ (e) The new catalog, information bulletin, or supplements.~~



~~(5) An authorized officer of the institution to be registered under this chapter shall sign a disclosure as to whether the institution or an owner, officer, director, administrator, faculty member, staff member, or agent of the institution has violated laws, federal regulations or state rules as determined in a criminal, civil or administrative proceeding.~~

~~(6) The Division shall refuse to register an institution if the Division determines the following:~~

~~(a) the institution or an owner, officer, director, administrator, faculty member, staff member, or agent of the institution has violated laws, federal regulations or state rules, as determined in a criminal, civil or administrative proceeding;~~

~~(b) the violation(s) are relevant to the appropriate operation of the school; and~~

~~(c) there is reasonable doubt that the institution will provide students with an appropriate learning experience or that the institution will function in accordance with all applicable laws and rules.~~

~~(7) Within thirty (30) days after receipt of an initial or renewal registration statement application and its attachments, the Division shall do one of the following:~~

~~(a) issue a certificate of registration;~~

~~(b) refuse to accept the registration statement based on Sections 13-34-107 and 113.~~

~~(8) A change in the ownership of an institution, as defined in Section 13-34-103(8), occurs when there is a merger or change in the controlling interest of the entity or if there is a transfer of more than fifty percent (50%) of its assets within a three-year period. When this occurs, the following information shall be submitted to the Division:~~

~~(a) a copy of any new articles of incorporation;~~

~~(b) a current financial statement;~~

~~(c) a listing of all institutional personnel that have changed as a result of the ownership transaction, together with complete resumes and qualifications;~~

~~(d) a detailed description of any material modifications to be made in the operation of the institution; and~~

~~(e) payment of the appropriate fee.~~

~~(9)(a) A satisfactory surety in the form of a bond, certificate of deposit, or irrevocable letter of credit shall be provided by the institution before a certificate of registration will be issued by the Division.~~

~~(b) The obligation of the surety will be that the institution, its officers, agents, and employees will:~~

~~(i) faithfully perform the terms and conditions of contracts for tuition and other instructional fees entered into between the institution and persons enrolling as students; and~~

~~(ii) conform to the provisions of the Utah Postsecondary Proprietary School Act and Rules.~~

~~(c) The bond, certificate of deposit, or letter of credit shall be in a form approved by the Division and issued by a company authorized to do such business in Utah.~~

~~(d)(i) The bond, certificate of deposit, or letter of credit shall be payable to the Division to be used for creating teach-out opportunities or for refunding tuition, book fees, supply fees, equipment fees, and other instructional fees paid by a student or potential student, enrollee, or his or her parent or guardian.~~

~~(ii) In each instance the Division may determine:~~

~~(A) which of the uses listed in Subsection (9)(d)(i) are appropriate; and~~

~~(B) if the Division creates teach-out opportunities, the appropriate institution to provide the instruction.~~

~~(c) An institution that closes or otherwise discontinues operations shall maintain the institution's surety until:~~

~~(i) at least one year has passed since the institution has notified the Division in writing that the institution has closed or discontinued operation; and~~

~~(ii) the institution has satisfied the requirements of Section R152-34-9.~~

~~(10)(a) The surety company may not be relieved of liability on the surety unless it gives the institution and the Division ninety calendar days notice by certified mail of the company's intent to cancel the surety.~~

~~(b) The cancellation or discontinuance of surety coverage after such notice does not discharge or otherwise affect any claim filed by a student, enrollee or his/her parent or guardian for damage resulting from any act of the institution alleged to have occurred while the surety was in effect, or for an institution's ceasing operations during the term for which tuition had been paid while the surety was in force.~~

~~(c) If at any time the company that issued the surety cancels or discontinues the coverage, the institution's registration is revoked as a matter of law on the effective date of the cancellation or discontinuance of surety coverage unless a replacement surety is obtained and provided to the Division.~~

~~(11)(a) Before an original registration is issued, and except as otherwise provided in this rule, the institution shall secure and submit to the Division a surety in the form of a bond, certificate of deposit or letter of credit in an amount of one hundred and eighty-seven thousand, five hundred dollars (\$187,500) for schools expecting to enroll more than 100 separate individual students (non-duplicated enrollments) during the first year of operation, one hundred and twenty-five thousand dollars (\$125,000) for schools expecting to enroll between 50 and 99 separate individual students during the first year, and sixty-two thousand, five hundred dollars (\$62,500) for institutions expecting to enroll less than 50 separate individual students during the first year.~~

~~(b) Institutions that submit evidence acceptable to the Division that the school's gross tuition income from any source during the first year will be less than twenty-five thousand dollars (\$25,000) may provide a surety of twelve thousand, five hundred dollars (\$12,500) for the first year of operation.~~

~~(12)(a) Except as otherwise provided in this rule, the minimum amount of the required surety to be submitted annually after the first year of operation will be based on twenty-five percent of the annual gross tuition income from registered program(s) for the previous year (rounded to the nearest \$1,000), with a minimum surety amount of twelve thousand, five hundred dollars (\$12,500) and a maximum surety amount of three hundred thousand dollars (\$300,000).~~

~~(b) The surety shall be renewed each year by the anniversary date of the school's certificate of registration, and also included as a part of each two-year application for registration renewal.~~

~~(c) No additional programs may be offered without appropriate adjustment to the surety amount.~~

~~(13)(a) The institution shall provide a statement by a school official regarding the calculation of gross tuition income and written evidence confirming that the amount of the surety meets the requirements of this rule.~~

~~(b) The Division may require that such statement be verified by an independent certified public accountant if the Division determines that the written evidence confirming the amount of the surety is questionable.~~

~~(14) An institution with a total cost per program of five hundred dollars or less or a length of each such program of less than one month shall not be required to have a surety.~~

~~(15) The Division will not register a program at a proprietary school if it determines that the educational credential associated with the program may be interpreted by employers and the public to represent the undertaking or completion of educational achievement that has not been undertaken and earned.~~

~~(16) Acceptance of registration statements and the issuing of certificates of registration to operate a school signifies that the legal requirements prescribed by statute and regulations have been satisfied. It does not mean that the Division supervises, recommends, nor accredits institutions whose statements are on file and who have been issued certificates of registration to operate.~~

**~~R152-34.8. Rules Relating to Fair and Ethical Practices Set Forth in Section 13-34-108.~~**

~~(1) An institution, as part of its assessment for enrollment, shall consider the applicant's basic skills, aptitude, and physical qualifications, as these relate to the choice of program and to anticipated employment and shall not admit a student to a program unless there is a reasonable expectation that the student will succeed, as prescribed by R152-34-4(3).~~

~~(2) Financial dealings with students shall reflect standards of ethical practice. Tuition paid to an institution, and related student loans, are consumer transactions as defined in Utah Code Title 13, Chapter 11.~~

~~(3) The institution shall adopt a fair and equitable refund policy including:~~

~~(a) A three business day cooling off period during which time the student may rescind the contract and receive a refund of all money paid. The cooling off period may not end prior to midnight of the third business day after the latest of the following days:~~

~~(i) the day the student signs an enrollment agreement;~~  
~~(ii) the day the student pays the institution an initial deposit or first payment toward tuition and fees; or~~

~~(iii) the day that the student first visits the institution, if the program lasts more than 30 consecutive calendar days.~~

~~(b) A student enrolled in a correspondence institution may withdraw from enrollment following the cooling off period, prior to submission by the student of any lesson materials or prior to receipt of course materials, whichever comes first, and effective upon deposit of a written statement of withdrawal for delivery by mail or other means, and the institution shall be entitled to retain no more than \$200 in tuition or fees as registration charges or an alternative amount that the institution can demonstrate to have been expended in preparation for that particular student's enrollment.~~

~~(c) A clear and unambiguous written statement of the institution's refund policy for students who desire a refund after the three business day cooling off period or after a student enrolled in a correspondence institution has submitted lesson materials or been in receipt of course materials.~~

~~(d) There shall be a written enrollment agreement, to be signed by the student and a representative of the institution, that clearly describes the cooling off period, nonrefundable registration fee, and refund policy and schedule, including the rights of both the student and the institution, with copies provided to each.~~

~~(e) There shall be complete written information on repayment obligations to all applicants for financial assistance before an applicant student assumes such responsibilities.~~

~~(f) A pay as you learn payment schedule that limits a student's prospective contractual obligation(s) at any one time, to the~~

~~institution for tuition and fees to four months of training, plus registration or start up costs not to exceed \$200 or an alternative amount that the institution can demonstrate to have spent in undertaking a student's instruction. This restriction applies regardless of whether a contractual obligation is paid to the institution by:~~

~~(i) the student directly; or~~  
~~(ii) a lender or any other entity on behalf of the student.~~

~~(g) The payment of a refund within 30 calendar days of a request for a refund if the person requesting the refund is entitled to the refund:~~

~~(i) under any provision of:~~

~~(A) the Utah Postsecondary Proprietary School Act, Utah Code Title 13, Chapter 34;~~

~~(B) the Postsecondary Proprietary School Act Rules, R152-34; or~~

~~(C) a contract or other agreement between the institution and the person requesting the refund; or~~

~~(ii) because of the institution's failure to fulfill its obligations to the person requesting the refund.~~

~~(4) Following the satisfactory completion of his or her training and education, a student is provided with appropriate educational credentials that show the program in which he or she was enrolled, together with a transcript of courses completed and grades or other performance evaluations received.~~

~~(5) No institution shall use the designation of 'college' nor 'university' in its title nor in conjunction with its operation unless it actually confers a standard college degree as one of its credentials, unless the use of such designation had previously been approved by the Board of Regents prior to July 1, 2002.~~

~~(6) The name of the institution shall not contain any reference that could mislead potential students or the general public as to the type or nature of its educational services, affiliations or structure.~~

~~(7) Advertising standards consist of the following:~~

~~(a) The institution's chief administrative officer assumes all responsibility for the content of public statements made on behalf of the institution and shall instruct all personnel, including agents, as to this rule and other appropriate laws regarding the ethics of advertisement and recruitment;~~

~~(b) Advertising shall be clear, factual, supportable, and shall not include any false or misleading statements with respect to the institution, its personnel, its courses and programs, its services, nor the occupational opportunities for its graduates;~~

~~(c) Institutions shall disclose that they are primarily operated for educational purposes if this is not apparent from the legal name. Institutions shall not advertise educational services in conjunction with any other business or establishment, nor in "help wanted" or "employment opportunity" columns of newspapers, magazines or similar forums in such a way as to lead readers to believe that they are applying for employment rather than education and training. Any advertisement in "help wanted" or "employment opportunity" forums shall be for positions open for immediate employment only;~~

~~(d) An institution, its employees and agents, shall refrain from other forms of ambiguous or deceptive advertising, such as:~~

~~(i) claims as to endorsement by manufacturers or businesses or organizations until and unless written evidence supporting this fact is on file; and~~

~~(ii) representations that students completing a course or program may transfer either credits or credentials for acceptance by another institution, state agency, or business, unless written evidence supporting this fact is on file;~~

~~(e) An institution shall maintain a file of all promotional information and related materials for a period of three (3) years;~~

~~(f) The Division may require an institution to submit its advertising prior to its use; and~~

~~(g) An institution cannot advertise that its organization or program is endorsed by the state of Utah other than to state that the school is "Registered under the Utah Postsecondary Proprietary School Act".~~

~~(h) An institution shall include the following registration and disclaimer statements in its catalog, student information bulletin, and enrollment agreements:~~

~~(i) REGISTERED UNDER THE UTAH POSTSECONDARY PROPRIETARY SCHOOL ACT (Title 13, Chapter 34, Utah Code).~~

~~(ii) Registration under the Utah Postsecondary Proprietary School Act does not mean that the State of Utah supervises, recommends, nor accredits the institution. It is the student's responsibility to determine whether credits, degrees, or certificates from the institution will transfer to other institutions or meet employers' training requirements. This may be done by calling the prospective school or employer.~~

~~(iii) The institution is not accredited by a regional or national accrediting agency recognized by the United States Department of Education.~~

~~(8) Recruitment standards include the following:~~

~~(a) Recruiting efforts shall be conducted in a professional and ethical manner and free from "high pressure" techniques; and~~

~~(b) An institution shall not use loans, scholarships, discounts, or other such enrollment inducements, where such result in unfair or discriminatory practices.~~

~~(9) An agent or sales representative may not be directly or indirectly be portrayed as "counselor," "advisor," or any other similar title to disguise his or her sales function.~~

~~(10) An agent or representative is responsible to have a clear understanding and knowledge of the programs and courses, tuition, enrollment requirements, enrollment agreement, support services, and the general operational procedures thereof.~~

~~(11) An institution shall indemnify any student from loss or other injury as a result of any fraud or other form of misrepresentation used by an agent in the recruitment process.~~

~~(12) An institution operating in Utah but domiciled outside the state shall designate a Utah resident as its registered agent for purposes of service of legal process.~~

~~(13) An institution shall provide a student with all of the student's school records, as described in R152-34-9(2), within five business days after a written or verbal request by a student for the student's school records. The institution may not charge a student more than the actual copying costs for the student's school records.~~

**R152-34-9. Rules Relating to Discontinuance of Operations Pursuant to Section 13-34-109.**

~~(1) Should an institution cease operations or otherwise discontinue its educational activities, it shall immediately notify the Division in writing 30 days prior to closing. The chief administrative officer shall send formal written notice to the Division; this notice shall include:~~

~~(a) The date on which the institution will officially close;~~

~~(b) A written plan for access to and preservation of permanent records;~~

~~(c) What actions the institution plans to take in regards to its students; and~~

~~(d) In the event an institution closes with students enrolled who have not completed their programs, a list of such students, including the amount of tuition paid and the proportion of their program completed, shall be submitted to the Division, with all particulars.~~

~~(2) Once an institution has notified the Division of its intent to cease operations, it shall not advertise, recruit, offer or otherwise enroll new students into its programs.~~

~~(3) School records consist of the following permanent scholastic records for all students who are admitted, withdrawn or terminated:~~

~~(a) entrance application and admission acceptance information;~~

~~(b) attendance and performance information, including transcripts which shall at a minimum include the program in which the student enrolled, each course attempted and the final grade earned;~~

~~(c) graduation or termination dates; and~~

~~(d) enrollment agreements, tuition payments, refunds, and any other financial transactions.~~

~~(4) An institution that closes or otherwise discontinues operations shall maintain its surety required under R152-34-7(11) and/or R152-34-7(12) until:~~

~~(a) At least one year has passed since the institution has notified the Division in writing that the institution has closed or discontinued operation; and~~

~~(b) The institution has satisfied the closure requirements of this section by providing documentation acceptable to the Division to show that it has satisfied all possible claims for refunds that may be made against the institution by students of the institution at the time the institution discontinued operations and by persons who were students of the institution within one year prior to the date that the institution discontinued operations, whichever is shorter.~~

~~(5) Within ten (10) business days after the closure, the institution shall provide the Division with all the information outlined above and in accordance with Section 13-34-109, including copies of student transcripts.~~

**R152-34-10. Rules Relating to Suspension, Termination or Refusal to Register under Section 13-34-111.**

~~(1) The Division may perform on-site evaluations to verify information submitted by an institution or an agent, or to investigate complaints filed with the Division.~~

~~(2) The Division may, in accordance with Title 63G, Chapter 4, Administrative Procedures Act, issue an order to deny, suspend, or revoke a registration, upon a finding that:~~

~~(a) the award of credentials by a nonexempt institution without having first duly registered with the Division and having obtained the requisite surety;~~

~~(b) a registration statement application that contains material representations which are incomplete, improper, or incorrect;~~

~~(c) failure to maintain facilities and equipment in a safe and healthful manner;~~

~~(d) failure to perform the services or provide materials as represented by the institution, failure to perform any commitment made in the registration statement or permit application, offering programs or services not contained in the registration statement currently on file, or violations of the conditions of the certificate of registration;~~

~~(e) failure to maintain sufficient financial capability, as set forth in section R152-34-7;~~

## NOTICES OF PROPOSED RULES

~~(f) to confer, or attempt to confer, a fraudulent credential, as set forth in 13-34-201;~~

~~(g) employment of students for commercial gain, if such fact is not contained in the current registration statement;~~

~~(h) promulgation to the public of fraudulent or misleading statements relating to a program or service offered;~~

~~(i) failure to comply with the Postsecondary Proprietary School Act or these rules;~~

~~(j) withdrawal of the authority to operate in the home state of an institution whose parent campus or headquarters is not domiciled in this state;~~

~~(k) failure to comply with applicable laws in this state or another state where the institution is doing business; and~~

~~(l) failure to provide reasonable information to the Division as requested from time to time.~~

~~(3) A violation of these administrative rules is also a violation of the Utah Consumer Sales Practices Act and accompanying administrative rules.~~

### **~~R152-34-11. Rules Relating to Fraudulent Educational Credentials under Section 13-34-201.~~**

~~(1) A person may not represent him or herself in a deceptive or misleading way, such as by using the title "Dr." or "Ph.D." if he or she has not satisfied accepted academic or scholastic requirements.]~~

### **R152-34. Utah Postsecondary School and State Authorization Act Rule.**

#### **R152-34-1. Purpose.**

The purpose of this rule is to:

(1) establish the form and content of the registration statement;

(2) specify information a postsecondary school must provide with a registration statement;

(3) establish how a postsecondary school may prove its financial viability in accordance with Subsections 13-34-202(1)(d) and R152-34-3(6);

(4) establish when a surety bond, certificate of deposit, or irrevocable letter of credit may be required;

(5) establish the form, content, and amount of a surety bond, certificate of deposit, or irrevocable letter of credit required in accordance with Section 13-34-202;

(6) provide for the execution and cancellation of a surety bond, certificate of deposit, or irrevocable letter of credit a postsecondary school obtains in accordance with Section 13-34-202;

(7) establish the amount of money a school may charge a student in a 12-month period to qualify for an exemption in accordance with Subsection 13-34-111(3);

(8) specify acts and practices that are prohibited in accordance with Section 13-34-108;

(9) specify the electronic format in which a postsecondary school is required to maintain an educational credential, enrollment agreement, and financing agreement in accordance with Section 13-34-203;

(10) specify the student outcomes a postsecondary school must disclose in accordance with Section 13-34-109;

(11) establish the type and number of credits required to obtain a degree or diploma from an unaccredited postsecondary school;

(12) establish:

(a) standards for granting to a postsecondary school a state authorization certificate in accordance with a reciprocity agreement;

(b) any filing or document required for a postsecondary school to obtain a state authorization certificate in accordance with a reciprocity agreement; and

(c) penalties for a postsecondary school that fails to comply with Section R152-34-11; and

(13) aid the division's administration and enforcement of Title 13, Chapter 34, Utah Postsecondary School and State Authorization Act.

#### **R152-34-2. Authority.**

This rule is promulgated in accordance with Subsection 13-2-5(1), Section 13-34-103, and Section 13-34-203.

#### **R152-34-3. Definitions.**

As used in this rule:

(1) "Change of ownership" means a change to any owner of a postsecondary school, including:

(a) sale or merger of a postsecondary school; or

(b) any other occurrence that changes whether a person is an owner in accordance with Subsection R152-34-3(7).

(2) "Composite score" means the score calculated by the United States Department of Education using a postsecondary school's financial information in accordance with 34 CFR 668.171 et seq.

(3) "Field trip" means a congregation in Utah of students and instructors from a postsecondary school that is not located in Utah:

(a) for instruction in the subject of enrollment;

(b) that lasts no more than ten calendar days; and

(c) occurs no more than three times per year in the same program.

(4) "Gross tuition revenue" means the total amount of tuition and fees collected, reduced by the amount of refunds paid, by a postsecondary school during the most recently completed 12-month fiscal year.

(5) "Material information" means information that could reasonably influence whether the division may deny, suspend, or revoke a registration statement, registration certificate, or state authorization certificate, including a change of ownership.

(6) "Other proof of financial viability" means financial information that demonstrates the postsecondary school:

(a) based on its audited financial statements, has a composite score of 1.5 or greater for the current year;

(b)(i) based on its audited financial statements, has a composite score of 1.0 through 1.4 for the current year;

(ii) in one of the immediately preceding two years, had a composite score of 1.5 or greater; and

(iii) provides information sufficient to allow the division, at its discretion, to determine the risk to student funds posed by a postsecondary school's financial condition, including:

(A) a detailed explanation of the events that caused the reduced composite score;

(B) the postsecondary school's plan to improve the composite score; and

(C) a teach out plan;

(c) based on its reviewed financial statements for the preceding two fiscal years:

(i) had two consecutive years of a current ratio at or above 1.0; and

(ii) had two consecutive years of a debt to equity ratio no greater than 3.0;

(d) based on its unaudited financial statements for the preceding two fiscal years;

(i) had two consecutive years of a current ratio at or above 1.0;

(ii) had two consecutive years of a debt to equity ratio no greater than 3.0; and

(iii) has an average credit score exceeding 580 for the postsecondary school's owners; or

(e) provides sufficient other information to the division such that the division director may, at the director's discretion, determine that the postsecondary school has demonstrated financial viability.

(7) "Owner" means a person who directly or indirectly:

(a) exercises substantial control over a postsecondary school; or

(b) owns or controls at least 20 % of the ownership interests in a postsecondary school.

(8) "Physical presence," as defined by Subsection 13-34-101(12), does not include a field trip or supervised field experience.

(9) "Supervised field experience" means a student learning experience that:

(a) occurs at a location in Utah that is not owned, operated, leased, maintained, or controlled by the postsecondary school in which the student is enrolled;

(b) primarily involves practical application of previous education;

(c) is supervised by a supervisor, mentor, faculty member, or other qualified professional who reports to the postsecondary school in which the student is enrolled; and

(d) is part of a program offered by a postsecondary school located outside of Utah in which the student is enrolled.

(10) "Unaccredited postsecondary school" means a postsecondary school that is not accredited by an accrediting agency.

#### **R152-34-4. Registration Statement -- Required Documents and Information.**

(1) A postsecondary school shall submit a complete registration statement on a form approved by the division, including all information required by the form and Subsection R152-34-4(2):

(a) each year, if the postsecondary school is an unaccredited postsecondary school;

(b) every two years, if the postsecondary school is an accredited postsecondary school; and

(c) within 30 days of any change to material information required by the registration statement.

(2) A postsecondary school shall include with its registration statement:

(a) if the postsecondary school is an accredited postsecondary school, a copy of its most recent and active accreditation statement;

(b) if the postsecondary school is a longstanding nonprofit accredited postsecondary school, a copy of its determination letter from the Internal Revenue Service demonstrating its nonprofit status, and documentation sufficient to demonstrate that it has continuously operated as a nonprofit for 20 years;

(c) financial documentation demonstrating it is fiscally responsible, including:

(i) for a postsecondary school that collected \$500,000 or more in gross tuition revenue, the two most recent fiscal year end audited financial statements completed by a certified public accountant in accordance with GAAP;

(ii) for a postsecondary school that collected \$250,000 - \$499,999.99 in gross tuition revenue, the two most recent fiscal year end;

(A) audited financial statements completed by an external certified public accountant in accordance with GAAP; or

(B) reviewed financial statements completed by an external certified public accountant;

(iii) for a postsecondary school that collected \$0 - \$249,999 in gross tuition revenue:

(A)(I) the two most recent fiscal year end audited financial statements completed by an external certified public accountant in accordance with GAAP;

(II) the two most recent fiscal year end reviewed financial statements completed by an external certified public accountant; or

(III) unaudited financial statements for each of the two most recent fiscal years, a commercial credit report, and a personal credit report for each of the postsecondary school's owners;

(iv) for a postsecondary school that has not previously operated:

(A) pro forma financial projections, in a form satisfactory to the division, for the postsecondary school's first 12 months of operation; and

(B) a personal credit report for each of the postsecondary school's owners;

(d) a current certificate of existence or good standing;

(e) a disclosure indicating whether the postsecondary school, its owner, officer, director, or administrator:

(i) has violated, in the preceding 10 years, any state or federal law or rule, not including traffic violations, as determined in a criminal, civil, or administrative proceeding;

(ii) is presently being investigated for alleged violations of state or federal law or rule, not including traffic violations;

(iii) has been subject to a negative action by an accrediting agency in the preceding 24 months; or

(iv) is presently being investigated or is subject to any other proceeding by the postsecondary school's accrediting agency;

(f) a list of programs offered by the postsecondary school, including the total program cost for each program; and

(g) the number of students enrolled in the postsecondary school.

(3) A credit report provided to the division shall:

(a) be no more than 60 days old;

(b) include reports from Equifax, Experian, and Transunion, if available.

(4) Notwithstanding Subsection R152-34-4(1)(b), an accredited postsecondary school shall annually provide to the division financial documentation in accordance with Subsection R152-34-4(2)(c).

(5) A postsecondary school shall submit a renewal registration statement 30 days before its registration certificate or state authorization certificate expires.

(6)(a) A registration statement submitted to the division in accordance with Subsection R152-34-4(1)(c) shall, at the division's discretion, be submitted using:

(i) electronic mail; or

(ii) other electronic means approved by the division.

(b) If non-material information included in a registration statement becomes incorrect or incomplete, a postsecondary school shall correct the information within 30 days using electronic mail sent to the division.

**R152-34-5. Surety Bond, Certificate of Deposit, or Irrevocable Letter of Credit -- Form -- Amount -- Execution and Cancellation -- Other Proof of Financial Viability.**

(1) A postsecondary school that provides to the division other proof of financial viability in accordance with Subsection R152-34-3(6) is not required to maintain a surety bond, certificate of deposit, or irrevocable letter of credit.

(2)(a) A postsecondary school shall provide with its registration statement a surety bond, certificate of deposit, or irrevocable letter of credit in a form and amount approved by the division.

(b) A postsecondary school may provide a continuation certificate to demonstrate it maintains a surety bond in accordance with Section 13-34-202 and Section R152-34-5.

(c) A certificate of deposit or irrevocable letter of credit obtained in accordance with Section 13-34-202 and Section R152-34-5 shall be issued or held by a financial institution that has a location in Utah.

(3)(a) A postsecondary school's surety bond, certificate of deposit, or irrevocable letter of credit shall be for an amount based on the postsecondary school's gross tuition revenue, according to the following table:

TABLE Amount of Surety Bond, Certificate of Deposit, or Irrevocable Letter of Credit	
Gross Tuition Revenue	Maximum Amount
\$0.00 - \$50,000	\$12,500
\$50,000.01 - \$100,000	\$25,000
\$100,000.01 - \$200,000	\$50,000
\$200,000.01 - \$300,000	\$75,000
\$300,000.01 - \$400,000	\$100,000
\$400,000.01 - \$500,000	\$125,000
\$500,000.01 - \$1,000,000	\$250,000
\$1,000,000.01 - \$2,000,000	\$500,000
\$2,000,000.01 - \$5,000,000	\$1,250,000
\$5,000,000.01 - \$10,000,000 or greater	\$2,500,000

(b) A postsecondary school that operates in Utah, but does not maintain physical presence in Utah, shall obtain a surety bond, certificate of deposit, or irrevocable letter of credit in an amount based on its gross tuition revenue attributable to Utah residents enrolled in the postsecondary school.

(c) A postsecondary school may obtain more than one surety bond, certificate of deposit, or irrevocable letter of credit to reach the amount required by Subsection R152-34-5(3)(a).

(d) The division may, at its discretion, determine whether a surety bond, certificate of deposit, or irrevocable letter of credit maintained by the postsecondary school, but that is not payable to the division, satisfies, in whole or in part, the requirements of Sections 13-34-202 and R152-34-5.

(4) A postsecondary school that submits pro forma financial projections in accordance with Subsection R152-34-4(2)(c)(iv) shall provide a surety bond, certificate of deposit, or irrevocable letter of credit for an amount:

(a) based on the postsecondary school's projected gross tuition revenue for its first 12 months of operation; and

(b) consistent with Subsection R152-34-5(3)(a).

**R152-34-6. Cost Exemption.**

A postsecondary school that does not charge any student more than \$3,000 in any 12-month period is exempt in accordance with Subsection 13-34-111(3)(d)(i)(C).

**R152-34-7. Prohibited Acts.**

Reserved.

**R152-34-8. Electronic Format of Educational Credential, Enrollment Agreement, and Financing Agreement.**

A postsecondary school shall:

(1) maintain a student's educational credential, enrollment agreement, and financing agreement in a text-searchable Portable Document Format (PDF) file;

(2) maintain a separate PDF file described in Subsection R152-34-8(1) for each student; and

(3) maintain a consistent file naming convention that allows a file described in Subsection R152-34-8(2) to be identified.

**R152-34-9. Required Outcome Disclosures.**

(1) A postsecondary school shall disclose in writing to its students, and prominently on its website, if one exists:

(a) the graduation or completion rate for its students;

(b) if the postsecondary school's program lasts more than one year, the percentage of students who return after the first year;

(c) if the postsecondary school provides education intended to prepare a student to take an exam required for professional licensure, the rate at which the postsecondary school's students pass the licensure exam; and

(d) the basis for any representation made by the postsecondary school regarding the impact of its program on a student's future earnings.

(2) An accredited postsecondary school may satisfy Subsection R152-34-9(1) by providing to a student:

(a) a document that contains the information present on the accredited postsecondary school's College Scorecard maintained by the United States Department of Education; or

(b) the web address that leads to the accredited postsecondary school's College Scorecard maintained by the United States Department of Education.

**R152-34-10. Type and Number of Credits Required for Degree or Diploma Offered by an Unaccredited Postsecondary School.**

To award a degree or diploma, a postsecondary school shall require a student to complete:

(1) 60 to 90 credit hours for an associate degree;

(2) 120 to 180 credit hours for a bachelor's degree;

(3) 150 to 225 credit hours for a master's degree; and

(4) 200 to 300 credit hours for a doctorate degree.

**R152-34-11. State Authorization Certificate -- Reciprocity Agreement.**

An accredited postsecondary school may obtain a state authorization certificate by filing a registration statement in accordance with Section R152-34-4.

**KEY:** ~~[education, postsecondary proprietary schools, registration, consumer protection]~~ [postsecondary schools, state authorization, registration, consumer protection]

Date of Last Change: ~~2024~~ December 15, 2017

Notice of Continuation: May 6, 2022

Authorizing, and Implemented or Interpreted Law: 13-2-5(1);  
13-34-103; 13-34-203

#### NOTICE OF PROPOSED RULE

**TYPE OF FILING:** Repeal

<b>Rule or Section Number:</b>	<b>R152-34a</b>	<b>Filing ID:</b> <b>56118</b>
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#### Agency Information

<b>1. Department:</b>	Commerce	
<b>Agency:</b>	Consumer Protection	
<b>Building:</b>	Heber Wells	
<b>Street address:</b>	160 E 300 S	
<b>City, state and zip:</b>	Salt Lake City, UT 84111	
<b>Mailing address:</b>	PO Box 146704	
<b>City, state and zip:</b>	Salt Lake City, UT 84114-6704	
<b>Contact persons:</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Daniel Larsen	801-530-6601	dcprules@utah.gov

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

#### General Information

<b>2. Rule or section catchline:</b>
R152-34a. Utah Postsecondary School State Authorization Act Rule
<b>3. Purpose of the new rule or reason for the change:</b>
This rule is being repealed as a result of S.B. 180, 2023 General Session, which repeals Title 13, Chapter 34a, Utah Postsecondary School State Authorization Act.
<b>4. Summary of the new rule or change:</b>
This filing repeals Rule R152-34a, Utah Postsecondary School State Authorization Act Rule, in its entirety.
Title 13, Chapter 34a, Utah Postsecondary School State Authorization Act, was repealed by S.B. 180 (2023). The Division of Consumer Protection (Division) no longer has authority to promulgate this rule, as the underlying statute will be repealed effective 01/01/2024.

#### Fiscal Information

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

#### A) State budget:

The repeal of this rule is not expected to impose costs or create savings to the state budget beyond the impact described in the Fiscal Note to S.B. 180 (2023).

#### B) Local governments:

The repeal of this rule is not expected to impose costs or create savings for local governments. This rule did not apply to local governments.

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

The repeal of this rule is not expected to impose costs upon or create savings for small businesses beyond any impact described in the Fiscal Note to S.B. 180 (2023).

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

The repeal of this rule is not expected to impose costs upon or create savings for non-small businesses beyond any impact described in the Fiscal Note to S.B. 180 (2023).

#### 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 repeal of this rule is not expected to have any fiscal impact on persons other than small businesses, non-small businesses, state, or local government entities.

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

The repeal of this rule does not impose 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

## NOTICES OF PROPOSED RULES

<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 Commerce, Margaret Busse, 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 13-2-5(1)		

## 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>	12/15/2023
<b>9. This rule change MAY become effective on:</b>	
01/01/2024	
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>	Daniel Larsen, Managing Analyst	<b>Date:</b>	11/01/2023
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## R152. Commerce, Consumer Protection.

[R152-34a. Utah Postsecondary School State Authorization Act Rule.

## R152-34a-101. Authority and Purpose.

(1) These rules are promulgated under the authority of Section 13-2-5(1) and Section 13-34a-103.

(2) These rules are promulgated to:

(a) administer and enforce the Utah Postsecondary School State Authorization Act; and

(b) provide standards by which persons subject to the Utah Postsecondary School State Authorization Act shall operate.

## R152-34a-102. Definition.

"Accredited" means public recognition by a national or regional accrediting agency, as defined in Section 13-34a-102(2).

## R152-34a-201. Application Process.

(1) To obtain a certificate of postsecondary state authorization, an applicant shall:

(a) submit to the division a completed application form, as provided by the division;

(b) attach to the application:

(i)(A) a copy of the school's accreditation statement; and

(B) if the applicant does not meet the criteria stated in Section 13-34a-203, audited financial statements pursuant to this Subsection (2);

(ii) a list of all current course offerings;

(iii) a copy of the school's tuition schedule and total program cost(s); and

(iv) a copy of the school's refund policy;

(c) comply in all respects with Section 13-34a-203 or Section 13-34a-204 as applicable;

(d) sign and notarize a statement that the owner of the school or similar controlling individual:

(i) has read and understood Section 13-34a et seq and these rules; and

(ii) agrees to operate in full compliance with Section 13-34a et seq and these rules; and

(e) pay the nonrefundable application fee.

(2) A school that is required to submit audited financial statements pursuant to this Subsection (1)(b)(i)(B) shall submit:

(a) the audited financial statements that were completed or provided to an accrediting agency in conjunction with the school's most recent accreditation review; and

(b) audited financial statements for the most recent fiscal year.

(3)(a) A postsecondary school that submits an application for a certificate of authorization under this Subsection R152-34a-201 is not required to apply concurrently with the division for registration as a postsecondary proprietary school under Section 13-34 et seq.

(b) For the purpose of Section 13-34-107(1)(b)(ii), a certificate of state authorization issued under this Subsection R152-34a-3 establishes an exemption to the registration requirement that otherwise applies to a person operating as a postsecondary proprietary school.

## R152-34a-206. Complaint Process.

To file a complaint under Section 13-34a et seq against a postsecondary school that holds a certificate from the division, a person shall submit to the division:

(1) a completed complaint form as provided by the division; or

(2) a letter, signed by the complainant, and including:

(a) all documentary evidence related to the complaint; and

(b) contact information for the complainant.



**~~R152-34a-302. Grounds for Investigation and Enforcement—Requirements Upon Termination of Certificate of Authorization.~~**~~(1) A postsecondary school that holds a certificate of authorization shall:~~~~(a) as to an entity granted a certificate under Section 13-34a-204, maintain financial capability pursuant to Section 13-34a-204(2)(a);~~~~(b) disclose to each student, in writing, the school's tuition schedule, total program cost, and refund policy before requiring a student to make any payment to the school;~~~~(c) if cited or investigated by the division, provide:~~~~(i) copies of all advertised claims;~~~~(ii) copies of any documents signed by or on behalf of the complainant and other interested person(s), as identified by the division;~~~~(iii) all academic records of the complainant and other student(s), as identified by the division and permitted under any applicable confidentiality law or agreement; and~~~~(iv) all other records requested by the division;~~~~(d)(i) maintain each student's transcript(s) for a period of at least 60 years from the date of the student's last attendance:~~~~(A) in either paper or electronic form; and~~~~(B) at a physical location within the continental United States; and~~~~(ii) provide a student's transcript(s);~~~~(A) within 20 days of a request from the student or the division; and~~~~(B)(I) without charge, if the request is from the division; or~~~~(II) with or without a reasonable charge, if the request is from a student;~~~~(c) if terminating operations, within the 30-day period following the date of termination:~~~~(i) surrender to the division the school's current state certificate of authorization; and~~~~(ii) identify:~~~~(A) the name and contact information of the individual who will maintain custody of student records pursuant to this Subsection (1)(d); and~~~~(B) the physical location where student transcripts will be maintained in compliance with this Subsection (1)(d); and~~~~(f) notify the division within 10 business days of:~~~~(i) any change in information on record with division; and~~~~(ii) any action taken against the school by an accrediting body or a regulatory agency, including a state or the federal government.~~~~(2) A postsecondary school that holds a certificate of state authorization may not:~~~~(a) promulgate to the public a fraudulent or misleading statement relating to a program or service offered; or~~~~(b) withhold information or documents requested by the division in an investigation.~~~~(3) Pursuant to Section Subsection 13-34a-103(2)(iv), the violation of a rule in this Subsection R152-34a-302 may be sanctioned by denial, suspension, or revocation of a certificate of the postsecondary school state authorization.~~**KEY: postsecondary schools, certificate of state authorization, application requirements, consumer protection****Date of Last Change: November 24, 2014****Notice of Continuation: April 1, 2019****Authorizing, and Implemented or Interpreted Law: 13-2-5(1); 13-34a-103]****NOTICE OF PROPOSED RULE****TYPE OF FILING:** New**Rule or Section Number:****R154-3****Filing ID:**  
**56130****Agency Information**

<b>1. Department:</b>	Commerce	
<b>Agency:</b>	Corporations and Commercial Code	
<b>Room number:</b>	Second Floor	
<b>Building:</b>	Heber M. Wells Building	
<b>Street address:</b>	160 E 300 S	
<b>City, state and zip:</b>	Salt Lake City, UT 84111	
<b>Contact persons:</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Leigh Veillette	801-530-6162	lveillette@utah.gov

**Please address questions regarding information on this notice to the persons listed above.****General Information****2. Rule or section catchline:**

R154-3. Decentralized Autonomous Organization Act Rule

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

This proposed rule is adopted by the Division of Corporations and Commercial Code (Division) under the authority of Sections 48-5-103 and 48-5-109 to enable the Division to administer Title 48, Chapter 5, Decentralized Autonomous Organization Act.

The Decentralized Autonomous Organization Act was passed as H.B. 357 during the 2023 General Session.

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

This proposed rule provides:

- 1) the form and content of registration required under Title 48, Chapter 5, Decentralized Autonomous Organization Act;
- 2) provides the method of determining whether formation requirements described in Section 48-5-201 have been met and when to issue/file a certificate of organization;
- 3) identifies standards for a security review for quality assurance;
- 4) permits documents filed with the Division under Title 48, Chapter 5, to be filed electronically; and
- 5) permits the Division to transmit documents or notices electronically.

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

The state will receive revenue in the form of filing fees from decentralized autonomous organizations (DAO), and will expend costs in supporting the registration program.

The exact amounts are inestimable at this time due to uncertainty about the number of registrants.

The registration program does not begin until 01/01/2024.

These revenues and costs may affect the amount lapsed to the General Fund from the Commerce Service Account.

**B) Local governments:**

This rule is not expected to have an impact on local governments' revenues or expenditures.

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

This proposed rule could result in a fiscal impact to small businesses, to the extent registrant DAOs qualify as small businesses.

Filing fees will be a cost to each DAO, as well as the data audit in the rule. The exact amounts are inestimable at this time due to uncertainty about the number of registrants. The registration program does not begin until 01/01/2024.

Additionally, the costs of each data audit will vary depending on the volume of code base and market practices of auditing organizations.

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

This proposed rule could result in a fiscal impact to non-small businesses, to the extent registrant DAOs qualify as non-small businesses.

Filing fees will be a cost to each DAO, as well as the data audit in the rule. The exact amounts are inestimable at this time due to uncertainty about the number of registrants. The registration program does not begin until 01/01/2024.

Additionally, the costs of each data audit will vary depending on the volume of code base and market practices of auditing organizations.

**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 have an impact on these groups.

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

To comply with the rule, and Title 48, Chapter 5, DAOs will need to pay filing fees and pay for the required data audit. The exact amounts are inestimable at this time due to uncertainty about the number of registrants.

The Division anticipates an initial filing fee of between \$200 and \$600. The registration program does not begin until 01/01/2024.

Additionally, the costs of each data audit will vary depending on the volume of code base and market practices of auditing organizations.

**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 Commerce, Margaret W. Busse, 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 48-5-103	Section 48-5-109
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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>	12/15/2023
--	------------

<b>9. This rule change MAY become effective on:</b>	01/01/2024
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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>	Margaret W. Busse, Executive Director	<b>Date:</b>	11/01/2023
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**R154. Commerce, Corporations and Commercial Code.****R154-3. Decentralized Autonomous Organization Act Rule.****R154-3-1. Title -- Authority -- Purpose.**

(1) This rule is known as the "Decentralized Autonomous Organization Act Rule."

(2) This rule is adopted by the Division under the authority of Sections 48-5-103 and 48-5-109 to enable the division to administer Title 48, Chapter 5, Decentralized Autonomous Organization Act.

**R154-3-2. Definitions.**

(1) Terms used in this rule are defined in Title 48, Chapter 5, Decentralized Autonomous Organization Act. In addition:

(2) "Address" means either:

(a) a street address, route number, or PO Box number plus the city, state and zip code; or

(b) an address that purports to be a mailing address outside the United States of America.

(3) "Auditing organization" means a person that conducts a data audit for a DAO.

(4) "DAO" means decentralized autonomous organization.

(5) "DAO record" means a DAO certificate of organization, DAO evidence of compliance with formation requirements, or supplemental materials submitted on behalf of a DAO, and includes a record maintained by the division. The term

may not be considered to refer exclusively to paper or paper-based writings.

(6) "Data audit" means "quality assurance" as defined in Subsection 48-5-101(27).

(7) "Electronic signature" means an electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.

(8) "Record" used as a noun, means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(9) "Remitter" means a person who tenders a DAO record to the division for filing, whether the person is a filer or an agent of a filer responsible for tendering the record for filing. "Remitter" does not include a person responsible for the delivery of the record to the division, such as the postal service or a courier service but does include a service provider who acts as a filer's representative in the filing process.

**R154-3-3. Means to Deliver DAO Records; Time of Filing; Signatures.**

(1) DAO records may be tendered for filing at the division as follows:

(a) Personal delivery by remitter at the division's street address;

(b) Courier delivery by a person other than the remitter at the division's street address;

(c) Postal delivery to the division's mailing address;

(d) Electronic mail and telefacsimile delivery to the division's email address or the division's fax filing telephone number; and

(e) Electronic filing using the division's Shopping Cart utility.

(2) The file time for DAO records is as follows:

(a) Subject to Subsection R154-3-3(2)(b), the file time for a DAO record delivered by personal delivery by remitter at the division's street address is when delivery of the DAO record is taken by the division, even though the DAO record may not yet have been accepted for filing and subsequently may be rejected and this rule applies only to a remitter who tenders a DAO record to the division and awaits an immediate determination of whether or not the DAO record will be taken or not.

(b) The file time for a DAO record delivered by courier delivery by a person other than a remitter at the division's street address is, notwithstanding the time of delivery, at the earlier of the time the DAO record is first examined by the division for processing, even though the DAO record may not yet have been accepted for filing and may be subsequently rejected, or the next close of business following the time of delivery. This rule does not apply to a courier who is acting as an agent of the remitter and who tenders a DAO record to the division and awaits an immediate determination of whether or not the DAO record will be taken or not under Subsection (1)(a). A DAO record delivered after regular business hours or on a day the division is not open for business, if not examined for processing sooner, will have a filing time of the close of business on the next day the division is open for business.

(c) The file time for a DAO record delivered by postal service delivery to the division's mailing address is notwithstanding the time of delivery, at the earlier of the time the DAO record is first examined by the division for processing or the next close of business following the time of delivery, even though the DAO record may not yet have been accepted for filing and may be subsequently rejected. A DAO record delivered after regular business hours or on a day the

filing office is not open for business, if not examined for processing sooner, will have a filing time of the close of business on the next day the filing office is open for business.

(d) The file time for a DAO record delivered by Shopping Cart and electronic mail and telefacsimile delivery to the division's email address or the division's fax filing telephone number is, notwithstanding the time of delivery, at the earlier of the time the DAO record is first examined by a filing office for processing, even though the DAO record may not yet have been accepted for filing and may be subsequently rejected, or the next close of business following the time of delivery. A DAO record delivered after regular business hours or on a day the division is not open for business, if not examined for processing sooner, will have a filing time of the close of business on the next day the division is open for business.

(3) Regardless of the method of delivery, information submitted to the division must be communicated only in the form of characters that appear on the American standard keyboard, or the information will be modified, upon entry into the division's information management system, as provided in Section R154-3-5.

(4) A DAO record may be signed by photographic or electronic means. A DAO record signed in an electronic medium shall be signed by electronic signature in accordance with Title 46, Chapter 4, Uniform Electronic Transactions Act.

#### **R154-3-4. Forms.**

(1) The division may prescribe forms or cover sheets for documents required or permitted to be filed by Title 48, Chapter 5, Decentralized Autonomous Organization Act.

(2) If the division prescribes a form or cover sheet pursuant to Subsection R154-3-4(1), the division shall provide the form or cover sheet on request.

(3) The use of a form or cover sheet is not mandatory unless the division specifically requires the use of the form or cover sheet in this rule.

#### **R154-3-5. Filing and Data Entry Errors.**

Data are entered into the division's information management system exactly as provided in a DAO record, without regard to apparent errors, except that characters that do not appear on the American standard keyboard will be replaced with an asterisk or the closest reasonable equivalent found on the American standard keyboard. If no reasonably equivalent character appears on this keyboard, then the character will be replaced with an asterisk.

#### **R154-3-6. Notification of Defects.**

Nothing in this rule prevents the division from communicating to a filer or a remitter that the division noticed apparent potential defects in a DAO record, whether or not it was filed or refused for filing. However, the division is under no obligation to do so.

#### **R154-3-7. Redaction of Certain Information.**

The division shall redact certain information from the information it provides to searchers and bulk data buyers upon request in accordance with Title 48, Chapter 5, Decentralized Autonomous Organization Act and Title 63G, Chapter 2, Government Records Access and Management Act.

#### **R154-3-8. Transmission by the Division.**

Any writing required or permitted to be prepared, delivered, or mailed by the division under Title 48, Chapter 5, Decentralized Autonomous Organization Act may be prepared,

delivered, or mailed in an electronic medium or by electronic transmission.

#### **R154-3-9. Grounds for Refusal.**

(1)(a) The division shall refuse a DAO certificate of organization if:

(i) The certificate of organization fails to provide one or more items listed in Subsection 48-5-201(2);

(ii) The DAO does not provide evidence in accordance with Section R154-3-11 of its compliance with the filing requirements listed in Subsection 48-5-201(3).

(b) A certificate of organization that does not provide an address that meets the requirements as set forth in Subsection R154-3-2(2) does not provide an address as required by Subsections 48-5-201(2)(a)(iii) and 48-5-201(2)(a)(iv).

(2) Any request under Subsection 48-5-201(2)(b) that the division redact information provided pursuant to Subsections 48-5-201(2)(a)(ii) and 48-5-201(2)(a)(iii) shall be provided either in the certificate of organization or in a separate record submitted contemporaneously with the certificate of organization.

#### **R154-3-10. Procedure Upon Refusal.**

(1)(a) If the division finds grounds to refuse a DAO record, the division shall keep the fee for a period of 30 days from the date of the refusal pending resubmission of the record.

(b) After the 30-day period in Subsection (1)(a), the remitter must pay the applicable fee to resubmit the record.

(c) The fee is nonrefundable.

(2) Communication of the refusal, the reasons for the refusal, and other related information will be made to the remitter as soon as practicable, by the same means as the means by which the DAO record was received by the filing office, or by mail or a more expeditious means as the division shall determine.

(3) Records of refusal, including a copy of the refused DAO record and the grounds for refusal, shall be managed in accordance with Title 63G, Chapter 2, Government Records Access and Management Act and the division's applicable retention schedules.

#### **R154-3-11. Evidence of Compliance with Filing Requirements.**

(1) In accordance with Section R154-3-4, the division form for submission of evidence of compliance with filing requirements is mandatory.

(2) The form described in Subsection (1) will facilitate a DAO providing the information required to show compliance with the requirements listed in Subsection 48-5-201(3).

(3) A data audit that does not meet the requirements as set forth in Section R154-3-12 does not meet the requirement as set forth in Subsection 48-5-201(3)(d).

(4) DAO evidence of compliance with formation requirements, including the form described in Subsection (1) and supplemental materials submitted on behalf of a DAO, shall be managed in accordance with Title 63G, Chapter 2, Government Records Access and Management Act and the division's applicable retention schedules.

#### **R154-3-12. Data Audit Requirements.**

(1)(a) The scope of the data audit must include all software code of the DAO.

(b) If a DAO can show to the satisfaction of the division director or their designee that portions of the software code of the

DAO have been previously audited, those portions of the software code may be removed from the scope of the data audit.

(3)(a) The data audit must be conducted by an auditing organization that meets the requirements as set forth in Section R154-3-13.

(b) The division director or their designee may reach out to each auditing organization that performs a data audit for a DAO filing with the division to ascertain whether the auditing organization meets the requirements as set forth in Section R154-3-13.

(4) A data audit must result in a report that:

(a) Is signed by an officer or principal of the auditing organization;

(b) Provides contact information for an individual from the auditing organization with knowledge of the data audit and report who may be contacted by the division director or their designee;

(c) Describes the findings of the data audit in detail; and

(d) Discloses if the audit was conducted using fully automated methods with minimal human intervention.

#### **R154-3-13. Auditing Organization Requirements.**

(1) An auditing organization must:

(a) Have been conducting business for at least one year;

(b) Have conducted at least one prior DAO data audit; and

(c) Provide the division with at least one prior DAO client's data audit report or the location where the report is publicly available.

(2) The division may, from time to time, identify auditing organizations that the division has deemed to have met the requirements in Subsection (1).

#### **KEY: decentralized autonomous organizations**

**Date of Last Change: 2024**

**Authorizing, and Implemented or Interpreted Law: 48-5-103; 48-5-109**

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

**TYPE OF FILING:** Amendment

<b>Rule or Section Number:</b>	<b>R156-31b</b>	<b>Filing ID:</b> <b>55904</b>
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#### **Agency Information**

<b>1. Department:</b>	Commerce	
<b>Agency:</b>	Professional Licensing	
<b>Building:</b>	Heber M. Wells Building	
<b>Street address:</b>	160 E 300 S	
<b>City, state and zip:</b>	Salt Lake City UT 84111-2316	
<b>Mailing address:</b>	PO Box 146741	
<b>City, state and zip:</b>	Salt Lake City UT 84114-6741	
<b>Contact persons:</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Jeff Busjahn	801-530-6789	jbusjahn@Utah.gov

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

#### **General Information**

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

R156-31b. Nurse Practice Act Rule

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

The Division of Professional Licensing (Division) in collaboration with the Board of Nursing and the Nursing Advisory Peer Education Committee is filing these proposed amendments to clarify and update this rule for nurses practicing in a school setting and to remove barriers to licensure as a medication aide as authorized by statutory changes made by H.B. 264 passed in the 2023 General Session.

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

The amendments to Subsection R156-31b-102(20) and Section R156-31b-701b further define Individualized Health Plans for nurses to utilize in a school setting.

The amendments to Section R156-31b-501 update the fine table to correspond to statutory changes.

As authorized by Subsection 58-31b-302(1)(e), as amended by H.B. 264 (2023), the amendment to Section R156-31b-802 allows an individual seeking certification as a medication aide to obtain their required 2,000 hours of experience in any health facility defined in Subsection 78B-3-403(12) instead of only in long term care facilities.

The remaining amendments make nonsubstantive formatting changes for clarity and to update this rule in accordance with the Rulewriting Manual of Utah.

#### **Public Hearing Information**

There will be a public hearing on 11/17/2023 at 9 AM at 160 E 300 S, Conference Room 474 (4th Floor), Salt Lake City, Utah.

Also via Google Meet link:  
meet.google.com/ngx-fsph-bwc

Or join by phone:  
(US) +1 302-440-5055  
PIN: 550866830

#### **Fiscal Information**

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

##### **A) State budget:**

The amendments to Subsection R156-31b-102(20) and Section R156-31b-701b are not expected to impact the state budget as they simply provide further direction for school nurses to practice safely.

All school nurses statewide have been asked to standardize Individualized Health Plans (IHPs) to include the full scope of nursing process (assessment, diagnosis,



interventions, and outcomes), as well as to write EAPs for school staff as needed. Standardization of IHPs and the utilization of EAPs is being implemented nationwide.

As described in Box 5C for small businesses, below, the amendment to Section R156-31b-802 may benefit state agencies that employ nurses or medication aides as this may increase the state agencies' ability to hire qualified medication aides instead of using more costly licensed nurses for medication passes, but the full fiscal and non-fiscal impacts cannot be estimated because the data necessary to determine how many licensees might be hired is unavailable, and because the benefits an employer may experience from any resulting increased ability to employ qualified medication aides will vary depending on the requirements of the employer and the individual characteristics of each medication aide.

The remainder of the proposed amendments are not expected to result in any impact as they merely update this rule in accordance with statutory changes.

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

The amendments to Subsection R156-31b-102(20) and Section R156-31b-701b are not expected to impact local governments as they simply provide further direction for school nurses to practice safely.

All school nurses statewide have been asked to standardize Individualized Health Plans (IHPs) to include the full scope of nursing process (assessment, diagnosis, interventions, and outcomes), as well as to write EAPs for school staff as needed. Standardization of IHPs and the utilization of EAPs is being implemented nationwide.

As described in Box 5C for small businesses, below, the amendment to Section R156-31b-802 may benefit local governments that employ nurses or medication aides as this may increase their ability to hire qualified medication aides instead of using more costly licensed nurses for medication passes, but the full fiscal and non-fiscal impacts cannot be estimated because the data necessary to determine how many licensees might be hired is unavailable, and because the benefits an employer may experience from any resulting increased ability to employ qualified medication aides will vary depending on the requirements of the employer and the individual characteristics of each medication aide.

The remainder of the proposed amendments are not expected to result in any impact as they merely update this rule in accordance with statutory changes.

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

The amendments to Subsection R156-31b-102(20) and Section R156-31b-701b are not expected to impact small businesses as they simply provide further direction for school nurses to practice safely.

The amendment to Section R156-31b-802 may benefit the estimated 4,828 small businesses in Utah comprising establishments employing medication aides or nurses (NAICS 623110, 623110, 622310, 622210, 624230, 621610, 624120, 623990, 623312, 621399, 62422, 611100) as the amendments may facilitate the ability of these businesses to hire qualified medication aides to practice instead of using more costly licensed nurses for medication passes, but the full fiscal impact cannot be estimated because the data necessary to determine how many licensees might be hired is unavailable, and because the benefits an employer may experience from any resulting increased ability to employ qualified medication aides will vary widely depending on the requirements of the employer and the individual characteristics of each medication aide.

The remainder of the proposed amendments are not expected to result in any impact on small businesses' revenues or expenditures as they merely update this rule in accordance with statutory changes.

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

The amendments to Subsection R156-31b-102(20) and Section R156-31b-701b are not expected to impact small businesses as they simply provide further direction for school nurses to practice safely.

The amendment to Section R156-31b-802 may benefit the estimated 314 non-small businesses in Utah comprising establishments employing medication aides or nurses (NAICS 623110, 623110, 622310, 622210, 624230, 621610, 624120, 623990, 623312, 621399, 62422, 611100) as the amendments may facilitate the ability of these businesses to hire qualified medication aides to practice instead of using more costly licensed nurses for medication passes, but the full fiscal impact cannot be estimated because the data necessary to determine how many licensees might be hired is unavailable, and because the benefits an employer may experience from any resulting increased ability to employ qualified medication aides will vary widely depending on the requirements of the employer and the individual characteristics of each medication aide.

The remainder of the proposed amendments are not expected to result in any impact on non-small businesses' revenues or expenditures as they merely update this rule in accordance with statutory changes.

#### **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 approximately 45,641 (LPN and RN) nurses who may be affected by the proposed amendments to Subsection R156-31b-102(20) and Section R156-31b-701b if they choose to practice as a school nurse, but the

Division does not anticipate any measurable fiscal impact to these persons beyond their receiving clearer direction to implement timely care of a student's medical condition.

The proposed amendment to Section R156-31b-802 will remove barriers to licensure for medication aides; there are currently only 63 licensed medication aides in Utah and the proposed rule change may assist individuals who are interested in pursuing licensure as a certified medication aide.

However, the full fiscal impact to these individuals cannot be estimated because the data necessary to determine how many of these individuals might be able to obtain licensure and then become hired is unavailable, and the benefits that each may experience from any resulting increased ability to become employed will vary depending on the employer and the individual characteristics of each medication aide.

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

As described in Box 5E for other persons, above, the Division does not anticipate any compliance costs for any affected persons from these proposed amendments.

**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 Commerce, Margaret W. Busse, has reviewed and approved this fiscal analysis.

The Division, in concert with the Utah Board of Nursing, proposes amendments to update Rule R156-31b, the Nurse Practice Act Rule. These proposed amendments clarify and update this rule for nurses practicing in a school setting and to remove barriers to licensure as a medication aide as authorized by statutory changes made by H.B. 264 (2023).

These proposed amendments add additional fines to the fine schedule table to correspond with statutory changes.

Small Businesses (less than 50 employees):

The Division does not expect any foreseeable impact on small businesses. The proposed amendments to Rule R156-31b will standardize school nursing practice and reduce licensing barriers for medication aides. The Division foresees benefits to the estimated 4,828 small businesses in Utah engaged in providing nursing services via medication aides (NAICS 623110, 622310, 622210, 624230, 621610, 624120, 623990, 623312, 621399, 62422, 611100).

Regulatory Impact to Non-Small Businesses (50 or more employees):

The proposed amendments are not expected to impact the 314 non-small businesses that provide nursing services. The amendments may benefit non-small businesses in Utah comprising establishments employing medication aides or nurses (NAICS 623110, 622310, 622210, 624230, 621610, 624120, 623990, 62312, 621399, 62422, 611100).

These amendments will have no expected fiscal impact for non-small businesses in Utah for the same rationale as described above for small businesses. These costs are either inestimable, for the reasons stated above, or there is no fiscal impact.

**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 58-31b-101	Subsection 58-1-106(1)(a)	Subsection 58-1-202(1)(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.)

<b>A) Comments will be accepted until:</b>		12/15/2023
<b>B) A public hearing (optional) will be held:</b>		
<b>Date:</b>	<b>Time:</b>	<b>Place</b> (physical address or URL):
11/17/2023	9:00 AM	See information in Box 4 above.

**To the agency:** If more space is needed for a physical address or URL, refer readers to Box 4 in General Information. If more than two hearings will take place, continue to add rows.

<b>9. This rule change MAY become effective on:</b>	12/22/2023
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>	Mark B. Steinagel, Division Director	<b>Date:</b>	10/26/2023
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**R156. Commerce, Professional Licensing.****R156-31b. Nurse Practice Act Rule.****R156-31b-102. Definitions.**

~~[The following definitions supplement the definitions]~~ Terms used in this rule are defined in Title 58, Chapter 1, Division of Professional Licensing Act, and Title 58, Chapter 31b, Nurse Practice Act. In addition:

(1) "Accreditation" means formal recognition and approval of a nurse education program by an accrediting body for nursing education that is approved by the United States Department of Education.

(2) "Administering" means the direct application of a prescription drug or device, whether by injection, inhalation, ingestion, or by any other means, to the body of a human patient or research subject by another person.

(3) "APRN" means advanced practice registered nurse.

(4) "APRN-CRNA" means advanced practice registered nurse with registered nurse anesthetist certification.

(5) "Approved continuing education" means:

(a) continuing education that has been approved by a nationally or internationally recognized approver of professional continuing education for health-related industries;

(b) nursing education courses offered by an approved education program as defined in Subsection (6);

(c) health-related coursework taken from an educational institution accredited by a regional or national institutional accrediting body recognized by the U.S. Department of Education;

(d) continuing education approved by any state board of nursing; or

(e) training or educational presentations offered by the Division.

(6) "Approved education program" as defined in Subsection 58-31b-102(3) is further defined to mean a preclicensing nursing education program that meets the standards in Sections 58-31b-601 and R156-31b-601.

(7) "Approved re-entry program" means a program designed to evaluate nursing competencies for nurses that is:

(a)(i) approved by a state board of nursing; or

(ii) offered by an accredited nursing education program; and

(b) includes a minimum of 150 hours of supervised clinical learning.

(8) "Certificate of Academic Status" means the Division form that may be completed by an approved registered nursing education program for an applicant for a registered nurse apprentice license, to prove the applicant's qualifications for licensure under Subsections 58-31b-302(3)(e) and (f) and Section R156-31b-302c.

(9) "CGFNS" means the Commission on Graduates of Foreign Nursing Schools.

(10)(a) "Clinical practice experiences" means, as used in the Commission on Collegiate Nursing Education Standards for Accreditation of Baccalaureate and Graduate Nursing Programs, amended 2018, planned learning activities in nursing practice that allow students to understand, perform, and refine professional competencies at the appropriate program level.

(b) "Clinical practice experiences" may be known as clinical learning opportunities, clinical practices, clinical strategies, clinical activities, experiential learning strategies, or practice.

(11) "Completed" an education program under Section 58-31b-302, means:

(a) graduation from the education program, verified by official transcripts showing degree and date of program completion; and

(b) for an LPN applicant under Subsections 58-31b-302(2)(e) and R156-31-103a(1)(a), may include:

(i) current enrollment in an RN approved education program; and

(ii) completion of coursework in the RN approved education program that is equivalent to the coursework of a PN approved education program.

(12) "Comprehensive nursing assessment" means:

(a) conducting extensive initial and ongoing data collection:

(i) for individuals, families, groups, or communities; and

(ii) addressing anticipated changes in patient conditions as well as emergent changes in patient health status;

(b) recognizing alterations to previous patient conditions;

(c) synthesizing the biological, psychological, spiritual, and social aspects of the patient's condition;

(d) evaluating the impact of nursing care; and

(e) using data generated from the assessments conducted pursuant to Subsections (a) through (d) to:

(i) make independent decisions regarding patient health care needs;

(ii) plan nursing interventions;

(iii) evaluate any possible need for different interventions; and

(iv) evaluate any possible need to communicate and consult with other health team members.

(13) "Contact hour" in the context of continuing education means 60 minutes, and may include a ten-minute break.



(14) "Delegate" means:

(a) to transfer to another nurse the authority to perform a selected nursing task in a selected situation;

(b) for an APRN who specializes in psychiatric mental health nursing, to transfer to a licensed mental health therapist selected psychiatric APRN supervisory clinical experiences within generally accepted industry standards; or

(c) to transfer to an unlicensed individual, including unlicensed assistive personnel or a responsible caregiver, the authority to perform a task that, according to generally accepted industry standards or law, does not require a nursing assessment as defined in Subsections (12) and (18).

(15) "Delegatee" means one or more persons assigned by a delegator to act on the delegator's behalf.

(16) "Delegator" means:

(a) a licensed nurse directly responsible for a patient's care, who assigns to another licensed or unlicensed individual the authority to perform a task on behalf of the delegator in accordance with Subsection 58-31b-102(12)(g) or R156-31b-102(13), or Section R156-31b-701a or R156-31b-701b; or

(b) a responsible caregiver who delegates to an unlicensed direct care worker the performance of nursing care for a patient in accordance with Sections 58-31b-308.1 and R156-31b-701c.

(17)(a) "Disruptive behavior" means conduct, whether verbal or physical, that:

(i) is demeaning, outrageous, or malicious;

(ii) occurs during the process of delivering patient care; and

(iii) places a patient at risk.

(b) "Disruptive behavior" does not include criticism that is offered in good faith with the aim of improving patient care.

(18) "Focused nursing assessment" means an appraisal of a patient's status and situation at hand, including:

(a) verification and evaluation of orders; and

(b) assessment of:

(i) the patient's nursing care needs;

(ii) the complexity and frequency of the required nursing care;

(iii) the stability of the patient; and

(iv) the availability and accessibility of resources, including appropriate equipment, adequate supplies, and other appropriate health care personnel to meet the patient's nursing care needs.

(19) "Foreign nurse education program" means any program that originates or occurs outside of the United States.

(20) "Individualized healthcare plan" or "IHP" means a written document that:

(a) is developed by the school nurse using the nursing process that includes assessment, diagnosis, outcome identification, planning, implementation, and evaluation;

([a]b) outlines the provision of student healthcare services intended to achieve specific student outcomes;[and]

([b]c) includes a confirmed medical diagnosis by a licensed health care provider as defined in Subsection 78B-3-403(13), that is within the health care provider's scope of practice; and

(d) may be used to develop an Emergency Action Plan (EAP) that instructs school staff how to manage a specific student's medical emergency.

(21) "Licensure by equivalency" applies only to a licensed practical nurse and may be warranted if the person seeking licensure:

(a)(i) has, within the two-year period preceding the date of application, successfully completed course work in a registered nurse education program that meets the criteria established in Sections 58-31b-601 and R156-31b-602; and

(ii) has been unsuccessful on the NCLEX-RN at least one time; or

(b)(i) is currently enrolled in an accredited registered nurse education program; and

(ii) has completed course work that is certified by the education program provider as being equivalent to the course work of an ACEN-accredited practical nursing program, as verified by the nursing education program director or administrator.

(22) "LPN" means licensed practical nurse.

(23) "MAC" means medication aide certified.

(24) "Medication" means a prescription or nonprescription drug as defined in Subsection 58-17b-102(26), 58-17b-102(39), or 58-17b-102([64]65) of the Pharmacy Practice Act.

(25) "NCLEX" means the National Council Licensure Examination of the National Council of State Boards of Nursing.

(26) "Nonapproved education program" means a nurse prelicensing course of study that does not meet the criteria of Section 58-31b-601, including a foreign nurse education program.

(27) "Nurse" means:

(a) an individual licensed under Title 58, Chapter 31b, Nurse Practice Act as:

(i) a licensed practical nurse;

(ii) a registered nurse;

(iii) an advanced practice registered nurse; or

(iv) an advanced practice registered nurse-certified registered nurse anesthetist; or

(b) a certified nurse midwife licensed under Title 58, Chapter 44a, Nurse Midwife Practice Act.

(28) "Other specified health care professional," as used in Subsection 58-31b-102(13), means an individual in addition to a registered nurse or a licensed physician who is permitted to direct the tasks of a licensed practical nurse, and includes:

(a) an advanced practice registered nurse;

(b) a certified nurse midwife;

(c) a chiropractic physician;

(d) a dentist;

(e) an osteopathic physician;

(f) a physician assistant;

(g) a podiatric physician;

(h) an optometrist;

(i) a naturopathic physician; or

(j) a mental health therapist as defined in Subsection 58-60-102(5).

(29) "Patient" means one or more individuals:

(a) who receive medical or nursing care; and

(b) to whom a licensee owes a duty of care.

(30) "Patient surrogate" means an individual who has legal authority to act on behalf of a patient when the patient cannot act or make decisions unaided, including:

(a) a parent;

(b) a foster parent;

(c) a legal guardian; or

(d) a person legally designated as the patient's attorney-in-fact.

(31) "PN" means an unlicensed practical nurse.

(32) "Psychiatric mental health nursing specialty" means an expertise in psychiatric mental health, whether as a clinical nurse specialist or nurse practitioner licensed as an APRN.

# NOTICES OF PROPOSED RULES

(33) "Practica" means working in the nursing field as a student, not exclusive to patient care activities.

(34) "Practitioner" means a person authorized by law to prescribe treatment, medication, or medical devices.

(35) "RN" means a registered nurse.

(36) "School" means any private or public institution of primary or secondary education, including a charter school, pre-school, kindergarten, or special education program.

(37) "Supervision" means the global definitions of levels of supervision in Section R156-1-102a, as follows:

(a) "Direct supervision" and "immediate supervision" mean the same as defined in Section R156-1-102a.

(b) "Indirect supervision" means the same as defined in Section R156-1-102a.

(c) "General supervision" means the same as defined in Section R156-1-102a.

(d) "Supervising licensee" means the same as defined in Section R156-1-102a.

(38)(a) "Unlicensed assistive personnel," as used in Subsection 58-31b-102(18), is further defined to mean an unlicensed individual who performs health care services in a complementary or assistive role to a nurse in carrying out acts included within the definition of the practice of nursing.

(b) "Unlicensed assistive personnel" includes the following:

(i) a nurse aide, orderly, assistant, attendant, technician, home health aide, medication aide permitted or certified by a state agency, unlicensed direct care worker, or any other individual who provides personal care or assistance regarding health-related services; and

(ii) a nursing student not licensed as a nurse, who provides care that is not part of the student's formal educational program, and who must comply with applicable laws and rules regarding the student's performance of care.

(39) "Unprofessional conduct," as defined in Title 58, Chapter 1, Division of Professional Licensing Act, and Title 58, Chapter 31b, Nurse Practice Act, is further defined in Section R156-31b-502.

## R156-31b-501. Administrative Penalties.

Under Sections 58-1-501, 58-31b-501, 58-31b-502, ~~58-31b-502.5,~~ 58-31b-503, Subsection 58-31b-102(1), and Section R156-31b-502, and unless otherwise ordered by the presiding officer, the following fine schedule shall apply:

TABLE 1 Fine Schedule		
VIOLATION	FIRST OFFENSE	SUBSEQUENT OFFENSE
58-1-501(1)(a), (b), (c), (d), (e), (f)(i), or (g)	\$ 500 - \$ 5,000	\$ 5,000 - \$10,000
<del>58-1-501(1)(b)</del>	<del>\$ 500 - \$ 5,000</del>	<del>\$ 5,000 - \$10,000</del>
<del>58-1-501(1)(e)</del>	<del>\$ 500 - \$ 5,000</del>	<del>\$ 5,000 - \$10,000</del>
<del>58-1-501(1)(d)</del>	<del>\$ 500 - \$ 5,000</del>	<del>\$ 5,000 - \$10,000</del>
<del>58-1-501(1)(e)</del>	<del>\$ 500 - \$ 5,000</del>	<del>\$ 5,000 - \$10,000</del>
<del>58-1-501(1)(f)-(i)</del>	<del>\$ 500 - \$ 5,000</del>	<del>\$ 5,000 - \$10,000</del>

<del>58-1-501(1)(g)</del>	<del>\$ 500 - \$ 5,000</del>	<del>\$ 5,000 - \$10,000</del>
58-1-501(2)(a)(i), (ii), (iii), (iv), (v), (vi), (vii), (viii), (ix), (x), (xi), (xii), (xiii), (xiv), or (xv)	\$ 500 - \$ 5,000	\$ 5,000 - \$10,000
58-1-501(2)( <del>(b)</del> )(a)(xvi) violating 58-1-511	\$ 500 - \$ 5,000	\$ 5,000 - \$10,000
<del>58-1-501(2)(e)</del>	<del>\$ 500 - \$ 5,000</del>	<del>\$ 5,000 - \$10,000</del>
<del>58-1-501(2)(d)</del>	<del>\$ 500 - \$ 5,000</del>	<del>\$ 5,000 - \$10,000</del>
<del>58-1-501(2)(e)</del>	<del>\$ 500 - \$ 5,000</del>	<del>\$ 5,000 - \$10,000</del>
<del>58-1-501(2)(f)</del>	<del>\$ 500 - \$ 5,000</del>	<del>\$ 5,000 - \$10,000</del>
<del>58-1-501(2)(g)</del>	<del>\$ 500 - \$ 5,000</del>	<del>\$ 5,000 - \$10,000</del>
<del>58-1-501(2)(h)</del>	<del>\$ 500 - \$ 5,000</del>	<del>\$ 5,000 - \$10,000</del>
<del>58-1-501(2)(i)</del>	<del>\$ 500 - \$ 5,000</del>	<del>\$ 5,000 - \$10,000</del>
<del>58-1-501(2)(j)</del>	<del>\$ 500 - \$ 5,000</del>	<del>\$ 5,000 - \$10,000</del>
<del>58-1-501(2)(k)</del>	<del>\$ 500 - \$ 5,000</del>	<del>\$ 5,000 - \$10,000</del>
<del>58-1-501(2)(l)</del>	<del>\$ 500 - \$ 5,000</del>	<del>\$ 5,000 - \$10,000</del>
<del>58-1-501(2)(m)</del>	<del>\$ 500 - \$ 5,000</del>	<del>\$ 5,000 - \$10,000</del>
<del>58-1-501(2)(n)</del>	<del>\$ 250 - \$ 4,000</del>	<del>\$ 4,000 - \$ 8,000</del>
<del>58-1-501(2)(o)</del>	<del>\$ 250 - \$ 4,000</del>	<del>\$ 4,000 - \$ 8,000</del>
58-1-501(5) or (6)	\$500 -- \$5,000	\$5,000 - \$10,000
58-1-501.5	\$ 250 - \$ 4,000	\$ 4,000 - \$ 8,000
58-1-501.6	\$ 500 - \$5,000	\$5,000 - \$10,000
58-1-501.7	\$ 500 - \$5,000	\$5,000 - \$10,000
58-1-501.8	\$ 500 - \$5,000	\$5,000 - \$10,000
58-1-505	\$ 500 - \$5,000	\$5,000 - \$10,000
58-1-506	\$ 500 - \$5,000	\$5,000 - \$10,000
58-1-508( <del>(2)</del> ) violation of 31A-26-313	\$500 per violation	
58-31b-501(1)	\$ 500 - \$ 4,000	\$ 4,000 - \$ 8,000
58-1-509	\$ 500 - \$5,000	\$5,000 - \$10,000
58-1-510	\$ 500 - \$ 1,000	\$1,000 - \$2,000
58-31b-501(2)	\$ 500 - \$ 4,000	\$ 4,000 - \$ 8,000
58-31b-501(3)	\$ 2,000 - \$ 7,500	\$ 7,500 - \$ 9,500
58-31b-502(1)(a)	\$ 500 - \$ 5,000	\$ 5,000 - \$10,000

58-31b-502(1)(b)	\$ 500 - \$ 5,000	\$ 5,000 - \$10,000
58-31b-502(1)(c)	\$ 4,000 - \$ 8,000	\$ 8,000 - \$10,000
58-31b-502(1)(d)	\$ 2,000 - \$ 5,000	\$ 5,000 - \$10,000
58-31b-502(1)(e)	\$ 1,000 - \$ 5,000	\$ 5,000 - \$10,000
58-31b-502(1)(f)	\$ 1,000 - \$ 5,000	\$ 5,000 - \$10,000
58-31b-502(1)(g)	\$ 1,000 - \$ 5,000	\$ 5,000 - \$10,000
58-31b-502(1)(h)	\$ 500 - \$ 5,000	\$ 5,000 - \$10,000
58-31b-502(1)(i)	\$ 500 - \$ 5,000	\$ 5,000 - \$10,000
58-31b-502(1)(j)	\$ 500 - \$ 5,000	\$ 5,000 - \$10,000
58-31b-502(1)(k)	\$ 500 - \$ 5,000	\$ 5,000 - \$10,000
58-31b-502(1)(l)	\$ 1,000 - \$ 5,000	\$ 5,000 - \$10,000
58-31b-502(1)(m)	\$ 1,000 - \$ 5,000	\$ 5,000 - \$10,000
<del>58-31b-502(1)(n)</del>	<del>double the original penalty, up to \$20,000</del>	
58-31b-502(1)(n) violating 58-31b-801	\$ 1,000 - \$ 5,000	\$ 5,000 - \$10,000
58-31b-502(1)(o)	\$ 1,000 - \$ 5,000	\$ 5,000 - \$10,000
58-31b-502(1)(p)	\$ 1,000 - \$ 5,000	\$ 5,000 - \$10,000
58-31b-502(1)(q)	\$ 1,000 - \$ 5,000	\$ 5,000 - \$10,000
<del>58-31b-502.5(1)</del>	<del>\$ 500 - \$ 5,000</del>	<del>\$ 1,500 - \$10,000</del>
<del>— Ongoing: \$2,000 per day but not less than the second offense</del>		
58-31b-502.5(2)	\$ 500 - \$ 5,000	\$ 1,500 - \$10,000
<del>— Ongoing: \$2,000 per day but not less than the second offense</del>		
58-31b-502.5(3)	\$ 5,000	\$10,000
<del>— Ongoing: \$2,000 per day but not less than the second offense</del>		
58-31b-502(1)(r)	\$ 1,000 - \$ 5,000	\$ 5,000 - \$10,000
58-31b-601	\$ 2,000 - \$ 7,500	\$ 7,500 - \$ 9,500
<del>58-31b-801</del>	<del>\$ 1,000 - \$ 5,000</del>	<del>\$ 5,000 - \$10,000</del>
58-31b-803	\$ 1,000 - \$ 5,000	\$ 5,000 - \$10,000
58-37-19	first offense \$250	second offense \$500
subsequent offenses \$1,000		
R156-1-501 <del>(6)</del>	\$ 500 - \$ 4,000	\$ 4,000 - \$ 8,000
<del>R156-1-501(7)</del>	<del>\$ 500 - \$ 4,000</del>	<del>\$ 4,000 - \$ 8,000</del>
R156-1-501(8)	\$ 500 - \$ 5,000	\$ 5,000 - \$10,000

<del>R156-1-501(9)</del>	<del>\$ 500 - \$ 5,000</del>	<del>\$ 5,000 - \$10,000</del>
R156-1-501.1	\$ 500 - \$ 5,000	\$ 5,000 - \$10,000
R156-31b-502(1) (a)	\$ 500 - \$ 4,000	\$ 4,000 - \$ 8,000
R156-31b-502(1) (b)	\$ 500 - \$ 5,000	\$ 5,000 - \$10,000
R156-31b-502(1) (c)	\$ 500 - \$ 5,000	\$ 5,000 - \$10,000
R156-31b-502(1) (d)	\$ 500 - \$ 5,000	\$ 5,000 - \$10,000
R156-31b-502(1) (e)	\$ 1,000 - \$ 5,000	\$ 5,000 - \$10,000
R156-31b-502(1) (f)	\$ 500 - \$ 5,000	\$ 5,000 - \$10,000
R156-31b-502(1) (g)	\$ 250 - \$ 1,500	\$ 1,500 - \$10,000
R156-31b-502(1) (h)	\$ 250 - \$ 1,500	\$ 1,500 - \$10,000
R156-31b-502(1) (i)	\$ 250	second offense \$500
subsequent offenses \$1,000		
R156-31b-502(1) (j)	\$ 250	second offense \$500
subsequent offenses \$1,000		
R156-31b-502(1) (k)	\$ 1,000 - \$ 5,000	\$ 5,000 - \$10,000
R156-31b-502(1) (l)	\$ 250 - \$ 5,000	\$ 5,000 - \$10,000
R156-31b-502(1) (m)	\$ 500 - \$ 1,000	\$ 1,000 - \$ 2,000
<del>R156-31b-602</del>	<del>\$ 2,000 - \$ 7,500</del>	<del>\$ 7,500 - \$ 9,500</del>
R156-31b-601	\$ 500 - \$ 5,000	\$ 5,000 - \$10,000
R156-31b-609	\$ 500 - \$ 5,000	\$ 5,000 - \$10,000
R156-31b-701a	\$ 500 - \$ 1,000	\$1,000 - \$2,000
R156-31b-701b	\$ 500 - \$ 1,000	\$1,000 - \$2,000
R156-31b-701c	\$ 500 - \$ 1,000	\$1,000 - \$2,000
R156-31b-703a	\$ 2,000 - \$ 7,500	\$7,500 - \$9,500
R156-37-502	\$ 1,000	\$ 1,000
\$ 1,000 for each additional violation		
R156-31b-801	\$ 500 - \$ 1,000	\$1,000 - \$2,000
Subsequent offenses.	Unless a different fine amount is specified elsewhere, <del>a sanction</del> the fine for an offense subsequent to a second offense is the greater of \$10,000, or \$2,000 <del>per day</del> for each day of continued offense.	

**R156-31b-701b. Delegation of Tasks in a School Setting.**

In addition to Section R156-31b-701a, the following requirements apply to the delegation of tasks by a registered nurse in a school setting:

(1) before a registered nurse may delegate a task to be performed within a school setting, the registered nurse shall:

(a) develop an IHP in conjunction with the student and each applicable parent or parent surrogate, educator, and healthcare provider;~~and~~

(b) if a student's health condition requires special consideration, ensure that [the IHP]an Emergency Action Plan (EAP) is available to school personnel[-]; and

~~(2)(c) [Each task being delegated by a registered nurse shall be identified]~~ identify each task within the student's current IHP; ~~and~~

~~(3)(2)(a)~~ a registered nurse shall personally train each unlicensed person who will be delegated the task of administering medications that are routine for the student;

(b) the training required under Subsection (3)(a) shall be performed at least annually; and

~~(e)(3)~~ a registered nurse may not delegate to an unlicensed individual the administration of medication:

~~(i)(a)~~ that has known, frequent side effects that can be life threatening;

~~(ii)(b)~~ that requires the student's vital signs or oxygen saturation to be monitored before, during, or after administration;

~~(iii)(c)~~ that is being administered as a first dose in a school setting:

~~(A)(i)~~ of a new medication; ~~or~~

~~(B)(ii)~~ after a dosage change; or

~~(iv)(iii)~~ that requires nursing assessment or judgment ~~[prior to]~~ before or immediately after administration; and

(d) in addition to delegating other tasks pursuant to this rule, a registered nurse may delegate to an unlicensed individual who has been properly trained, the following tasks regarding a diabetic student's IHP:

(i) administration of a scheduled dose of insulin; and

(ii) administration of glucagon in an emergency ~~[situation]~~, as prescribed by the practitioner's order or specified in the IHP or EAP.

#### **R156-31b-801. Medication Aide Certified - Formulary and Protocols.**

Under Subsection 58-31b-102(10)(b)(i), the formulary and protocols for a MAC to administer routine medications are as follows[-];

(1) ~~[U]~~ under the supervision of a licensed nurse, a MAC may:

(a) administer over-the-counter medication;

(b) administer prescription medications;

(i) if expressly instructed to do so by the supervising nurse; and

(ii) via the routes listed in Subsection 58-31b-102(~~15~~)16(b);

(c) turn oxygen on and off at a predetermined, established flow rate;

(d) destroy medications per facility policy;

(e) assist a patient with self administration; and

(f) account for controlled substances with another MAC or nurse physically present[-];

(2) ~~[A]~~ a MAC may not administer medication via the following routes:

(a) central lines;

(b) colostomy;

(c) intramuscular;

(d) subcutaneous;

(e) intrathecal;

(f) intravenous;

(g) nasogastric;

(h) nonmetered inhaler;

(i) intradermal;

(j) urethral;

(k) epidural;

(l) endotracheal; or

(m) gastrostomy or jejunostomy tubes[-];

(3) ~~[A]~~ a MAC may not administer the following kinds of medications:

(a) barium and other diagnostic contrast;

(b) chemotherapeutic agents, except oral maintenance chemotherapy;

(c) medication pumps including client controlled analgesia; and

(d) nitroglycerin paste[-];

(4) ~~[A]~~ a MAC may not:

(a) administer medication that requires nursing assessment or judgment ~~[prior to]~~ before administration, through ongoing evaluation, or during follow-up;

(b) receive written or verbal patient orders from a licensed practitioner;

(c) transcribe orders from the medical record;

(d) conduct patient or resident assessments or evaluations;

(e) engage in patient or resident teaching activities regarding medications, unless expressly instructed to do so by the supervising nurse;

(f) calculate drug doses, or administer any medication that requires a medication calculation to determine the appropriate dose;

(g) administer the first dose of a new medication or a dosage change, unless expressly instructed to do so by the supervising nurse; or

(h) account for controlled substances, unless assisted by another MAC or a nurse who is physically present[-];

(5) ~~[U]~~ under Section ~~[s]~~ R156-31b-701a or R156-31b-701b, a nurse may refuse to delegate to a MAC the administration of medications to a specific patient or in a specific situation[-]; and

~~(6)(a)~~ ~~[A]~~ a nurse practicing in a facility that:

~~(a)~~ is required to provide nursing services 24 hours ~~[per]~~ a day may not supervise more than two MACs per shift[-]; and

~~(b)~~ ~~[A nurse practicing in a facility that]~~ is not required to provide nursing services 24 hours ~~[per]~~ a day may supervise up to four MACs per shift.

#### **R156-31b-802. Medication Aide Certified - Approval of Training Programs.**

Under Subsection 58-31b-601(~~3~~)4, the minimum standards for a MAC training program ~~[to be approved by the Division in collaboration with the Board,]~~ and the process to obtain approval are as follows[-];

(1) ~~[Each]~~ a MAC training program shall be approved by the Division in collaboration with the ~~[Board prior to]~~ Advisory Peer Education Committee created in Section R156-31b-202 before the program [being]is implemented[-];

(2) ~~[A]~~ a MAC training program may be offered only by an educational institution, a health care facility, or a health care association[-];

(3) ~~[The]~~ a MAC training program shall consist of at least:

(a) 60 clock hours of didactic classroom training that is consistent with the Medication Assistant-Certified (MA-C) Model Curriculum adopted by the National Council of State Boards of Nursing's Delegate Assembly on August 9, 2007, which is ~~[hereby adopted and]~~ incorporated by reference; and

(b) 40 hours of practical training in a ~~[long-term care facility.]~~ healthcare facility as defined in Subsection 78B-3-402(12);

(4) ~~The~~each classroom training instructor and the ~~on-site~~practical training ~~experience~~instructor shall:

(a)(i) have an active LPN, RN, or APRN license in good standing or a multistate privilege to practice nursing in Utah; and  
(ii) have at least one year of Clinical Practice Experiences;  
or

(b)(i) be an approved certified nurse aide (CNA) instructor who has completed a ~~Train the Trainer~~ program recognized by the Utah Nursing Assistant Registry; and

(ii) have at least one year of Clinical Practice Experiences~~[-];~~

(5)(a) ~~The~~practical training instructor-to-student ratio shall be no greater than:

(i) 1:2 if the instructor is working with individual students to administer medications; or

(ii) 1:6 if the instructor is supervising students who are working one-on-one with medication nurses to administer medications in clinical facilities~~[-];~~

(b) ~~The on-site~~a practical training ~~experience~~instructor shall be on-site and available at any time if the student is not being directly supervised by a licensed nurse during the Clinical Practice Experiences~~[-];~~ and

(6) ~~An~~an entity seeking approval to provide a MAC training program shall~~[-];~~

~~(a)-~~ submit to the Division a complete application form ~~prescribed~~provided by the Division~~[-];~~ with:

~~(b)a~~ ~~provide~~evidence of adequate and appropriate trainers and resources to provide the training program, including a well-stocked clinical skills lab or the equivalent;

~~(c)b~~ ~~submit to the Division~~a copy of the proposed training curriculum and an attestation that the proposed curriculum is consistent with the model curriculum in Subsection (3)(a); and

~~(d)c~~ ~~document~~documentation of the MAC training program's minimal admission requirements, ~~that~~which shall include:

(i) an earned high school diploma, successful passage of the general educational development test, or equivalent education as approved by the Board;

(ii) current certification as a nursing aide, in good standing, from the Utah Nursing Assistant Registry;

(iii) at least 2,000 hours of experience completed:

(A) as a CNA working in a ~~long-term care setting~~healthcare facility as defined in Subsection 78B-3-403(12); and

(B) within the two-year period preceding the date of application to the training program; and

(iv) current cardiopulmonary resuscitation certification.

#### KEY: licensing, nurses

Date of Last Change: ~~January 24,~~2023

Notice of Continuation: October 27, 2022

Authorizing, and Implemented or Interpreted Law: 58-31b-101; 58-1-106(1)(a); 58-1-202(1)(a)

#### NOTICE OF PROPOSED RULE

TYPE OF FILING: Amendment

Rule or Section Number:	R156-47b	Filing ID: 56068
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#### Agency Information

<b>1. Department:</b>	Commerce	
<b>Agency:</b>	Professional Licensing	
<b>Building:</b>	Heber M. Wells Building	
<b>Street address:</b>	160 E 300 S	
<b>City, state and zip:</b>	Salt Lake City UT 84111-2316	
<b>Mailing address:</b>	PO Box 146741	
<b>City, state and zip:</b>	Salt Lake City UT 84114-6741	
<b>Contact persons:</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Bobbie Loy	801-530-6628	bloy@utah.gov
<b>Please address questions regarding information on this notice to the persons listed above.</b>		

#### General Information

2. Rule or section catchline:
R156-47b. Massage Therapy Practice Act Rule
3. Purpose of the new rule or reason for the change:
S.B. 42, passed during the 2023 General Session, created new licensure categories of "massage assistant in-training" and "massage assistant."
As required by S.B. 42, these proposed amendments establish the required education and training, supervision requirements, renewal requirements, practice standards, and unprofessional conduct definitions for these licenses.
Additional nonsubstantive formatting changes are also made throughout this rule to streamline and update this rule, clarify and update definitions, and comply with the Rulewriting Manual for Utah.
4. Summary of the new rule or change:
Section R156-47b-101 is amended to consolidate the existing provisions for the rule's title, authority, and relationship to Rule R156-1.
Section R156-47b-102 is amended to update definitions and provide additional definitions related to practice as a massage assistant, massage apprentice, and massage assistant in-training.
Section R156-47b-202 is amended to update criteria for membership on the massage therapy education committee.
Section R156-47b-302a is amended to update standards for equivalent education and training, including in particular expanding the list of approved credential evaluation services from only three listed services to

evaluation services that are current members of the National Association of Credential Evaluation Services.

Section R156-47b-302b is amended to add the required examination for licensure as a massage apprentice and for licensure as a massage assistant in accordance with Section 58-47b-302.

Section R156-47b-302c is amended to update massage apprenticeship standards.

New Section R56-47b-302d is added to establish the education and training standards for a massage assistant in-training.

New Section R156-47b-302e is added to establish the practice standards for massage assistants.

Section R156-47b-303 is amended to allow a massage assistant in-training to request an extension of licensure for a circumstance of hardship beyond their control.

Section R156-47b-304 is amended to update the Division of Professional Licensing (Division) website URL for massage therapy.

Section R156-47b-502 updates and defines unprofessional conduct for a supervising massage therapist, massage therapy supervisor, massage assistant, and massage assistant in-training.

Section R156-47b-503 is amended to clarify administrative penalties.

Section R156-47b-601 is amended to clarify the minimum number of hours needed to practice animal massage therapy.

The remaining proposed amendments are nonsubstantive formatting changes to streamline and update this rule, clarify and update definitions, and comply with the Rulewriting Manual for Utah.

#### **Public Hearing Information**

There will be a public hearing on 11/17/2023 at 9 AM at 160 E 300 S, Conference Room 474 (4th Floor), Salt Lake City, Utah.

Also via Google Meet link:  
meet.google.com/ngx-fsph-bwc

Or join by phone:  
(US) +1 302-440-5055  
PIN: 550866830

#### **Fiscal Information**

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

#### **A) State budget:**

Because these proposed amendments are made in accordance with the requirements of S.B. 42 (2023), the Division does not anticipate any fiscal impact to the state budget beyond that determined by the fiscal note for S.B. 42, at <https://le.utah.gov/~2023/bills/static/SB0042.html>

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

The Division does not anticipate any fiscal impact to local governments because the amendments will not impact any local government practices or procedures.

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

The proposed amendments will not have any measurable impact on small businesses' revenues or expenditures because the amendments merely implement the new license categories and statutory changes enacted by S.B. 42 (2023) and further streamline and update this rule.

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

The proposed amendments will not have any measurable impact on non-small businesses' revenues or expenditures because the amendments merely implement the new license categories and statutory changes enacted by S.B. 42 (2023) and further streamline and update 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**):

The following persons will be impacted by these proposed amendments as follows:

Individuals qualified to practice as a massage assistant and massage assistant in-training will be able to obtain a license and engage in the practice of limited massage therapy.

Licensed massage therapists who are qualified to serve as a supervising massage therapist will be able to supervise massage assistants and massage assistants in-training in accordance with the applicable law, and individuals who are qualified to serve as a massage therapy supervisor will be able to supervise massage assistants in accordance with the applicable law.

The Division does not anticipate any cost or savings to these individuals from these proposed amendments beyond those determined by the S.B. 42 (2023) Fiscal note, which can be found at <https://le.utah.gov/~2023/bills/static/SB0042.html>.

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

As described in Box 5E above, there are no expected 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**

<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 Commerce, Margaret W. Busse, has reviewed and approved this fiscal analysis.

The Division proposes these amendments in response to the statutory changes made by S.B. 42 (2023). These proposed amendments created new licensure categories and established education, training, and supervision requirements.

There are also nonsubstantive formatting changes to streamline and update the rules, clarify and update definitions and comply with the Rulewriting Manual for Utah.

Small Businesses (less than 50 employees):

The Division does not expect any foreseeable impact on small businesses in the practice of massage therapy in the state of Utah. The proposed amendments are to conform to the requirements of S.B. 42. The changes are to update this rule to encompass current statutory requirements and practices in the profession.

Further, the Division does not foresee any negative impact on small businesses since the grammatical amendments are made to make the rule comport to the Rule Writing Manual for Utah.

Regulatory Impact to Non-Small Businesses (50 or more employees):

The Division finds that the non-small businesses in massage therapy industry in the state of Utah will not suffer a negative fiscal impact from the proposed rule amendments.

However, these amendments will have no expected fiscal impact for non-small businesses in Utah for the same rationale as described above for small businesses.

Further, any of these costs are either inestimable, for the reasons stated above, or there is no fiscal impact.

**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 58-1-106(1)(a)	Subsection 58-1-202(1)(a)	Section 58-47b-101
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**Incorporations by Reference Information**

**7. Incorporations by Reference:**

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

<b>Official Title of Materials Incorporated (from title page)</b>	Utah Code of Ethics and Standards of Practice
<b>Publisher</b>	Utah Chapter of the American Massage Therapy Association
<b>Issue Date</b>	May 1, 2010

**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>	12/15/2023
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<b>B) A public hearing (optional) will be held:</b>		
<b>Date:</b>	<b>Time:</b>	<b>Place</b> (physical address or URL):
11/17/2023	9:00 AM	See information in Box 4 above.

<b>9. This rule change MAY become effective on:</b>	12/22/2023
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>	Mark B. Steinagel, Division Director	<b>Date:</b>	10/31/2023
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**R156. Commerce, ~~Occupational and~~ Professional Licensing. R156-47b. Massage Therapy Practice Act Rule.****R156-47b-101. Title - Authority - Relationship to Rule R156-1.**

(1) This rule is known as the "Massage Therapy Practice Act Rule."

(2) This rule is adopted by the Division under the authority of Subsection 58-1-106(1)(a) to enable the Division to administer Title 58, Chapter 47b, Massage Therapy Practice Act.

(3) The organization of this rule and its relationship to Rule R156-1 is as described in Section R156-1-107.

**R156-47b-102. Definitions.**

~~The following rule definitions supplement the definitions~~ Terms used in this rule are defined in Title 58, Chapter 1, ~~Occupations and Professions~~ Division of Professional Licensing Act, and Title 58, Chapter 47b, Massage Therapy Practice Act. In addition:

(1) "Accrediting agency" means an organization, association, or commission ~~nationally~~ recognized by the United States Department of Education as a reliable authority in assessing the quality of education or training provided by ~~the~~ a school or institution.

(2) "Acute" injury under Subsection 58-47b-102(9)(b) means a sudden onset injury, such as a sprain, strain, or contusion.

(2)3 "Body wrap" means a body treatment that:

(a) may include one or more therapeutic preparations;

(b) is not for cosmetic purposes; and

(c) maintains modesty by fully or partially draping the body.

(3)4 "Clinic" means performing on the public, in a supervised student setting, the techniques and skills learned ~~as a student~~ under the curriculum of a registered school ~~or an accredited school on the public, while in a supervised student setting~~.

(4) "Direct supervision" as used in Subsection 58-47b-302(3)(d) means that the supervisor, acting within the scope of the supervisor's massage therapist license, is in the facility where the apprentice is performing massage and directs the work of the apprentice under Subsection R156-1-102a(4)(a) while the apprentice is performing massage.

(5) "Distance learning" means the acquisition of theory-based knowledge and non hands-on skills through information and ~~instruction encompassing all technologies and other forms of~~

~~learning at a distance, outside a school of massage meeting the standards in Section R156-47b-302 including internet, audio and~~ education provided without the teacher being physically present with the student, massage apprentice, or massage assistant in-training, using various technologies to facilitate communication such as internet and audio or visual recordings ~~mail or other correspondence~~.

(6) "FSMTB" means the Federation of State Massage Therapy Boards.

(7) "~~Hands-on~~ Hands-on instruction" means direct experience with or application of the education or training in ~~either~~ a school of massage therapy, ~~massage~~ ~~or~~ apprenticeship curriculum, or massage assistant in-training curriculum.

(8) "Lymphatic massage" means a method using light pressure applied by the hands to the skin in specific maneuvers to promote drainage of ~~the~~ lymphatic fluid from the tissue.

(9) "Manipulation" as used in Subsections 58-47b-102(6)(b) ~~(9)(a)(i) and 58-47b-102(10)(b)~~, means contact with movement, involving touching the clothed or unclothed body.

(10) "Massage client services" means practicing on the public the techniques and skills learned as ~~an apprentice on the public in training under direct supervision~~ a massage apprentice or massage assistant in-training, while under the supervision of a supervising massage therapist pursuant to Subsection 58-47b-302(3)(d) and Section R156-47b-302c or Subsection 58-47b-302(4)(b)(ii)(B) and Section R156-47b-302d.

(11) "Recognized school" means a school located in ~~a~~ another state, district, or territory of the United States ~~other than Utah~~, whose students ~~upon graduation~~ are recognized by that jurisdiction as having completed the educational requirements for licensure in that jurisdiction.

(12) "Registered school" means a school of massage with a curriculum that is registered with an accrediting agency or with the Utah Department of Commerce, Division of Consumer Protection, in accordance with Subsection R156-47b-302(1).

(13) "Subacute injury" under Subsection 58-47b-102(9)(b) means an injury that:

(a) happened less than eight weeks ago and is beyond an acute injury stage, but the tissue becomes sensitive to pain when there is tissue resistance; and

(b) is managed uniquely compared to more chronic or persistent issues.

(12)14 "Unprofessional conduct" is further defined, in accordance with Subsection 58-1-203(1)(e) and Section 58-47b-502, in Section R156-47b-502.

**R156-47b-103. Authority - Purpose.**

This rule is adopted by the Division under the authority of Subsection 58-1-106(1)(a) to enable the Division to administer Title 58, Chapter 47b, Massage Therapy Practice Act.

**R156-47b-104. Organization - Relationship to Rule R156-1.**

The organization of this rule and its relationship to Rule R156-1 is as described in Section R156-1-107.

**R156-47b-202. Massage Therapy Education Peer Committee.**

(1) There is created under Subsection 58-1-203(1)(f), the Massage Therapy Education Peer Committee, consisting of:

(a) two individuals who:

(i) are instructors in massage therapy at a registered school; and

(ii) have experience in curriculum development;



~~(b) one individual who represents a professional massage therapy association;~~

~~(c) one individual who previously served as a member of the Utah Board of Massage Therapy; and~~

~~(d) one individual who is a licensed massage therapist.~~

~~([a]2) The Massage Therapy Education Peer Committee shall:~~

~~([i]a) advise the Utah Board of Massage Therapy regarding massage therapy educational issues;~~

~~([ii]b) recommend to the Board standards for massage school curricula, apprenticeship curricula, massage assistant in-training curricula, and animal massage training; and~~

~~([iii]c) periodically review the current curriculum requirements.~~

~~(b) The composition of this committee shall be:~~

~~(i) two individuals who are instructors in massage therapy;~~

~~(ii) two individuals, one who represents a professional massage therapy association, and one who represents the Utah Committee of Bodywork Schools; and~~

~~(iii) one individual from the Utah State Office of Education.]~~

#### **R156-47b-302. Qualifications for Licensure as a Massage Therapist - Massage School Curriculum Standards.**

Under Subsection 58-47b-302(2)(d)(i)(A), an applicant shall graduate from a school of massage with a curriculum that meets the following standards at the time of graduation:

(1) Curricula shall:

(a) be registered with:

(i) the Utah Department of Commerce, Division of Consumer Protection; or

(ii) an accrediting agency~~[recognized by the United States Department of Education]~~; or

(b) be from a recognized school.

(2) Curricula shall be a minimum of 600 hours and shall include the following:

(a) anatomy, physiology and kinesiology - 125 hours;

(b) pathology - 40 hours;

(c) massage theory, massage techniques including the five basic Swedish massage strokes, and hands-on instruction - 285 hours;

(d) professional standards, ethics and business practices - 35 hours;

(e) sanitation and universal precautions including CPR and first aid - 15 hours;

(f) clinic - 100 hours; and

(g) other related massage subjects as approved by the Division in collaboration with the Board.

(3) The Division, in collaboration with the Board, may consider supplemental coursework of an applicant who has completed the minimum 600 curricula hours, but has incidental deficiencies in one or more of the categories in Subsections R156-47b-302(2)(a) through (f).

#### **R156-47b-302a. Qualifications for Licensure - Equivalent Education and Training.**

(1) Under Subsection 58-47b-302(2)(d)(i)(B), an applicant shall demonstrate equivalent education and training by submitting documentation of:

(a) a ~~current~~ massage therapist license issued by another state, district, or territory of the United States or ~~a foreign country~~ by

a jurisdiction outside of the United States that meets the requirements for licensure by endorsement in Section 58-1-302; or

(b) for an applicant for licensure by endorsement under Subsection 58-1-302(3)(b) with ~~foreign~~ education and training in a jurisdiction outside of the United States, a credential evaluation satisfactory to the Division from ~~one of the following~~:

~~(i) Josef Silny and Associates, Inc.;~~

~~(ii) International Education Consultants; or~~

~~(iii) Educational Credential Evaluators, Inc.~~

~~(2) Hours of supervised training obtained while licensed as a massage therapy apprentice under Subsection R156-47b-302e(5) may not satisfy any of the required minimum of 600 hours of school instruction in Subsection R156-47b-302(2).~~

~~(3) Hours of instruction or training obtained while enrolled in a school of massage having a curriculum meeting the standards of Subsection R156-47b-302(2) may not satisfy any of the required minimum 1,000 hours of supervised apprenticeship training in Subsection R156-47b-302e(5). An evaluation service that is a current member of the National Association of Credential Evaluation Services (NACES).~~

(2) Under Subsection 58-47b-302(2)(d), an applicant for licensure as a massage therapist may not:

(a) satisfy any of the required minimum 600 hours of school instruction under Subsection 58-47b-302(2)(d)(i) and Section R156-47b-302 by using:

(i) hours of supervised training as a massage apprentice under Subsections 58-47b-302(2)(d)(ii) and R156-47b-302c(5); or

(ii) hours of education and training as a massage assistant in-training under Subsection 58-47b-302(4)(b)(i)(B) and Section R156-47b-302d; or

(b) satisfy any of the required minimum 1,000 hours of supervised training as a massage apprentice under Subsections 58-47b-302(2)(d)(ii) and R156-47b-302c(5) by using:

(i) hours of school instruction under Subsection 58-47b-302(2)(d)(i) and Section R156-47b-302;

(ii) hours of school instruction under Subsection 58-47b-302(4)(b)(i)(A) or (ii)(A); or

(iii) hours of supervised education and training obtained while licensed as a massage assistant in-training under Subsection 58-47b-302(4)(b)(i)(B) or (ii)(B).

#### **R156-47b-302b. Qualifications for Licensure - Examination Requirements.**

(1) Under Subsection~~[s]~~ 58-47b-302(2)(c)~~[-and 58-47b-302(3)(e)]~~, an applicant for licensure as a massage therapist shall pass:

([1]a) the FSMTB Massage and Bodywork Licensing Examination (MBLEx); or

([2]b) a predecessor exam, if the exam was passed during the time the exam was accepted by the Division.

(2) Under Subsection 58-47b-302(3)(e), an applicant for licensure as a massage apprentice shall pass the Utah Massage Therapy Law and Rule Examination.

(3) Under Subsection 58-47b-302(4)(a)(vi), an applicant for licensure as a massage assistant shall pass the Utah Massage Assistant Theory, Law, and Rule Examination.

#### **R156-47b-302c. Massage Apprenticeship Standards.**

Under Subsections 58-47b-302(2)(d)(ii) and 58-47b-302(3)(d), the following standards are established for a massage apprenticeship program:

## NOTICES OF PROPOSED RULES

(1) A ~~[supervisor]~~supervising massage therapist and ~~message~~ apprentice may begin an apprenticeship program after:

(a) the ~~message~~ apprentice is licensed as a massage apprentice;

(b) the ~~[supervisor]~~supervising massage therapist is approved by the Division; and

(c) unless otherwise approved by the Division in collaboration with the Board, each of the ~~[supervisor's]~~supervising ~~message therapist's~~ previous apprentices has passed the FSMTB MBLEx.

(2) A massage therapist may not serve as a ~~[supervisor]~~supervising massage therapist if the massage therapist has been disciplined for unlawful or unprofessional conduct within five years of the start of the apprenticeship program.

(3) Under Subsection 58-47b-302(6)(a), unless otherwise approved by the Division in collaboration with the Board:

(a) a supervising massage therapist shall serve as the sole supervisor for their massage apprentice, and may not allow another massage therapist to also supervise that massage apprentice; and

(b) a massage therapist may not supervise a massage apprentice who is under the supervision of another massage therapist.~~(a) If an apprentice being supervised fails the FSMTB MBLEx three times, the supervisor shall:~~

~~(i) with the apprentice, meet with the Board at the next appropriate Board meeting;~~

~~(ii) explain to the Board why the apprentice is not able to pass the examination;~~

~~(iii) provide to the Board a plan of study in the appropriate subject matter to assist the apprentice in passing the examination; and~~

~~(b) upon successful completion of the review in Subsection (3)(a)(iii), the apprentice shall again be eligible to take the FSMTB MBLEx.~~

~~(4) A supervisor may not supervise more than two apprentices at one time, unless otherwise approved by the Division in collaboration with the Board.]~~

~~([5]4)~~ The ~~[supervisor]~~supervising massage therapist shall train the ~~message~~ apprentice in the areas of:

(a) anatomy, physiology and kinesiology - 125 hours;

(b) pathology - 40 hours;

(c) massage theory - 50 hours;

(d) massage techniques including the five basic Swedish massage strokes - 120 hours;

(e) massage client services - 300 hours;

(f) ~~[hands on]~~hands-on instruction - 310 hours;

(g) professional standards, ethics and business practices - 40 hours; and

(h) sanitation and universal precautions including CPR and first aid - 15 hours.

~~([6]5)(a)~~ The ~~[supervisor]~~supervising massage therapist shall submit with the ~~message~~ apprentice's application a curriculum content outline that includes a list of the resource materials to be used, which has been preapproved by the Division.

(b) The ~~message~~ apprentice shall follow the submitted Division-approved curriculum content outline.

~~([7]6)~~ The ~~[supervisor]~~supervising massage therapist and ~~message~~ apprentice shall:

(a) display a conspicuous sign near the ~~message~~ apprentice's workstation stating "Apprentice in Training";

(b) keep a daily record that includes:

(i) the number of hours of ~~[instruction and -]~~training completed; and

(ii) the number of hours of ~~message~~ client services performed;~~and~~

~~(iii) the number of hours of training completed;]~~

(c) make the ~~message~~ apprentice's training records available to the Division immediately upon request;

(d) verify the completion of the apprenticeship program on forms available from the Division;

(e) ~~if the apprenticeship program is terminated, notify the Division within ten working days [if the apprenticeship program is terminated]on a Notice of Disassociation form available from the Division; and~~

(f) ensure that the ~~message~~ apprentice performs the massage client services in Subsection ~~([5]4)(e)~~ only on the public, and performs the other ~~[hands on]~~hands-on instruction or practice on ~~[an apprentice or supervisor]~~a massage apprentice or the supervising massage therapist.

~~(7)(a)~~ A supervising massage therapist shall provide direct supervision under Subsection 58-47b-302(3)(d) for a massage apprentice performing massage client services by:

(i) giving prior written or verbal instructions to the massage apprentice;

(ii) being present in the facility where the massage apprentice is performing the massage client services; and

(iii) being available to provide immediate face-to-face communication with the massage apprentice as necessary.

(b) The supervision massage therapist may, but need not be, present in the room where the massage apprentice is performing massage client services on the public client.

(8) If a massage apprentice fails the FSMTB MBLEx three times:

(a) the supervising massage therapist shall:

(i) with the massage apprentice, meet with the Board at the next appropriate Board meeting;

(ii) explain to the Board why the massage apprentice cannot pass the examination; and

(iii) provide to the Board a plan of study in the appropriate subject matter to assist the massage apprentice in passing the examination; and

(b) if the Division and Board approve, the massage apprentice shall again be eligible to take the FSMTB MBLEx.

### **R156-47b-302d. Massage Assistant-in-Training Education and Training Standards.**

Under Subsections 58-47b-302(4)(a)(iv), 58-47b-302(4)(b), and 58-47b-302(5)(d), the following standards are established for a massage assistant in-training education and training program:

(1) Under Subsections 58-47b-102(6), 58-47b-302(5)(d), and 58-47b-501(1)(a), a massage assistant in-training may engage in the supervised practice of limited massage therapy as defined in Subsection 58-47b-102(9), but may not engage in the practice of massage therapy as defined in Subsection 58-47b-102(10).

(2) A supervision massage therapist and a massage assistant in-training may begin their education and training program after:

(a) the supervision massage therapist has submitted with the massage assistant in-training's license application the curriculum content outline and list of resource materials to be used;

(b) the massage assistant in-training is licensed as a massage assistant in-training; and

(c) the Division has approved the supervising massage therapist.

(3) A massage therapist may not serve as a supervising massage therapist if:

(a) the massage therapist's license has been disciplined for unlawful or unprofessional conduct within five years of the start of the massage assistant in-training education and training program; or

(b) unless otherwise approved by the Division in collaboration with the Board, one or more of the supervising massage therapist's previous massage assistants in-training has not passed the Utah Massage Assistant Theory, Law, and Rule Examination.

(4) Under Subsection 58-47b-302(4)(b), a supervising massage therapist shall train the massage assistant in-training for a total of at least 300 hours as follows:

(a) under Subsection 58-47b-302(4)(b)(i)(B), at least 150 hours of education and training under the direct supervision of the supervising massage therapist, by face-to-face instruction in the following areas while the supervising massage therapist and massage assistant in-training are present in the same room:

(i) anatomy and physiology - 40 hours;

(ii) pathology - 20 hours;

(iii) massage theory - 10 hours;

(iv) massage techniques including the five basic Swedish massage strokes - 40 hours;

(v) hands-on instruction in the areas in Subsections 58-47b-102(9)(a)(ii) through (vi) - 30 hours;

(vi) professional standards, ethics, and business practices - 5 hours;

(vii) sanitation and universal precautions, including CPR and first aid - 5 hours; and

(b) under Subsection 58-47b-302(4)(b)(ii)(B), at least 150 hours of education and training under the indirect supervision of the supervising massage therapist, by the massage assistant in-training performing at least 150 hours of massage client services on the public while the supervising massage therapist:

(i) has given prior written or verbal instructions to the massage assistant in-training;

(ii) is present in the facility where the massage assistant in-training is performing the massage client services, and may, but need not be, present in the room where the massage assistant in-training is performing the massage client services; and

(iii) is available to provide immediate face-to-face communication with the massage assistant in-training as necessary.

(5) The massage assistant in-training shall follow the curriculum content outline and use the resource materials as submitted by their supervising massage therapist.

(6) Under Subsection 58-47b-302(6)(a), unless otherwise approved by the Division in collaboration with the Board:

(a) a supervising massage therapist shall serve as the sole supervisor for their massage assistant in-training, and may not allow another massage therapist to supervise that massage assistant in-training; and

(b) a massage therapist may not supervise a massage assistant in-training who is under the supervision of another massage therapist.

(7) A supervising massage therapist and massage assistant in-training shall:

(a) under Section 58-47b-306, display a conspicuous sign near the workstation stating "Massage Assistant In-Training";

(b) keep a daily record that includes:

(i) the number of hours of education and training completed; and

(ii) the number of hours of massage client services performed;

(c) make massage assistant in-training education and training and work history records available to the Division upon request;

(d) verify the massage assistant in-training's completion of their education and training on a form available from the Division;

(e) if the massage assistant in-training program is terminated, notify the Division within ten working days on a Notice of Disassociation form available from the Division; and

(f) ensure that the massage assistant in-training performs massage client services only on the public, and performs the other hands-on instruction or practice on a massage assistant in-training, a massage assistant, or the supervision massage therapist.

(8) If a massage assistant in-training fails the Utah Massage Assistant Theory, Law, and Rule Examination three times:

(a) the supervising massage therapist shall:

(i) with the massage assistant in-training, meet with the Board at the next appropriate meeting;

(ii) explain to the Board why the massage assistant in-training cannot pass the examination; and

(iii) provide to the Board a plan of study in the appropriate subject matter to help the massage assistant in-training pass the examination; and

(b) if the Division and Board approve, the massage assistant in-training shall again be eligible to take the Utah Massage Assistant Theory, Law, and Rule Examination.

#### **R156-47b-302e. Massage Assistant Practice Standards.**

Under Subsections 58-47b-102(5), 58-47b-302(4)(a)(v), and Section 58-47b-301, the following standards are established for practice as a massage assistant:

(1) Under Subsection 58-47b-501(1)(a), a massage assistant may engage in the supervised practice of limited massage therapy as defined in Subsection 58-47b-102(9), but may not engage in the practice of massage therapy as defined in Subsection 58-47b-102(10).

(2) An individual may not serve as a massage therapy supervisor for a massage assistant if the individual's professional license under Title 58, Occupations and Professions, or professional license in any other jurisdiction, has been disciplined for unlawful or unprofessional conduct within five years of the start of the supervision.

(3) Under Subsection 58-47b-302(6)(b), when a massage assistant is engaging in the practice of limited massage therapy, the massage assistant may be supervised by only one massage therapy supervisor at a time. This does not prohibit the massage assistant from having different massage therapy supervisors at different times.

(4) Under Subsection 58-47b-306(2), the massage therapy supervisor and massage assistant shall display a conspicuous sign near the massage assistant's workstation stating "Massage Assistant".

(5) A massage therapy supervisor shall make the massage therapy supervisor's and the massage assistant's employment records available to the Division upon request, such as personnel records, payroll records, independent contractor and 1099 records, supervision records, work contracts, performance reviews, disciplinary actions, and work history records showing dates, times, and locations of practice.

(6) A massage assistant shall make the massage assistant's employment records available to the Division upon request, such as payroll records, independent contractor and 1099 records, supervision records, work contracts, and work history records showing dates, times and locations of practice.

**R156-47b-303. Renewal Cycle - Procedures.**

(1) Under Subsection 58-1-308(1)(a), the renewal date for the two-year renewal cycle ~~[applicable to]~~for licensees under Title 58, Chapter 47b, Massage Therapy Practice Act is established in Section R156-1-308a.

(2) Renewal procedures shall be in accordance with Sections R156-1-308c through R156-1-308e.

(3) Under Subsection 58-47b-303(3) an expired massage assistant in-training license may not be renewed, but the Division in collaboration with the Board may extend the license for a period proportionate to a hardship experienced by the massage assistant in-training, if the massage assistant in-training presents evidence in writing satisfactory to the Division and Board that:

(a) the circumstance of hardship arose beyond the massage assistant in-training's control to prevent the completion of the licensure process; and

(b) the massage assistant in-training is on a course reasonably expected to lead to licensure as a massage assistant, such as making reasonable progress toward completing the required hours of education and training and passing the required exam.

**R156-47b-304. Exemptions from Licensure.**

Under Subsection 58-47b-304(1)(n)(i), the industry organizations that are recognized by the Division are listed on the Division's website at ~~[dopl.utah.gov/m]~~<https://dopl.utah.gov/massage-therapy> under Related Information - Resources.

**R156-47b-502. Unprofessional Conduct.**

Under Section 58-47b-502, "[U]nprofessional conduct" includes:

(1) engaging in any lewd, indecent, obscene, or unlawful behavior while ~~[acting]~~practicing as a massage therapist, massage therapy supervisor, massage apprentice, massage assistant, or massage assistant in-training;

(2) ~~[as an apprentice supervisor, failing to provide direct supervision to a massage apprentice;]~~under Subsection 58-47b-502(4), failing to properly supervise a massage apprentice, massage assistant, or massage assistant in-training shall include:

(a) failing to provide the required direct supervision;

(b) failing to provide the required indirect supervision; or

(c) violating Subsection 58-47b-302(6).

(3) ~~[practicing]~~as a massage apprentice, practicing without direct supervision;

(4) as a massage assistant, practicing without the required indirect supervision;

(5) as a massage assistant in-training, practicing without the required direct or indirect supervision;

(4)(6) as ~~[an apprentice supervisor]~~a supervising massage therapist, failing to provide or to document adequate ~~[instruction or]~~education and training as required by Title 58, Chapter 47b, Massage Therapy Practice Act or Rule R156-47b;

(7) as a massage therapy supervisor, failing to provide employment records to the Division upon request, including under Subsection R156-47b-302e(5);

(8) as a massage assistant, failing to provide employment records to the Division upon request, including under Subsection R156-47b-302e(6);

(5)(2) as ~~[an apprentice supervisor]~~a supervising massage therapist, advising, directing, or instructing ~~[an]~~a massage apprentice or massage assistant in-training in any ~~[instruction]~~education or training or behavior that ~~[is inconsistent, contrary, or contradictory to]~~ established professional or ethical standards of the

~~profession]~~violates the generally accepted and recognized standards and ethics of the massage profession, including those in the Utah Chapter of the American Massage Therapy Association Utah Code of Ethics and Standards of Practice, May 1, 2010 edition, which is incorporated by reference;

(10) as a massage therapy supervisor, advising or directing a massage assistant in any behavior, or allowing or aiding or abetting any behavior by a massage assistant, that violates the generally accepted and recognized standards and ethics of:

(a) the massage profession, including those in the Utah Chapter of the American Massage Therapy Association Utah Code of Ethics and Standards of Practice, May 1, 2010 edition, which is incorporated by reference; or

(b) the massage therapy supervisor's licensed profession under Title 58, Occupations and Professions.

(6)(11) failing to notify a client of any health condition the licensee may have that could present a hazard to the client;

(7)(12) ~~[failure]~~failing to use appropriate draping procedures to protect the client's personal privacy;~~and]~~or

(8)(13) failing to conform to the generally accepted and recognized standards and ethics of the massage profession, including those in the Utah Chapter of the American Massage Therapy Association ~~[Utah Code of Ethics and Standards of Practice]~~, ~~[September 17, 2005]~~May 1, 2010 edition, which is ~~[hereby]~~incorporated by reference.

**R156-47b-503. Administrative Penalties[—Unlawful Conduct].**

~~[Under Section 58-1-501, unless otherwise ordered by the presiding officer, the fine schedule in]~~In addition to the penalties in Section 58-47b-503, the penalties under Sections 58-1-502 and R156-1-502 shall apply to a violation of ~~[citations issued under]~~Title 58, Occupations and Professions~~[Chapter 47b, Massage Therapy Practice Act]~~.

**R156-47b-601. Standards for Animal Massage Therapy Training.**

Under Subsection 58-28-307(12)(c), a massage therapist practicing animal massage shall have received at least 60 hours of animal massage therapy training in the following areas:

(1) quadruped anatomy;

(2) the theory of quadruped massage; and

(3) supervised quadruped massage experience.

**KEY:** licensing, massage therapy, massage therapist, massage apprentice

**Date of Last Change:** ~~[December 27, 2021]~~2023

**Notice of Continuation:** March 21, 2022

**Authorizing, and Implemented or Interpreted Law:** 58-1-106(1)(a); 58-1-202(1)(a); 58-47b-101

**NOTICE OF PROPOSED RULE**

**TYPE OF FILING:** Amendment

**Rule or Section Number:**

**R307-110**

**Filing ID:**  
**56123**

**Agency Information**

**1. Department:** Environmental Quality

**Agency:** Air Quality

**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 144820	
<b>City, state and zip:</b>	Salt Lake City, UT 84114-4820	
<b>Contact persons:</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Mat Carlile	385-306-6535	mcarlile@utah.gov
Erica Pryor	385-499-3416	epryor1@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>
R307-110. General Requirements: State Implementation Plan
<b>3. Purpose of the new rule or reason for the change:</b>
The Utah Air Quality Board (Board) has proposed for public comment amended Utah State Implementation Plan (SIP), Section X, Parts A and B. Sections R307-110-31 and R307-110-32 incorporate SIP Section X, Parts A and B respectively, into this rule and must be amended to change the Board adoption date to the anticipated adoption date of the amended plan.
<b>4. Summary of the new rule or change:</b>
Section R307-110-31 incorporates Section X Part A of the SIP.
Part A summarizes inspection and maintenance (I/M) requirements that are common among all I/M programs. Part A was modified by adding a paragraph summarizing recent legislative changes to the emissions programs. It was also modified to update the process of handling out-of-state exemptions of the emission programs.
Section R307-110-32 incorporates Section X Part B of the SIP that contains the requirements of Davis County's I/M program.
Amendments to Part B update the plan to incorporate changes to Davis County's I/M ordinance to ensure that the SIP reflects current program.
Sections R307-110-31 and R307-110-32 are amended by changing the date of the last adoption by the Air Quality Board to 02/07/2024. These changes were already legally enforceable, and the amendment is bringing this rule in line with federal law.

**Public Hearing Information:****At the MASOB:**

A public hearing will be held on Tuesday, 12/19/2023, from 3 to 4 PM in the DEQ Board room, 1st Floor, Room 1020 at 195 N 1950 W, Salt Lake City, UT.

**To attend virtually through Google Meets:**

Public Hearing R307-110-31/32 (3pm-4pm)

Tuesday, December 19 · 2:30 – 4:30pm

Time zone: America/Denver

**Google Meet joining info:**

Video call link: <https://meet.google.com/vkh-nadu-bpb>

Or dial: (US) +1 929-324-9942

PIN: 529 143 528#

More phone numbers: <https://tel.meet/vkh-nadu-bpb?pin=4209740534480>

**Please note:** A public hearing is scheduled for 12/19/2023.

The hearing will be canceled should no request for one be made by Friday, 12/15/2023, at 10 AM MST. The final status of the public hearing will be posted on Friday, 12/15/2023, after 10 AM MST.

The status of the public hearing may be checked at the following website location under the corresponding rule.

<https://deq.utah.gov/public-notice-archive/air-quality-rule-plan-changes-open-public-comment>

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

This rule change will not have any fiscal impact on the state budget because it does not enact or remove any new requirements.

**B) Local governments:**

This rule change will not have any fiscal impact on the local governments because it does not enact or remove any new requirements.

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

This rule change will not have any fiscal impact on small businesses because it does not enact or remove any new requirements.

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

This rule change will not have any fiscal impact on non-small businesses because it does not enact or remove any new requirements.

**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 will not have any fiscal impact on other persons because it does not enact or remove any new requirements.

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

No additional costs for affected persons are anticipated due to this rule change because it does not enact or remove any new 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**

<b>Fiscal Cost</b>	<b>FY2024</b>	<b>FY2025</b>	<b>FY2026</b>
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Cost</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Fiscal Benefits</b>	<b>FY2024</b>	<b>FY2025</b>	<b>FY2026</b>
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Net Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

**H) Department head comments on fiscal impact and approval of regulatory impact analysis:**

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

**Citation Information**

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

Section 19-6a-1642	40 CFR Part 51 Subpart S Inspection and Maintenance Program Requirements	
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**Incorporations by Reference Information**

**7. Incorporations by Reference:**

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

<b>Official Title of Materials Incorporated (from title page)</b>	UTAH STATE IMPLEMENTATION PLAN SECTION X VEHICLE INSPECTION AND MAINTENANCE PROGRAM PART A GENERAL REQUIREMENTS AND APPLICABILITY.  UTAH STATE IMPLEMENTATION PLAN SECTION X VEHICLE INSPECTION AND MAINTENANCE PROGRAM PART B DAVIS COUNTY
<b>Publisher</b>	Division of Air Quality, Utah Department of Environmental Quality
<b>Issue Date</b>	February 7, 2024

**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>		12/15/2023
<b>B) A public hearing (optional) will be held:</b>		
<b>Date:</b>	<b>Time:</b>	<b>Place</b> (physical address or URL):
12/19/2023	3:00 to 4:00 PM	See information in Box 4 above.



<b>9. This rule change MAY become effective on:</b>	02/07/2024
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>	Bryce C. Bird, Division Director	<b>Date:</b>	10/12/2023
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**R307. Environmental Quality, Air Quality.****R307-110. General Requirements: State Implementation Plan.  
R307-110-31. Section X, Vehicle Inspection and Maintenance Program, Part A, General Requirements and Applicability.**

The Utah State Implementation Plan, Section X, Vehicle Inspection and Maintenance Program, Part A, General Requirements and Applicability, as most recently amended by the Utah Air Quality Board on [September 4, 2019]February 7, 2024, pursuant to Section 19-2-104, is [hereby]incorporated by reference and made a part of [these rules]this rule.

**R307-110-32. Section X, Vehicle Inspection and Maintenance Program, Part B, Davis County.**

The Utah State Implementation Plan, Section X, Vehicle Inspection and Maintenance Program, Part B, Davis County, as most recently amended by the Utah Air Quality Board on [March 4, 2020]February 7, 2024, pursuant to Section 19-2-104, is [hereby]incorporated by reference and made a part of [these rules]this rule.

**KEY:** air pollution, PM10, PM2.5, ozone

**Date of Last Change:** 2023[September 28, 2023]

**Notice of Continuation:** December 1, 2021

**Authorizing, and Implemented or Interpreted Law:** 19-2-104

NOTICE OF PROPOSED RULE		
<b>TYPE OF FILING:</b> Amendment		
<b>Rule or Section Number:</b>	<b>R307-415-6g</b>	<b>Filing ID:</b> 56124

**Agency Information**

<b>1. Department:</b>	Environmental Quality	
<b>Agency:</b>	Air Quality	
<b>Building:</b>	MASOB	
<b>Street address:</b>	195 N 1950 W	
<b>City, state and zip:</b>	Salt Lake City, UT 84116	
<b>Mailing address:</b>	PO Box 144820	
<b>City, state and zip:</b>	Salt Lake City, UT 84114-4820	
<b>Contact persons:</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
David Beatty	385-306-6532	dbeatty@utah.gov

Erica Pryor	385-499-3416	epryor1@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>
R307-415-6g. Permit Content: Emergency Provision
<b>3. Purpose of the new rule or reason for the change:</b>
The Environmental Protection Agency modified 40 CFR 70, published in the Federal Register / Vol. 88, No. 139 / Friday, July 21, 2023/ Rules and Regulations, with a rule effective date of 08/21/2023. The rule change removed Section 40 CFR 70.6(g). Emergency provision.
Section R307-415-6g was established under 40 CFR 70, and therefore to continue to be in alignment with the federal rule, the Division of Air Quality (Division) is proposing to remove Section R307-415-6g from Rule R307-415.
Additionally, these provisions are included in Section I of each issued Title V permit; however, the new rule allows for the individual permits to be changed over time as each permit is modified or renewed.
After this rule change becomes effective, the Division will remove Section R307-415-6g from each issued Title V permit going forward.
<b>4. Summary of the new rule or change:</b>
The Division is proposing to amend Rule R307-415 by removing Section R307-415-6g to align with the federal rule Section 40 CFR 70.6(g).

**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 anticipated costs or savings to the state budget as this rule will have no impact on the Department of Environmental Quality or any potentially involved parties.
<b>B) Local governments:</b>
This proposed rule change is not expected to have a fiscal impact on local governments' revenues or expenditures.
<b>C) Small businesses ("small business" means a business employing 1-49 persons):</b>
This proposed rule change is not expected to have a fiscal impact on small businesses.

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

This proposed rule change does not have a fiscal impact on 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 rule change does not have a fiscal impact on persons other than small businesses, non-small businesses, state, or local government entities.

**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 direct 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**

<b>Fiscal Cost</b>	<b>FY2024</b>	<b>FY2025</b>	<b>FY2026</b>
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Cost</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Fiscal Benefits</b>	<b>FY2024</b>	<b>FY2025</b>	<b>FY2026</b>
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Net Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

**H) Department head comments on fiscal impact and approval of regulatory impact analysis:**

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

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

Section 19-2-109.1.	40 CFR 70.6(g)	
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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>	12/15/2023
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**9. This rule change MAY become effective on:**

02/07/2024

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>	Bryce C. Bird, Division Director	<b>Date:</b>	10/02/2023
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**R307. Environmental Quality, Air Quality.****R307-415. Permits: Operating Permit Requirements.****[R307-415-6g. Permit Content: Emergency Provision:**

(1) Emergency. An "emergency" is any situation arising from sudden and reasonably unforeseeable events beyond the control of the source, including acts of God, which situation requires immediate corrective action to restore normal operation, and that causes the source to exceed a technology based emission limitation under the permit, due to unavoidable increases in emissions attributable to the emergency. An emergency shall not include noncompliance to the extent caused by improperly designed equipment, lack of preventative maintenance, careless or improper operation, or operator error.

(2) Effect of an emergency. An emergency constitutes an affirmative defense to an action brought for noncompliance with such technology based emission limitations if the conditions of (3) below are met:

(3) The affirmative defense of emergency shall be demonstrated through properly signed, contemporaneous operating logs, or other relevant evidence that:

(a) An emergency occurred and that the permittee can identify the causes of the emergency;

(b) The permitted facility was at the time being properly operated;



~~(c) During the period of the emergency the permittee took all reasonable steps to minimize levels of emissions that exceeded the emission standards, or other requirements in the permit; and~~

~~(d) The permittee submitted notice of the emergency to the director within two working days of the time when emission limitations were exceeded due to the emergency. This notice fulfills the requirement of R307-415-6a(3)(c)(ii). This notice must contain a description of the emergency, any steps taken to mitigate emissions, and corrective actions taken.~~

~~(4) In any enforcement proceeding, the permittee seeking to establish the occurrence of an emergency has the burden of proof.~~

~~(5) This provision is in addition to any emergency or upset provision contained in any applicable requirement.]~~

**KEY:** air pollution, greenhouse gases, operating permit, emission fees

**Date of Last Change:** ~~2024~~**January 15, 2022**

**Notice of Continuation:** May 4, 2022

**Authorizing, and Implemented or Interpreted Law:** 19-2-109.1; 19-2-104

#### NOTICE OF PROPOSED RULE

**TYPE OF FILING:** New

<b>Rule or Section Number:</b>	<b>R356-7</b>	<b>Filing ID:</b> <b>56026</b>
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#### Agency Information

<b>1. Department:</b>	Governor	
<b>Agency:</b>	Criminal and Juvenile Justice (State Commission on)	
<b>Room number:</b>	E330	
<b>Building:</b>	Senate Building (at State Capitol)	
<b>Street address:</b>	350 N State Street	
<b>City, state and zip:</b>	Salt Lake City, UT 84114	
<b>Contact persons:</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Angelo Perillo	801-538-1047	aperillo@utah.gov
Ken Matthews	801-538-1058	kmatthews@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>
R356-7. Appointing a Designee, Representative, or Proxy
<b>3. Purpose of the new rule or reason for the change:</b>
The purpose of this rule is to establish procedures for appointing a designee, representative, or proxy to serve on a public body established in Title 63M, Chapter 7.

The purpose of this rule to enact appointing a designee, representative, or proxy to serve on a public body to make it compliant with new requirements.

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

If a statute creating a public body allows a member to appoint a designee, the member may appoint a designee to represent the member when the member cannot appear at meetings by sending an email to the staff.

(EDITOR'S NOTE: A corresponding emergency (120-day) Rule R356-7 that is effective as of 10/30/2023 is under ID 56027 in this issue, November 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:

This program will create no cost burden or savings for the state.

This new rule will not change the way electronic meetings are being conducted today. It will not add any additional time or tasks that could lead to new costs.

##### B) Local governments:

This program will create no cost burden or savings for local government.

This new rule will not change the way electronic meetings are being conducted today. It will not add any additional time or tasks that could lead to new costs.

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

This program will create no cost burden or savings for small businesses.

This new rule will not change the way electronic meetings are being conducted today. It will not add any additional time or tasks that could lead to new costs.

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

This program will create no cost burden or savings for non-small businesses.

This new rule will not change the way electronic meetings are being conducted today. It will not add any additional time or tasks that could lead to new costs.

##### 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 should be no costs or saving for other persons as a result of this rule.

This new rule will not change the way electronic meetings are being conducted today. It will not add any additional time or tasks that could lead to new costs.

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

There should be no costs or saving for any affected persons as a result of this rule.

This new rule will not change the way electronic meetings are being conducted today. It will not add any additional time or tasks that could lead to new costs.

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

**Regulatory Impact Table**

<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 State Commission on Criminal and Juvenile Justice, Tom Ross, has reviewed and approved this fiscal 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 52-4-207(2)(a)	Section 63G-3-201	
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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:** 12/15/2023

**9. This rule change MAY become effective on:** 12/22/2023

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>	Tom Ross, Executive Director	<b>Date:</b>	10/30/2023
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**R356. Governor, Criminal and Juvenile Justice (State Commission on).**

**R356-7. Appointing a Designee, Representative, or Proxy.**

This rule is authorized by Subsection 52-4-207(2)(a) regarding electronic meetings and Section 63G-3-201 which requires an agency to make rules in certain circumstances.

**R356-7-2. Purpose.**

The purpose of this rule is to establish procedures for appointing a designee, representative, or proxy to serve on a public body established in:

- (1) Section 36-29-111;  
(2) Title 63M, Chapter 7, Criminal Justice and Substance Abuse;  
(3) Section 64-13e-105;  
(4) Section 77-37-5;  
(5) Section 78A-10a-302;  
(6) Section 78A-10a-402;  
(7) Section 78A-12-201; and  
(8) Section 78B-22-401.

**R356-7-3. Definitions.**

- (1) Terms used in this rule are defined in Section 52-4-103.
- (2) In addition:
- (a) "designee" means an individual appointed by a member to represent the member when the member cannot appear at meetings of a public body;
- (b) "electronically" means to attend a meeting through the use of:
- (i) an online medium that allows for audio and video interactions; or
- (ii) a telecommunications medium that allows for audio interactions;
- (c) "member" means an individual designated by statute to serve on a public body;
- (d) "representative" means an individual appointed by an entity to represent that entity on a public body;
- (e) "proxy" means an individual who is appointed by a member to appear in person on the member's behalf at a specific meeting of a public body; and
- (f)(i) "staff" means an individual who is responsible for ensuring that a public body complies with the requirements of Title 52, Chapter 4, the Open and Public Meetings Act; and
- (ii) "staff" includes the director of a public body or a staff member assigned to assist with the administrative duties of the public body.

**R356-7-4. Appointing a Designee.**

- (1) If a statute creating a public body allows a member to appoint a designee, the member may appoint a designee to represent the member when the member cannot appear at meetings by sending an email to the staff.
- (2) The email shall state the name and title of the member's designee.
- (3) After an individual has been appointed as a member's designee, the designee:
- (a) may attend a meeting in person or electronically;
- (b) shall be counted as a member for purposes of determining a quorum;
- (c) may participate in a meeting as any other member; and
- (d) may vote their conscience on matters before the public body.
- (4) Once a designee has been appointed, the designee may continue to represent the member at meetings until the member notifies the staff, in writing, that:
- (a) the member has appointed a new designee; or
- (b) the individual previously appointed may no longer represent the member at meetings.
- (5) If the member and their designee both appear at a meeting, only the member may vote on a matter.
- (6) A designee may not appoint a designee or proxy to appear on their behalf at a meeting.

**R356-7-5. Appointing a Representative.**

- (1) If a statute creating a public body allows an entity to appoint a representative to serve on a public body, the entity may appoint their representative by having the head of the entity send an email to the staff.
- (2) The email shall state the name and title of the representative of the entity.
- (3) The entity's representative:
- (a) may attend a meeting either in person or electronically;

- (b) shall be counted as a member for purposes of determining a quorum;
- (c) may participate in a meeting as any other member; and
- (d) may vote their conscience on matters before the public body.
- (4) Once a representative of an entity has been appointed, the representative shall continue to represent the entity until the head of the entity notifies the staff, in writing, that:
- (a) the entity has appointed a new representative; or
- (b) the individual previously appointed may no longer represent the entity at meetings.

**R356-7-6. Appointing a Proxy.**

- (1) A member or representative of an entity may appoint a proxy to appear at a specific meeting on their behalf by sending an email to the staff.
- (2) The email shall:
- (a) be sent before the meeting; and
- (b) contain the name and title of the proxy who will stand in for the member or representative at the meeting.
- (3) The proxy shall attend the meeting in person and may not attend electronically.
- (4) Once an individual has been appointed as a proxy for a member or representative, the proxy:
- (a) shall be counted as a member for purposes of determining a quorum;
- (b) may participate in the meeting as any other member; and
- (c) may only vote on matters before the public body as directed by the member or the representative and may not vote their conscience.
- (5) A proxy shall have no authority to act on behalf of the member or representative after the meeting under Subsection (1) has concluded.

**R356-7-7. Failure to Comply.**

An individual who appears at a meeting and represents themselves to be a designee of a member, a representative of an entity, or a proxy for a member or representative may not be counted for purposes of determining a quorum and may not vote on matters unless the requirements of this rule have been met.

**KEY: Public bodies, designees, representatives, proxies****Date of Last Change: 2023****Authorizing, and Implemented or Interpreted Law: Title 52, Chapter 4****NOTICE OF PROPOSED RULE****TYPE OF FILING:** Repeal and Reenact**Rule or Section Number:****R380-20****Filing ID:**  
**55993****Agency Information**

<b>1. Department:</b>	Health and Human Services
<b>Agency:</b>	Administration
<b>Building:</b>	MASOB
<b>Street address:</b>	195 N 1950 W

## NOTICES OF PROPOSED RULES

<b>City, state and zip:</b>	Salt Lake City, UT 84116	
<b>Contact persons:</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Donovan Bergstrom	801-330-2699	dbergst@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>
R380-20. Government Records Access and Management
<b>3. Purpose of the new rule or reason for the change:</b>
Following the recodification of the Department of Health and Human Services (Department) statute in the 2023 General Session, the Department is with a repeal of Rule R495-810, Government Records Access and Management Act.  The Department will utilize Rule R380-20, Government Records Access and Management to implement and carry out responses to record requests.
<b>4. Summary of the new rule or change:</b>
This filing proposes adding amended provisions from Rule R495-810 to Rule R380-20.

## 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 the state budget as a result of this rule repeal and reenactment because this filing is technical in nature and the result of the consolidation of the Department.
<b>B) Local governments:</b>
Local governments, city business licensing requirements, were considered.  This proposed rule will not impact local governments' revenues or expenditures because this repeal and reenactment applies only to Department record requests.
<b>C) Small businesses</b> ("small business" means a business employing 1-49 persons):
This proposed rule will not impact small businesses' revenues or expenditures because this repeal and reenactment applies only to Department record requests.

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

This proposed rule will not impact non-small business' revenues or expenditures because this repeal and reenactment applies only to Department record requests.

**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 will not impact persons other than small businesses, non-small businesses, state, or local government entities revenues or expenditures because this repeal and reenactment applies only to Department record requests.

**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 will not impact any other entity's revenues or expenditures because this repeal and reenactment applies only to Department record requests.

**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-2-204	Section 26B-1-213
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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>	12/15/2023
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<b>9. This rule change MAY become effective on:</b>	12/22/2023
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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>	10/30/2023
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**R380. Health and Human Services, Administration.**

**[R380-20. Government Records Access and Management.**

**R380-20-1. Purpose.**

~~This rule establishes procedures that implement the Government Records Access and Management Act, Chapter 2, Title 63G, within the Department of Health. It is authorized by Sections 26-1-5, 26-1-17, 63G-2-204(2), and 63A-12-104(2).~~

**R380-20-2. Requests for Access.**

~~All public requests for a record under Section 63G-2-204 shall be directed to the GRAMA Records Officer in the Office of the Executive Director, with the exception of records created by or held by the entities listed below within the Department. For records created or held by the entities listed, the request must be made to the specific entity listed.~~

~~Office of the Medical Examiner~~

~~Bureau of Human Resource Management  
Employee Assistance Section  
Bureau of Vital Records and Health Statistics~~

**R380-20-3. Research Requests for Access.**

~~Notwithstanding R380-20-2, all requests for records for research purposes pursuant to Section 63G-2-202(8) shall be directed to the GRAMA Records Officer in the Office of the Executive Director.]~~

**R380-20. Government Records Access and Management Act.**

**R380-20-1. Authority and Purpose.**

~~(1) This rule establishes procedures that implement the Government Records Access and Management Act, Chapter 2, Title 63G, within the Department of Health and Human Services.~~

~~(2) This rule is authorized by Sections 26B-1-202, 26B-1-204, and 26B-1-213.~~

**R380-20-2. Definitions.**

~~Terms used in this rule are defined in Section 63G-2-103.~~

**R380-20-3. Request for Access.**

~~(1) A person may submit record requests to any Department of Health and Human Services office.~~

~~(2) If the office maintains a requested record, that office's designated records officer shall respond to the request.~~

~~(3) If the office does not maintain a requested record, the request shall be sent immediately to the appropriate department office.~~

**R380-20-4. Research Requests for Access.**

~~When submitting a records request for research purposes to the Department of Health and Human Services as described in Subsection 63G-2-202(8), A person shall direct the request to the assigned records officer for the Office of the Executive Director, notwithstanding Section R380-20-3.~~

**KEY: public records, government documents[, GRAMA]**

**Date of Last Change: 2023[1992]**

**Notice of Continuation: March 25, 2022**

**Authorizing, and Implemented or Interpreted Law: 26B-1-202; 26B-1-204; 26B-1-213; 63G-2-202[63G-2-202(8); 63G-2-204; 63A-12-104; 26-1-5; 26-1-17]**

**NOTICE OF PROPOSED RULE**

**TYPE OF FILING:** Amendment

<b>Rule or Section Number:</b>	<b>R380-42</b>	<b>Filing ID:</b> <b>55970</b>
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**Agency Information**

<b>1. Department:</b>	Health and Human Services
<b>Agency:</b>	Administration
<b>Building:</b>	MASOB
<b>Street address:</b>	195 N 1950 W
<b>City, state and zip:</b>	Salt Lake City, UT 84116



Contact persons:		
Name:	Phone:	Email:
Donovan Bergstrom	801-330-2699	dbergst@utah.gov
Please address questions regarding information on this notice to the persons listed above.		

**General Information**

<b>2. Rule or section catchline:</b>
R380-42. Open and Public Meetings Act Electronic Meetings
<b>3. Purpose of the new rule or reason for the change:</b>
Following the recodification of the Department of Health and Human Services (Department) statute in the 2023 General Session, the Department is proceeding with an amendment of Rule R380-42, Open and Public Meetings Act Electronic Meetings.
<b>4. Summary of the new rule or change:</b>
This filing updates outdated citations following the consolidation of the Department.
Additionally, it makes nonsubstantive formatting changes to reflect current practices and ensure compliance with the Rulewriting Manual for Utah.

**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 the state budget as a result of this rule amendment because this filing is technical in nature and the result of the consolidation of the Department.
<b>B) Local governments:</b>
Local governments, city business licensing requirements, were considered.
This proposed rule amendment will not impact local governments' revenues or expenditures because this amendment applies only to Department electronic meetings.
<b>C) Small businesses</b> ("small business" means a business employing 1-49 persons):
This proposed rule will not impact small businesses' revenues or expenditures because this amendment applies only to Department electronic meetings.
<b>D) Non-small businesses</b> ("non-small business" means a business employing 50 or more persons):

This proposed rule will not impact non-small businesses' revenues or expenditures because this amendment applies only to Department electronic meetings.

**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 will not impact persons other than small businesses, non-small businesses, state, or local government entities revenues or expenditures because this amendment applies only to Department electronic meetings.

**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 will not impact any other entity's revenues or expenditures because this amendment applies only to Department electronic meetings.

**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-1-202		

**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>	12/15/2023

<b>9. This rule change MAY become effective on:</b>	12/22/2023
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>	10/28/2023
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**R380. Health and Human Services, Administration.****R380-42. Open and Public Meetings Act Electronic Meetings.****R380-42-1. Authority and Purpose.**

(1) ~~[Utah Code Section]~~ This rule is authorized by Sections 26B-1-202 and 52-4-207 which requires ~~[a state]~~ any public body that ~~[holds]~~ convenes or conducts an electronic meeting[s] to ~~[have a]~~ written rules or procedures for such ~~[governing the use of electronic]~~ meetings. ~~[This rule establishes procedures for conducting electronic meetings by each public body created by statute within Utah Code, Title 26 or by Department rule, except for any public body that has adopted its own rule.]~~

~~\_\_\_\_\_ (2) A public body with rule making authority may adopt a separate rule governing its electronic meetings.]~~

~~(2)(3)~~ [This rule is authorized by Sections 52-4-207, 63G-3-201 and 26-1-5.] The purpose of this rule is to establish procedures for conducting an electronic meeting of any body created within the Department of Health and Human Services.

**R380-42-2. Definitions.**

The definitions found in Section 52-4-103 apply to this rule. In addition, the following definitions apply:

(1) "Meeting" means a meeting of the public body that is required to be public by the ~~[provisions of the]~~ Open and Public Meetings Act, ~~[Utah Code]~~ Title 52, Chapter 4.

(2) "Electronic meeting" includes any meeting where at least one member of the public body participates in the public meeting by telephonic or other electronic means.

(3) "Presiding officer" means the member of the public body designated by statute, rule, or vote of the public body to preside at a meeting of the public body.

(4) "Business day" means a day that the ~~[D]~~ department is open to the public for the conduct of business, exclusive of weekends and state holidays.

**R380-42-3. Procedures.**

(1) A public body, as defined in Subsection 52-4-103(10), may hold an open and public meeting where members of the public body or the general public participate electronically or telephonically.

(2) When an electronic meeting is scheduled, the public notice required by Section 52-4-202 shall describe:

(a) the electronic or telephonic method by which members of the public body or the general public may participate; and

(b) the anchor location where members of the public body or the general public may attend, monitor, and participate in the open portions of the meeting, unless the public body is permitted under Subsection 52-4-207(5) to hold the electronic meeting without an anchor location.

(3)(a) The anchor location is the physical location from which the electronic meeting originates or from which the participants are connected.

(b) The anchor location shall have sufficient space and facilities so that interested persons and the public may attend, monitor, and participate in the open portions of the meeting.

(4) At the commencement of the meeting the chair shall identify for the record all those who are appearing telephonically or electronically.

(5) The public body shall count a member who appears electronically or telephonically as present for purposes of determining a quorum.

(6)(a) A member who appears electronically or telephonically may fully participate and vote on any matter before the public body.

(b) The chair shall confirm votes by members who are appearing electronically or telephonically.

**R380-42-[3]4. Designation of Electronic Meetings.**

(1) The presiding officer may schedule any meeting as an electronic meeting upon the presiding officer's discretion or upon request of any member of the public body.

(a) A member of the public body may request that the member's participation in the meeting be allowed electronically up to 48 hours, but no less than two business days, ~~before~~ prior to the commencement of the meeting. The presiding officer may refuse a member's request to hold a meeting electronically.

(b) If the ~~[D]~~ department cannot technically arrange for the meeting to be held electronically, the presiding officer's decision to allow electronic participation the ~~[D]~~ department may deny the request.

## NOTICES OF PROPOSED RULES

(c) The presiding officer or the [D]department may restrict the number of connections for members to participate in the meeting based on available equipment capability.

(d) If budget constraints do not allow the [D]department to provide an electronic connection at no charge to the member, the member who chooses to participate electronically may be required to do so at ~~their~~<sup>his or her</sup> own cost.

(2) No vote of the public body is necessary to include other members of the public body to join the meeting through an electronic connection.

### **R380-42-[4]5. Anchor Location.**

(1) Unless otherwise designated in the posted public notice of the meeting, the anchor location for an electronic meeting held by the public body is the ~~[Cannon Health Building located at 288 North 1460 West]~~<sup>Multi Agency State Office Building (MASOB) 195 North 1950 West</sup>, Salt Lake City, Utah.

(2) The person presiding at the meeting may restrict the number of separate connections for members of the public body that are allowed for an electronic meeting based on available equipment capability.

(3) The [D]department shall provide a meeting room for an anchor location for any meeting that is held electronically.

### **R380-42-[5]6. Quorum, Member Participation.**

(1) A quorum is not required to be present at the anchor location.

(2) A member of the public body who participates in the meeting via electronic means shall be counted as present at the meeting for quorum, participation, and voting requirements.

### **R380-42-[6]7. Public Participation.**

Interested persons and the public may attend and monitor the open portions of the meeting at the anchor location.

**KEY: electronic meetings, open and public meetings**

**Date of Last Change: 2023[December 11, 2012]**

**Notice of Continuation: December 6, 2022**

**Authorizing, and Implemented or Interpreted Law: 52-4-207**

## **NOTICE OF PROPOSED RULE**

**TYPE OF FILING:** Amendment

<b>Rule or Section Number:</b>	<b>R380-70</b>	<b>Filing ID:</b> <b>56036</b>
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### **Agency Information**

<b>1. Department:</b>	Health and Human Services
<b>Agency:</b>	Administration
<b>Room number:</b>	104
<b>Building:</b>	Martha Hughes Cannon Building
<b>Street address:</b>	288 N 1460 W
<b>City, state and zip:</b>	Salt Lake City, UT 84116

### **Contact persons:**

<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Valli Chidambaram	801-739-4211	vchidambaram@utah.gov

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

### **General Information**

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

R380-70. Standards for Electronic Exchange of Clinical Health Information

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

Following the recodification of the Department of Health and Human Services (Department) statute in the 2023 General Session, the Department is proceeding with this amendment to update or remove outdated citations.

Additionally, the Department identifies standards incorporated by reference in this rule that are no longer publicly available and outdated.

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

Punctuation and word choice were changed to ensure consistency with the Rulewriting Manual for Utah.

Standards incorporated by reference in this rule are updated to more modern, relevant standards.

This filing also updates outdated citations following the consolidation of the Department.

### **Fiscal Information**

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

##### **A) State budget:**

This rule filing is technical in nature, and is being processed following the consolidation and recodification of the Department's statute. It will not result in a fiscal impact or savings to the state budget.

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

This rule filing is technical in nature, and is being processed following the consolidation and recodification of the Department's statute. It will not result in a fiscal impact or savings to local governments.

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

This rule filing is technical in nature, and is being processed following the consolidation and recodification of the Department's statute. It will not result in a fiscal impact or savings to small businesses.



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

This rule filing is technical in nature, and is being processed following the consolidation and recodification of the Department's statute. It will not result in a fiscal impact or savings to non-small businesses.

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

This rule filing is technical in nature, and is being processed following the consolidation and recodification of the Department's statute. It will not result in a fiscal impact or savings to persons other than small businesses, non-small businesses, state, or local government entities.

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

This rule filing is technical in nature, and is being processed following the consolidation and recodification of the Department's statute. It will not result in compliance costs.

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

<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:**

Subsection 26B-1-202(43)	Section 26B-8-411	
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**Incorporations by Reference Information****7. Incorporations by Reference:****A) This rule adds, updates, or removes the following title of materials incorporated by references:**

<b>Official Title of Materials Incorporated (from title page)</b>	HL7 Standards
<b>Publisher</b>	HL7 International
<b>Issue Date</b>	03/26/2023
<b>Issue or Version</b>	5

**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>	12/15/2023
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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>	Tracy S. Gruber, Executive Director	<b>Date:</b>	10/30/2023
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**R380. Health and Human Services, Administration.****R380-70. Standards for Electronic Exchange of Clinical Health Information.****R380-70-1. Purpose and Authority.**

This rule governs electronic information exchanges between health care providers, laboratories, and third[-]party payers. ~~[It is authorized by Sections 26-1-30]Subsection 26B-1-202(43) and [26-1-37]Section 26B-8-411 authorize this rule.~~

**R380-70-2. Definitions.**

The terms defined in ~~[Utah Code 26-1-37]Section 26B-8-411~~ apply to this rule and the standards adopted by this rule. In addition, the following terms apply to this rule and the standards adopted by this rule:

(1) "Clinical health information" means data gathered on patients regarding episodes of clinical health care.

(2) "Clinical laboratory" means a laboratory that performs laboratory testing, except research, on humans ~~[(except research) in the U.S.]United States~~.

(3) "Health care provider" has the same meaning as used in ~~[Utah Code]Section 26B-8-411[26-1-37]~~ and includes an entity, such as a clinic, employer, or other business arrangement, where an individual licensed under Title 58, Occupations and Professions, provides health care.

**R380-70-3. Terms Used in Standards.**

~~Some terms used in this rule and the standards adopted by this rule are nationally recognized terms within the clinical data exchange community. The following are provided as an aid to the reader:~~

~~(1) Health care information codes~~

~~(a) "ASA Codes" are the codes contained in the ASA Relative Value Guide developed and maintained by the American Society of Anesthesiologists to describe anesthesia services and related modifiers.~~

~~(b) "CDT Codes" are the Current Dental Terminology prescribed by the American Dental Association.~~

~~(c) "CPT Codes" means the Current Procedural Terminology, published by the American Medical Association.~~

~~(d) "HCPCS" are CMS's Common Procedure Coding System, a coding system that describes products, supplies, procedures and health professional services and includes, the American Medical Association's Current Procedural Terminology codes, alphanumeric codes, and related modifiers. HCPCS codes are:~~

~~(i) "HCPCS Level I Codes" are the CPT codes and modifiers for professional services and procedures.~~

~~(ii) "HCPCS Level II Codes" are national alphanumeric codes and modifiers for health care products and supplies, and codes for professional services not included in the AMA's CPT codes.~~

~~(e) "ICD CM Codes" are the diagnosis and procedure codes in the International Classification of Diseases, clinical modifications published by the U.S. Department of Health and Human Services.~~

~~(f) "LOINC" means Logical Observation Identifiers Names and Codes. It is a set of universal codes and names to identify laboratory and other clinical observations developed by the Regenstrief Institute.~~

~~(g) "NDC" means the National Drug Codes of the Food and Drug Administration.~~

~~(h) "SNOMED" means Systematized Nomenclature of Medicine maintained and distributed by the International Health Terminology Standards Development Organisation. It is a~~

~~systematically organized computer processable collection of medical terminology.~~

~~(2) Electronic Data Interchange Standards~~

~~(a) "ASC X12N" are standard formats developed by the Accredited Standards Committee X12N Insurance Subcommittee of the American National Standards Institute and the ASC X12N implementation guides either as promulgated or as modified by another federally registered SDO;~~

~~(b) "HL7" are electronic data interchange standard formats developed by Health Level 7, which is a standards development organization accredited by the American National Standards Institute. The HL7 standard is usually modified into specific implementation guides by a separate standards development organization;~~

~~(c) "NCPDP" are standard formats for the transfer of data to and from the pharmacy services sector of the healthcare industry. It is developed by the National Council on Prescription Drug Program, which is a standards development organization accredited by the American National Standards Institute.]~~

**R380-70-[4]3. Electronic Exchange Requirements.**

(1) A health care provider or third[-]party payer that exchanges information electronically with another health care provider or third[-]party payer ~~[must]shall~~ comply with ~~[the provisions of]this rule~~.

(2) A person required to report information to the Utah Department of Health and Human Services and that submits its report electronically shall submit the report in accordance with ~~[the provisions of]this rule~~.

(3) A health care provider or third[-]party payer may reject electronically transmitted clinical information if it is not transmitted in accordance with this rule.

**R380-70-[5]4. Exemptions.**

(1) This rule does not govern the exchange of information that is not conducted electronically or for which no standard has been established in this rule.

(2) This rule does not apply to the exchange of clinical health information among affiliates, as provided in Section 26B-8-411[26-1-37], within a health care system.

(3) ~~[Nothing in this rule requires]~~This rule does not require a health care provider or third[-]party payer to use a specific telecommunications network for the exchange of clinical health information.

**R380-70-[6]5. Electronic Data Interchange Standards.**

~~[Standards incorporated by reference in this rule are available for public inspection at the department during normal business hours or at <http://health.utah.gov/phi/index.php?formname=laws>.~~

~~(1) A health care provider, a clinical laboratory, or third-party payer that electronically exchanges clinical health information with another health care provider, a clinical laboratory, or third-party payer must comply with the following Utah Health Information Network standards:~~

~~(a) Discharge Summary v2.0, March 4, 2009;~~

~~(b) History and Physical v2.0, March 4, 2009;~~

~~(c) Chief Complaint v2.0, March 15, 2009;~~

~~(d) Operative Report v2.0, June 15, 2009;~~

~~(e) Clinical Acknowledgement and Error Status v2.0, June 15, 2009;~~

~~(f) Laboratory Test Result Identifiers v2.0, September 5, 2009;~~

~~(g) Clinical Laboratory Results v2.0, September 30, 2009;~~

~~(h) Radiology Report v2.0, June 21, 2010, which are incorporated by reference.]~~

(1) Standards in this rule are available for public inspection through the Health Level Seven International (HL7) website.

(2) A health care provider, a clinical laboratory, or third-party payer that electronically exchanges clinical health information with another health care provider, a clinical laboratory, or third-party payer shall comply with the following Health Level Seven International (HL7) standards:

(a) HL7 Version 2 or higher;

(b) CDA Release 1 or higher; or

(c) FHIR (HL7 Fast Healthcare Interoperability Resources).

#### **R380-70-[7]6. Standards Recommendations.**

A party that recommends standards to the [D]department, shall seek guidance and work with national standard setting entities, such as the American National Standards Institute ASC X12, Health Level 7, and the National Council on Prescription Drug Program, that deal with the particular subject matter.

**KEY: standards, clinical health information exchange**

**Date of Last Change: 2023[July 5, 2011]**

**Notice of Continuation: January 24, 2019**

**Authorizing, and Implemented or Interpreted Law: [26-1-30; 26-1-37]26B-1-202; 26B-8-411**

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

**TYPE OF FILING:** Repeal

<b>Rule or Section Number:</b>	<b>R380-77</b>	<b>Filing ID:</b> <b>56006</b>
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#### **Agency Information**

<b>1. Department:</b>	Health and Human Services	
<b>Agency:</b>	Administration (Health)	
<b>Room number:</b>	104	
<b>Building:</b>	Martha Hughes Cannon 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>
Valli Chidambaram	801-739-4211	vchidambaram@utah.gov

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

#### **General Information**

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

R380-77. Coordination of Patient Identification and Validation Services

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

This rule is being repealed. The advisory committee that was set up to assist the Department of Health and Human Services (Department) in establishing methods to promote interagency collaboration and participation in shared patient identity services met every quarter to discuss projects, opportunities, and methods.

While the space served well for ideation, there was no funding from any of the participating organizations or the Department to support/implement the proposals. Attendance to the quarterly meetings eventually started waning.

The Division of Data, Systems and Evaluation (DSE) had a discussion with the advisory committee chairs and other stake holders. All were in agreement that the rule could be repealed.

The DSE will host the Digital Health Services Commission that will continue to provide the necessary inter-organizational collaborative space for innovative statewide project ideas and proposals.

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

Rule R380-77, Coordination of Patient Identification and Validation Services, is repealed in its entirety.

#### **Fiscal Information**

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

###### **A) State budget:**

This repeal will not fiscally impact the state budget, this filing is to update the Department's code with current and existing processes.

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

This repeal will not fiscally impact local governments, this filing is to update the Department's code with current and existing processes.

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

This repeal will not impact small businesses, this filing is to update the Department's code with current and existing processes.

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

This repeal will not impact non-small businesses, this filing is to update the Department's code with current and existing processes.

###### **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 will not fiscally impact the persons other than small businesses, non-small businesses, state, or local government entities, this filing is to update the Department's code with current and existing processes.

**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.

**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:**

Subsection		
26B-1-202(43)		

**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:** 12/15/2023

**9. This rule change MAY become effective on:** 12/22/2023

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>	10/27/2023
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**R380. Health, Administration.**

~~[R380 77. Coordination of Patient Identification and Validation Services.~~

~~R380 77 1. Purpose and Authority.~~

~~As authorized by Subsection 26-1-30(30), the purpose of this rule is to establish the methods in which health care providers, public health entities, and health care insurers may coordinate among themselves to verify the identities of the individuals they serve.~~

~~R380 77 2. Establishment of Advisory Committee.~~

~~(1) The Department shall establish a patient identity and validation service advisory committee to assist the Department in establishing methods as part of the Department's duties under Subsection 26-1-30(30). The committee serves in a consultative and advisory capacity to the Department.~~

~~(2) The committee shall be comprised of individuals knowledgeable in health information technology, health informatics and health care delivery systems, including representatives from the Department, community-based organizations, hospital and clinic administration, health care insurers, professional health care associations, patients, and informatics researchers.~~

~~(3) The Utah Digital Health Service Commission established by Section 26-9f may advise the Department to oversee this advisory committee.~~

~~R380 77 3. Duties and Responsibilities.~~

~~The committee shall:~~

~~(1) Promote collaborative efforts among community stakeholders regarding participation in shared patient identification services to reduce duplicate services, improve quality and efficiency of care, and to promote patient safety;~~

~~(2) Provide input and guidance to the Department concerning existing community resources and experiences to advance the adoption and implementation of shared patient identification services;~~

~~(3) Advise the Department regarding adoption of standards for the electronic exchange of personally identifiable information between health care providers, public health entities, and health care insurers;~~

~~(4) Define the minimum amount of personally identifiable information necessary to disambiguate and validate identities across organizational information systems;~~

~~(5) Make recommendations on the information technology architecture, hardware, software, application, network configuration, and other technical aspects that allow for the implementation of shared patient identification services and technical compatibility among participants;~~

~~(6) Identify, evaluate, and make recommendations on a strategic and sustainable business model for shared identification services;~~

~~(7) Provide information and evaluate industry trends on existing information exchanges that link and verify person-centric records across organization boundaries; and~~

~~(8) Make recommendations and coordinate the creation, dissemination, and implementation of policies and procedures to address participation in and utilization of shared patient identification services.~~

**KEY: identity, validation, health**

**Date of Last Change: January 21, 2022**

**Notice of Continuation: January 25, 2022**

**Authorizing, and Implemented or Interpreted Law: 26-1-30(30); 26-1-37]**

## NOTICE OF PROPOSED RULE

**TYPE OF FILING:** New

<b>Rule or Section Number:</b>	<b>R380-80</b>	<b>Filing ID:</b> <b>56011</b>
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### Agency Information

<b>1. Department:</b>	Health and Human Services	
<b>Agency:</b>	Administration	
<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
<b>Please address questions regarding information on this notice to the persons listed above.</b>		

### General Information

<b>2. Rule or section catchline:</b>
R380-80. Provider Code of Conduct and Client Rights

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

The purpose of this new rule is to move the provisions of Rule R495-876, Provider Code of Conduct and Client Rights, out from under Title R495 and put it under Title R380.

Additionally, this filing updates citations in response to S.B. 38 passed 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.

Substantive changes are in response to internal departmental coordination to align the code to apply to all entities serving the consolidated Department providers and employees. A subsequent repeal of Rule R495-876 was filed alongside this new rule.

(EDITOR'S NOTE: The proposed repeal of Rule R495-876 is under ID 56010 in this issue, November 15, 2023, of the Bulletin.)

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

This filing proposes the provisions of Rule R495-876, Provider Code of Conduct and Client Rights, be put under Title R380.p

Changes update the definition of critical incident to apply to reporting requirements not only for human services programs, but for health care facilities as well.

### Fiscal Information

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

##### A) State budget:

Substantive changes will only impact state employees for entities who have not required critical incident reporting in the programs they license.

It is anticipated that the additional work will be absorbed by existing staff and processes.

##### B) Local governments:

There will be no fiscal impact on local governments as a result of this proposed rule.

This new rule does not introduce any new processes that will incur a cost for local governments.

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

Many health and childcare facilities have not been required to report critical incidents in the past, they will now be required to do so.

The Administration Office doesn't anticipate any cost or benefit to providers with this new requirement, as the office

has an online provider portal they can use to complete these reports.

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

Many health and childcare facilities have not been required to report critical incidents in the past, they will now be required to do so.

The Administration Office doesn't anticipate any cost or benefit to providers with this new requirement, as the office has an online provider portal they can use to complete these reports.

**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 fiscal impact on any other persons as a result of this proposed rule.

This new rule does not introduce any new processes that will incur a cost for persons other than small, non-small, state or local government entities.

**F) 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 introduce any new processes that will incur a compliance cost 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>

#### 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		
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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>	12/15/2023
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<b>9. This rule change MAY become effective on:</b>	12/22/2023
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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>	10/27/2023
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#### R380. Health and Human Services, Administration.

##### R380-80. Provider Code of Conduct and Client Rights.

##### R380-80-1. Authority and Purpose.

(1) This rule is authorized by Section 26B-1-202.

(2) The purpose of this rule is to:

(a) protect clients from abuse, neglect, mistreatment, and exploitation; and

(b) clarify the expectation of conduct for department providers, their staff, and volunteers who interact with clients.



**R380-80-2. Definitions.**

(1) "Abuse" means the same as the term is defined in Section 26B-6-201 for vulnerable adults or Section 80-1-102 for children.

(2) "Client" means an individual who receives or has received services from a provider.

(3) "Critical incident" means the same as the term defined in Rule R380-600.

(4) "Department" means the Department of Health and Human Services or any of its divisions, offices, or agencies.

(5) "Exploitation" includes:

(a) the use of a client's property, labor, or resources without the client's consent or in a manner that is contrary to the client's best interests, or for the gain of some person other than the client, including spending a client's funds for the benefit of another;

(b) using the labor of a client without paying the client a fair wage or without providing the client with just or equivalent non-monetary compensation, where such use is inconsistent with therapeutic practices;

(c) engaging or involving a client in any sexual conduct;

(d) sexual abuse of a minor as described in Section 76-5b-201; or

(e) sexual exploitation of a vulnerable adult as described in Section 76-5b-202 and Subsection 76-5-111(2).

(6) "Fraud" means a false or deceptive statement, act, or omission that causes, or attempts to cause, property or financial damages, or is made for personal or provider gain. Fraud includes the offenses identified as fraud in Title 76, Chapter 6, Offenses Against Property.

(7) "Harm" means physical or emotional pain, damage, or injury.

(8) "Mistreatment" means conduct that results in emotional or physical harm.

(9) "Neglect" means abandonment or the failure to provide necessary care, including nutrition, education, clothing, shelter, sleep, bedding, supervision, health care, hygiene, treatment, or protection from harm, and neglect also means the same as the term is defined in Sections 26B-6-201 for a vulnerable adult; 76-5-110 for a child with a disability; and 80-1-102 for a child.

(10) "Penalty" means an action taken by the department against a provider which may include to place a condition on, suspend, deny, or revoke a license or certificate due to the program or facility's non-compliance with statute, administrative rule, or requirement.

(11) "Provider" means:

(a) a license or certificate holder;

(b) the legally responsible individual or individuals providing services regulated by the department;

(c) any individual or business entity that contracts or subcontracts with the department to provide services to clients;

(d) any professionally licensed or certified individuals who provide services to clients under the supervision or direction of an individual or business entity; or

(e) any human services program as defined in Section 26B-2-101.

(12)(a) "Restraint" means physically restricting a person's freedom of movement, physical activity, or normal access to their body, including by chemical and mechanical means.

(b) "Restraint" does not include an escort used to lead, guide, or direct a client.

(13) "Seclusion" means the same as defined in Section 26B-2-101.

(14) "Staff" means provider employees, managers, directors, supervisors, administrators, agents, volunteers, owners, and contractors.

**R380-80-3. Provider's Compliance with Conduct Requirements Imposed by Law, Contract, or Other Policies.**

(1) In addition to complying with this rule, Provider Code of Conduct and Client Rights, the provider shall comply and be responsible for their own staff's compliance with each applicable federal, state, and local law, and each policy and administrative rule required by the department or by other state and federal agencies that regulate or oversee the provider's programs.

(2) If a department, state, or federal entity requires a policy or rule that is more specific or restrictive than this rule, the provider shall comply with the more specific or restrictive policy or rule.

**R380-80-4. Providers' Duty to Help Protect Clients.**

(1) The provider shall protect each client from abuse, neglect, exploitation, and mistreatment.

(2) Each individual who witnesses or suspects that a child has been subjected to abuse, neglect, or exploitation shall immediately notify Child Protective Services intake in the Division of Child and Family Services or law enforcement.

(3) Each individual who witnesses or suspects that a disabled or elder adult has been subjected to abuse, neglect, or exploitation shall immediately report to the Adult Protective Services intake office in the Division of Aging and Adult Services or law enforcement.

(4) Each provider shall make each report and documentation about abuse, neglect, exploitation, and mistreatment available to appropriate department personnel, and law enforcement upon request.

(5) Each provider shall cooperate fully in any investigation conducted by the department, law enforcement, or other regulatory or monitoring agencies.

(6) Each provider shall document and report each critical incident to the Office of Licensing and the client's case worker assigned to the client or support coordinator.

(7) If a client dies while receiving services from or under the care of the provider, the provider shall notify the supervising department division or office immediately and shall cooperate with any investigation.

**R380-80-5. Provider Code of Conduct.**

(1) The provider shall ensure that staff and volunteers are supervised, qualified, and trained to:

(a) meet the needs of the clients as required by rule; and

(b) follow any applicable laws, policies, procedures, and rules.

(2) Each provider shall accurately represent services offered, policies, and procedures to clients, guardians, prospective clients, and the public.

(3) Each provider shall create, maintain, and comply with applicable written policies and safe practices that address the appropriate treatment of clients.

(4) Each provider shall protect clients from abuse, neglect, harm, exploitation, mistreatment, fraud, and any action that may compromise the health and safety of clients through acts or omissions and shall instruct and encourage others to do the same.

(5) Each provider shall refrain from using or permitting the use of corporal punishment and shall only utilize restraint as an

## NOTICES OF PROPOSED RULES

intervention to protect individuals from self-harm, from harming others, or from damaging property.

(6) Each provider serving clients under the Division of Services for People with Disabilities shall comply with the rules on restraint as described in Rule R539-4.

(7) Each provider shall maintain the health and safety of clients.

(8) Each provider may not be under the influence or use alcoholic beverages or controlled substances without medical prescription while serving clients.

(9) Each provider serving people with disabilities shall only use aversive procedures after review and approval of the provider human rights committee or the Human Rights Committee as defined in Section R539-3-4.

(10) Each provider shall provide services and supervision that is commensurate with the skills, abilities, behaviors, and needs of each client.

(11) Each provider shall give each staff a copy of this rule, Provider Code of Conduct and Client Rights as part of their initial employment.

(12) Each provider shall sign and ensure each staff signs off on reading, understanding, and agreeing to follow this rule, Provider Code of Conduct and Client Rights before working with clients.

(13) Each provider shall inform clients of each right listed in Section R380-80-6.

(14) Each provider shall maintain a copy of the client's rights, signed by each client or client's guardian in each client record.

(15) Each provider shall prominently display a poster in each facility that notifies clients of their rights.

### **R380-80-6. Client Rights.**

(1) The provider shall ensure that each client has the right to:

- (a) be informed of their rights;
- (b) be treated with dignity, respect, and fairness;
- (c) be free from potential harm or acts of violence;
- (d) be free from discrimination;
- (e) be free from abuse, neglect, mistreatment, exploitation, and fraud;
- (f) have equal access to food, shelter, and health services;
- (g) be free from retaliation for reporting any violation to their rights;
- (h) privacy of current and closed records; and
- (i) communicate and visit with family, attorney, clergy, physician, counselor, or case manager or worker assigned to client, unless therapeutically contraindicated or court restricted.

(2) The provider shall inform each client of policies and procedures that affect client or guardian's ability to make informed decisions regarding client care including:

- (a) program expectations, requirements, mandatory or voluntary aspects of the program;
- (b) consequences for non-compliance;
- (c) reasons for involuntary termination from the program and criteria for re-admission;
- (d) program service fees and billing; and
- (e) safety and characteristics of the physical environment where services will be provided.

**KEY: social services, provider conduct**

**Date of Last Change: 2023**

**Authorizing, and Implemented or Interpreted Law: 26b-1-202**

## NOTICE OF PROPOSED RULE

**TYPE OF FILING:** New

<b>Rule or Section Number:</b>	<b>R380-808</b>	<b>Filing ID:</b> <b>56055</b>
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### Agency Information

<b>1. Department:</b>	Health and Human Services	
<b>Agency:</b>	Administration	
<b>Room number:</b>	Fourth Floor	
<b>Building:</b>	Multi-agency State Office Building	
<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>
Shannon Thoman-Black	385-223-2941	sthomanblack@utah.gov

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

### General Information

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

R380-808. Fatality Review Act

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

Following the recodification of the Department of Health and Human Services (Department) statute in the 2023 General Session, the Department is repealing Rule R495-808, as the Department will be using Title R380 for Administration.

This filing proposes Rule R380-808, Fatality Review Act, alongside a repeal of Rule R495-808. The contents of Rule R495-808 are being updated to reflect the consolidated Department while being moved under Title R380.

(EDITOR'S NOTE: The proposed repeal of Rule R495-808 is under ID 56056 in this issue, November 15, 2023, of the Bulletin.)

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

This rule outlines who is responsible for reporting fatalities for individuals being served by the Department.

This rule previously existed under Title R495

### Fiscal Information

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



**A) State budget:**

There are no anticipated cost or savings to the state budget, as this rule does not change processes or procedures from what existed within Rule R495-808. This rule is being filed alongside a repeal of Rule R495-808 to consolidate rule titles within the Department's code of administrative rules.

**B) Local governments:**

There are no anticipated cost or savings to the local governments, as this rule does not change processes or procedures from what existed within Rule R495-808. This rule is being filed alongside a repeal of Rule R495-808 to consolidate rule titles within the Department's code of administrative rules.

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

There are no anticipated costs or savings to small businesses, as this rule does not change processes or procedures from what existed within Rule R495-808. This rule is being filed alongside a repeal of Rule R495-808 to consolidate rule titles within the Department's code of administrative rules.

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

There are no anticipated costs or savings to non-small businesses, as this rule does not change processes or procedures from what existed within Rule R495-808. This rule is being filed alongside a repeal of Rule R495-808 to consolidate rule titles within the Department's code of administrative rules.

**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 businesses, state, or local government entities, as this rule does not change processes or procedures from what existed within Rule R495-808. This rule is being filed alongside a repeal of Rule R495-808 to consolidate rule titles within the Department's code of administrative rules.

**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; this rule does not change processes or procedures from what existed within Rule R495-808. This rule is being filed alongside a repeal of Rule R495-808 to consolidate rule titles within the Department's code of administrative rules.

**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-1-2	Section 26B-1-501	Section 26B-1-602
Section 26B-1-503	Section 26B-1-504	Section 26B-1-505
Section 26B-1-506	Section 26B-1-507	

**Public Notice Information**

**8. The public may submit written or oral comments to the agency identified in box 1. (The public may also**

## NOTICES OF PROPOSED RULES

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:** 12/15/2023

**9. This rule change MAY become effective on:** 12/22/2023

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>	10/30/2023
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### R380. Health and Human Services, Administration.

#### R380-808. Fatality Review Act.

##### R380-808-1. Authority.

(1) The Department of Health and Human Services may adopt, amend, and enforce rules as necessary in Section 26B-1-201.

(2) Sections 26B-1-501 through 26B-1-507 set forth the legal criteria and requirements for Department of Health and Human Services fatality reviews.

##### R380-808-2. Statement of Purpose.

The purpose of this rule is to clarify reporting and reviews of fatality reports for the Department of Health and Human Services.

##### R380-808-3. Completion of Deceased Client Reports.

In accordance with Subsection 26B-1-502(1), the department designates the following employees to complete a Notification of Deceased Client form: a worker, supervisor, or other Department of Health and Human Services employee who becomes aware of the death.

##### R380-808-4. Referral to Office of Ombudsman.

(1) In the case of a child fatality, if the fatality review coordinator or the Fatality Review Committee determines that there are policies or procedure issues that are not related to the death or further case-specific information is needed, the case may be referred to the Office of Ombudsman for a full case review.

(2) Upon completion of the Office of Ombudsman case review, the analyst shall present the finding to the Fatality Review Committee for further review.

#### **KEY: health, human services, fatality review**

**Date of Last Change: 2023**

**Authorizing, and Implemented or Interpreted Law: 26B-1-2-1; 26B-1-501; 26B-1-602; 26B-1-503; 26B-1-504; 26B-1-505; 26B-1-506; 26B-1-507**

### NOTICE OF PROPOSED RULE

**TYPE OF FILING:** Amendment

<b>Rule or Section Number:</b>	<b>R383-1</b>	<b>Filing ID:</b> <b>55868</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 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
Jordan Miera	385-267-0058	jmiera@utah.gov

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

### General Information

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

R383-1. Definitions

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

Various Rule R383-1 definitions are being removed because the Utah Department of Agriculture and Food (UDAF) now has regulatory authority over medical cannabis pharmacy agents, courier agents, medical cannabis couriers, and medical cannabis pharmacies.

This law changed during the 2023 General Session under H.B. 72. UDAF will take over regulation of these entities on 01/01/2024.

The rules applicable to these entities are Rules R383-7, R383-8, R383-9, and R383-14 and they are being repealed or amended. The corresponding definitions are removed as they are no longer mentioned in Rules R383-1 through R383-15.

The definition of QMP proxy is added as the term will be seen in Rules R383-1 through R383-15.

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

The definitions of terms for cannabis waste, cardholder area, courier agent, direct supervisor, educational event, educational material, limited access area, LMP, PIC, public waiting area, and recreational disposition are removed.

The definition of QMP proxy is added.

The spelling of the acronym UCJIS is corrected.

The subsection numbering is adjusted due to the removal of multiple definitions.

**Public Hearing Information:**

A public hearing will be held on 11/28/2023 at 11:00 AM at the MASOB, 195 N 1950 W, Room 2125, Salt Lake City, UT.

Please click the link below to join the webinar:  
<https://utah-gov.zoom.us/j/82967792081>

Or One tap mobile : +12532158782,,82967792081

**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 proposed rule changes only remove or add definitions which does not incur a fiscal impact.

**B) Local governments:**

There is no fiscal impact on local governments as the proposed rule changes only remove or add definitions which does not incur fiscal impact.

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

There is no fiscal impact on small businesses as the proposed rule changes only remove or add definitions which does not incur a fiscal impact.

**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 proposed rule changes only remove or add definitions which does not incur a fiscal impact.

**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 government entities, as the proposed rule changes only remove or add definitions which does not incur a fiscal impact.

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

There is no compliance costs for affected persons as the proposed rule changes only removes or add definitions which does not incur a 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
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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>		12/15/2023
<b>B) A public hearing (optional) will be held:</b>		
<b>Date:</b>	<b>Time:</b>	<b>Place</b> (physical address or URL):
11/28/2023	11:00 AM	See information in Box 4 above.

**9. This rule change MAY become effective on:** 12/22/2023

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>	10/22/2023
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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-1-202(1), this rule defines terms used in Title R383.

**R383-1-2. Definitions.**

(1) The definitions in Section 26B-4-201 apply to this rule. In addition, the following applies to this rule.

~~[(2)](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)](2) "Card" means any type of medical cannabis card or registration card, whichever applies, authorized under Title 26B, Chapter 4, Part 2 Cannabinoid Research and Medical Cannabis.~~

~~[(4)](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.]~~

~~[(5)](5) "Courier agent" means a medical cannabis courier agent.]~~

~~[(6)](3) "Department" means the Utah Department of Health and Human Services.~~

~~[(7)](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)](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.]~~

~~[(10)](4) "EVS" means the electronic verification system.~~

~~[(11)](5) "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)](6) "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.~~

~~[(13)](7) "ICS" means the inventory control system.~~

~~[(14)](8) "Institutional review board" or "IRB" means the same term as defined in Subsection 26B-4-[201]212(1)(f).~~

~~[(15)](9) "Law enforcement personnel" means law enforcement personnel with access to UC[4]JIS.~~

~~[(16)](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)](17) "LMP" means a limited medical provider.]~~

~~[(18)](10) "Mail" means to send through mail services, email, or hand-delivery.~~

~~[(19)](11) "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 dosing guidelines~~[dosage parameters]~~ in a medical cannabis recommendation;

(r) home delivery of medical cannabis; and

(s) purpose of the state central patient portal.

~~[(20)](12)~~ "Pharmacy agent" means a medical cannabis pharmacy agent.

~~[(21)](21)~~ "PIC" means a pharmacist in charge who oversees the operation and generally supervises a medical cannabis pharmacy.

~~[(22)](13)~~ "PMP" means a medical cannabis pharmacy medical provider.

~~[(23)](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 pharmacy.

~~[(24)](14)~~ "QMP" means a qualified medical provider.

~~[(25)](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.~~

(15) "QMP Proxy" or "Qualified Medical Provider Proxy" means an individual that has been given authority to enter certifications and recommendations for a QMP as described in Subsection 26B-4-202(3).

~~[(26)](16)~~ "RMP" means a recommending medical provider.

~~[(27)](17)~~ "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)](18)~~ "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)](19)~~ "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.

~~[(30)](20)~~ "UC[~~F~~]JIS" means the Utah Criminal Justice Information System.

~~[(31)](21)~~ "UDAF" means the Utah Department of Agriculture and Food.

~~[(32)](22)~~ "Utah resident" means an individual who has established a domicile in Utah.

**KEY: medical cannabis, marijuana**

**Date of Last Change:** ~~[October 23], 2023~~

**Authorizing, and Implemented or Interpreted Law:** 26B-1-213(1); ~~26-61a~~26B-4; 63G-3

#### NOTICE OF PROPOSED RULE

**TYPE OF FILING:** Amendment

**Rule or Section Number:**

**R383-2**

**Filing ID:**  
**55869**

#### 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 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 Miera	385-267-0058	jmiera@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 adds role types that need Electronic Verification System (EVS) access and removes role types that do not need access to EVS.

Language is added stipulating that anyone who has EVS access cannot share their login information. This is not allowed but was never clearly stipulated in either rule or statute.

References to the updated Utah Department of Agriculture and Food (UDAF) statute are also made due to passing of H.B. 72 during the 2023 General Session.

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

The courier agent and cannabis production establishment agent references are removed in Subsections R383-2-2(3)(d) and (e) because these agents do not need EVS access.

Subsection R383-2-3(3) is added to emphasize that individuals with EVS access cannot share their login credentials. This section is renumbered as a result.

References to UDAF statute, Title 4, Chapter 41a, are updated throughout this rule.

**Public Hearing Information:**

A public hearing will be held on 11/28/2023 at 11:00 AM at the MASOB, 195 N 1950 W, Room 2125, Salt Lake City, UT.

Please click the link below to join the webinar:  
<https://utah-gov.zoom.us/j/82967792081>

Or One tap mobile : +12532158782,,82967792081

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

This proposed rule will not impact the state budget because the EVS software already allows QMP proxies to have EVS access.

The emphasis on EVS login information-sharing restrictions will not impact the budget because the Department of Health and Human Services (DHHS) will not have to spend resources to further regulate these individuals as DHHS already monitors this.

**B) Local governments:**

This proposed rule will not impact local governments as it will not incur a financial impact because this proposed rule removes references to individuals that the DHHS no longer regulates.

The added EVS login information-sharing restrictions will not impact local governments because they will not have to adhere to any new regulations.

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

This proposed rule will not impact small businesses as it will not incur a financial impact because this proposed rule removes references to individuals that the DHHS no longer regulates.

The emphasis on EVS login information-sharing restrictions may impact small businesses such as medical cannabis pharmacies but most pharmacies already comply with this requirement.

**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 will not incur a financial impact because this proposed rule removes references to individuals that the DHHS no longer regulates.

The added EVS login information-sharing restrictions may impact non-small businesses such as medical cannabis pharmacies but most pharmacies already comply with this requirement.

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

This proposed rule will not impact persons other than small businesses, non-small businesses, or state, or local government entities will not incur a financial impact because this proposed rule removes references to individuals that the DHHS no longer regulates.

The added EVS login information-sharing restrictions will not financially impact these entities because the new regulations have no financial impact.

**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 will not financially impact affected persons because this proposed rule removes references to individuals that the DHHS no longer regulates.

The added EVS login information-sharing restrictions will not financially impact these entities because the new regulations will not ask the affected person to spend or incur any financial assets.

**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.)

A) Comments will be accepted until:		12/15/2023
B) A public hearing (optional) will be held:		
Date:	Time:	Place (physical address or URL):
11/28/2023	11:00 AM	See information in Box 4 above.

#### 9. This rule change MAY become effective on:

12/22/2023

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>	10/22/2023
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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-1-202(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. 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 26B, Chapter 4, Part 2, Cannabinoid Research and Medical Cannabis or Title 4, Chapter 41a, [Utah Cannabis Production Establishments] Cannabis Production Establishments and Pharmacies:

- (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 26B, Chapter 4, Part 2, Cannabinoid Research and Medical Cannabis or Title 4, Chapter 41a, [Utah Cannabis Production Establishments] Cannabis Production Establishments and Pharmacies, and this rule to the following individuals:

- (a) a QMP;
- (b) a PMP;
- (c) a QMP Proxy;
- ~~(e)~~(d) a pharmacy agent;
- ~~(d)~~ a courier agent;
- ~~(e)~~ a cannabis production establishment agent;
- ~~(f)~~(e) a state agency employee; or
- ~~(g)~~(f) 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.



## NOTICES OF PROPOSED RULES

### R383-2-3. 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 Chapter 26B, Chapter 4, Part 2 Cannabinoid Research and Medical Cannabis or Title 4, Chapter 41a, ~~[Utah Cannabis Production Establishments]~~ Cannabis Production Establishments and Pharmacies, 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) A person authorized to access EVS information and the ICS shall safeguard their login credentials and not share them with anyone.

~~[(3)]~~(4) 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 26B-4-202.

**KEY:** medical cannabis, medical cannabis pharmacy, inventory control system, electronic verification system

Date of Last Change: ~~[October 23, 2023]~~ 2023

Authorizing, and Implemented or Interpreted Law: 4-41A; 26-61a; ~~[26-61a-103(4)]~~ 26B-4-202(4); 63G-3

#### NOTICE OF PROPOSED RULE

TYPE OF FILING: Amendment

Rule or Section Number:	R383-4	Filing ID: 55870
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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 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
Jordan Miera	385-267-0058	jmiera@utah.gov
<b>Please address questions regarding information on this notice to the persons listed above.</b>		

### General Information

#### 2. Rule or section catchline:

R383-4. Qualified Medical Providers

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

Qualified medical provider (QMP) proxies are added to various sections in this rule.

A QMP proxy requires access to the electronic verification system (EVS) to assist QMPs under Subsection 26B-4-202(3). Access to the EVS requires registration, which is a similar process to the QMP registration.

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

QMP proxies are added throughout the proposed rule amendments as their registration happens to be similar to that of a QMP.

#### Public Hearing Information:

A public hearing will be held on 11/28/2023 at 11:00 AM at the MASOB, 195 N 1950 W, Room 2125, Salt Lake City, UT.

Please click the link below to join the webinar:

<https://utah-gov.zoom.us/j/82967792081>

Or One tap mobile : +12532158782,,82967792081

### 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 because the registration process is already in place. The state does not need to develop a new registration process.

##### B) Local governments:

There is no fiscal impact on local governments as the proposed rule only adds QMP proxies to this rule. It does require local governments to change how they regulate medical cannabis.

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

It is difficult to estimate the fiscal impact to small businesses with the addition of QMP proxies to this rule. QMP proxies can be employees of small businesses, such as QMP clinics.

However, it is voluntary for the QMP to designate another individual as a QMP proxy and pay the \$50 registration fee. For this reason, adding QMP proxies to this rule may have an impact on small businesses but the fiscal impact is unknown.

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

It is difficult to estimate the fiscal impact to non-small businesses with the addition of QMP proxies to this rule. QMP proxies can be employees of non-small businesses, such as QMP clinics.

However, it is voluntary for the QMP to designate another individual as a QMP proxy and pay the \$50 registration fee. For this reason, adding QMP proxies to this rule may have an impact on non-small businesses but the fiscal impact is unknown.

**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 government entities, as the proposed rule only adds QMP proxies.

It does require persons other than small businesses, non-small businesses, and state, or local government entities who work in the medical cannabis industry to adhere to these new regulations, but they will not impact them fiscally.

**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 the affected person as the proposed rule only adds QMP proxies to this rule.

It does require QMP proxies to adhere to these new regulations, but they will not impact them fiscally.

**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.)

<b>A) Comments will be accepted until:</b>		12/15/2023
<b>B) A public hearing (optional) will be held:</b>		
<b>Date:</b>	<b>Time:</b>	<b>Place</b> (physical address or URL):
11/28/2023	11:00 AM	See information in Box 4 above.

**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>	Tracy Gruber, Executive Director	<b>Date:</b>	10/22/2023
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**R383. Health and Human Services, Center for Medical Cannabis.**

**R383-4. Qualified Medical Providers and Qualified Medical Provider Proxies.**

**R383-4-1. Authority and Purpose.**

(1) Subsection 26B-1-202(1) authorizes this rule.

(2) This rule establishes application procedures for QMPs and QMP Proxies and establishes the continuing education requirements for QMPs.

**R383-4-2. Application Procedures.**

(1) The application procedures established in this section shall govern the application for the initial issuance of a QMP or QMP Proxy registration card under Title 26B, Chapter 4, Part 2, Cannabinoid Research and Medical Cannabis.

(2) Each applicant shall apply upon forms available in the EVS, from the Department.

(3) The Department may issue a QMP or QMP Proxy registration card, only if the Department determines that the applicant meets all requirements established under Title 26B, Chapter 4, Part 2, Cannabinoid Research and Medical Cannabis, 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 requirements.

(5)(a) The Department shall provide to the applicant a written notice of an incomplete application and that the application is denied.

(b) The Department ~~shall~~ may not accept the application unless the applicant corrects the deficiencies within the time period specified in the notice and otherwise meets all 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.

**R383-4-3. Renewal Application Procedures.**

(1) Renewal application procedures established in this section shall govern applications to renew a QMP or QMP Proxy registration card.

(2) Each QMP or QMP Proxy registration card applicant shall apply upon renewal application forms, available from the Department.

(3) The Department may issue a QMP or QMP Proxy registration card to an applicant who submits a complete renewal application, and the Department determines that the applicant meets the 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 requirements.

(5) The Department shall provide the applicant a written notice of an incomplete application and that the renewal application will be denied, unless the applicant corrects the deficiencies within the time period specified in the notice, and otherwise meets all 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 or QMP Proxy's card.

(b) The notice shall include instructions on how to renew their QMP or QMP Proxy 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 or QMP Proxy registration card automatically expires on the expiration date, and is no longer valid.

(10) If an individual's QMP or QMP Proxy 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.

**R383-4-4. Continuing Education Requirement.**

(1)(a) 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.

(2) Requirements for renewal shall include:

(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;

(b) a completion test with a passing score, as determined by the course provider, to verify comprehension of course content; and

(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: ~~[October 23, 2023]~~2023**

**Authorizing, and Implemented or Interpreted Law: 63G-3; 26B-1-202(1)**

NOTICE OF PROPOSED RULE		
<b>TYPE OF FILING:</b> Amendment		
<b>Rule or Section Number:</b>	<b>R383-5</b>	<b>Filing ID:</b> <b>55871</b>

**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 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
Jordan Miera	385-267-0058	jmiera@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>
R383-5. Dosing Guidelines
<b>3. Purpose of the new rule or reason for the change:</b>
<p>This rule amendment adds Section R383-5-3, which was previously Section R383-7-12. This section is moved because Rule R383-7 is being repealed in its entirety as the Center for Medical Cannabis (CMC) no longer has regulating authority over that rule.</p> <p>During the 2023 General Session, H.B. 72 moved the regulation authority of medical cannabis pharmacies to the Utah Department of Agriculture and Food.</p> <p>Sections of Rule R383-7 are moved and consolidated to other rules. It makes logical sense for partial filling and dosing guidelines to be included in one rule since they both deal with how medical cannabis is dispensed.</p> <p>(EDITOR'S NOTE: The proposed repeal of R383-7 is under ID 55872 in this issue, November 15, 2023, of the Bulletin.)</p>
<b>4. Summary of the new rule or change:</b>
The title of the rule is updated to include Partial Filling. Section R383-5-3 Partial Filling is added.

**Public Hearing Information:**

A public hearing will be held on 11/28/2023 at 11:00 AM at the MASOB, 195 N 1950 W, Room 2125, Salt Lake City, UT.

Please click the link below to join the webinar:  
<https://utah-gov.zoom.us/j/82967792081>

Or One tap mobile : +12532158782,,82967792081

**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 title change and addition of Section R383-5-3 because it does not add or take away regulations.

**B) Local governments:**

There is no fiscal impact on local governments because it does not add regulatory oversight to local governments.

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

There is no fiscal impact on small businesses because this rule filing only moves rule language from one rule to another.

**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 addition of the partial filling section 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 added 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 added 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.)

A) Comments will be accepted until:		12/15/2023
B) A public hearing (optional) will be held:		
Date:	Time:	Place (physical address or URL):
11/28/2023	11:00 AM	See information in Box 4 above.

<b>9. This rule change MAY become effective on:</b>	12/22/2023
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>	10/22/2023
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**R383. Health and Human Services, Center for Medical Cannabis.**

**R383-5. Dosing Guidelines and Partial Filling.**

**R383-5-1. Authority and Purpose.**

(1) Subsection 26B-1-202(1) authorizes this rule.

(2) This rule establishes standards for dosing guidelines and partial filling ~~[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 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.

**R383-5-3. Partial Filling.**

A PMP or pharmacy agent who partially fills a recommendation for a medical cannabis cardholder shall specify in the ICS the following:

(1) date of partial fill;

(2) quantity supplied to the cardholder; and

(3) quantity remaining of the recommendation partially filled.

**KEY: medical cannabis, medical cannabis dosing guidelines, medical cannabis pharmacy**

**Date of Last Change:** ~~[October 23,]~~ 2023

**Authorizing, and Implemented or Interpreted Law:** 63G3; 26B-1-202(1)

**NOTICE OF PROPOSED RULE****TYPE OF FILING:** Repeal

<b>Rule or Section Number:</b>	<b>R383-7</b>	<b>Filing ID:</b> <b>55872</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 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
Jordan Miera	385-267-0058	jmiera@utah.gov
<b>Please address questions regarding information on this notice to the persons listed above.</b>		

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

R383-7. Medical Cannabis Pharmacy

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

H.B. 72 was passed during the 2023 General Session. This bill moved the regulatory authority of medical cannabis pharmacies to the Utah Department of Agriculture and Food. This rule is being repealed as the Health and Human Services (DHHS) no longer has regulatory authority over pharmacies.

Section R383-7-12 is being moved to Rule R383-5, Dosing Guidelines, to eliminate the need to rename Rule R383-7. It also makes more sense for the reader to locate dosing and partial filling guidelines in one location.

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

Rule R383-7 is being repealed in its entirety. Section R383-7-12 is moved to Rule R383-5.  
(EDITOR'S NOTE: The proposed amendment of R383-5 is under ID 55871 in this issue, November 15, 2023, of the Bulletin.)

**Public Hearing Information:**

A public hearing will be held on 11/28/2023 at 11:00 AM at the MASOB, 195 N 1950 W, Room 2125, Salt Lake City, UT.

Please click the link below to join the webinar:  
<https://utah-gov.zoom.us/j/82967792081>

Or One tap mobile : +12532158782,,82967792081

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

Any fiscal impact on the state budget is seen in the fiscal note of H.B. 72 (2023). This proposed rule does not result in a fiscal impact to the state budget since it is entirely being repealed.

**B) Local governments:**

Any fiscal impact on local governments is seen in the fiscal note of H.B. 72 (2023). This proposed rule does not result in a fiscal impact to local governments since it is entirely being repealed.

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

Any fiscal impact on small businesses is seen in the fiscal note of H.B. 72 (2023). This proposed rule does not result in a fiscal impact to small businesses since it is entirely being repealed.

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

Any fiscal impact on non-small businesses is seen in the fiscal note of H.B. 72 (2023). This proposed rule does not result in a fiscal impact to non-small businesses since it is entirely being repealed.

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

Any fiscal impact on persons other than small businesses, non-small businesses, state, or local governments is seen in the fiscal note of H.B. 72 (2023). This proposed rule does not result in a fiscal impact to these entities since it is entirely being repealed.

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



Any compliance costs for affected persons is seen in the fiscal note of H.B. 72 (2023). This proposed rule does not result in a fiscal impact to these persons since it is entirely being repealed.

**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
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Section 26B-4-233	Section 26B-4-228	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:		12/15/2023
B) A public hearing (optional) will be held:		
This Date:	Time:	Place (physical address or URL):
11/28/2023	11:00 AM	See information in Box 4 above.

<b>9. This rule change MAY become effective on:</b>	12/22/2023
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>	10/22/2023
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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-1-202(1) and Title 26B, Chapter 4, Part 2, Cannabinoid Research and Medical Cannabis, authorize this rule.~~

~~(2) This rule establishes operating and licensing standards and requirements applicable to medical cannabis pharmacies and their employees.~~

~~**R383-7-2. General Operating Standards.**~~

~~(1) In addition to general operating standards established in Title 26B, Chapter 4, Part 2, 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) 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 26B, Chapter 4, Part 2, Cannabinoid Research and Medical Cannabis; and~~

~~(ii) applicable administrative rules.~~

~~(2) A medical cannabis pharmacy 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 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 deliveries from a cannabis processing facility or another medical cannabis pharmacy.~~

~~(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 26B, Chapter 4, Part 2, Cannabinoid Research and Medical Cannabis, and this rule.~~

~~(7) A medical cannabis pharmacy may not dispense expired, damaged, deteriorated, misbranded, adulterated, or opened medical cannabis products or medical cannabis devices.~~

~~(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 it is requested in writing.~~

~~(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 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.~~

### **R383-7-3. 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 26B-4-224;~~

~~(c) a plan to comply with applicable operating standards, statutes, and administrative rules, including:~~

~~(i) Title 26B, Chapter 4, Part 2, Cannabinoid Research and Medical Cannabis; 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.~~

### **R383-7-4. 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 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 unique email address for the medical cannabis pharmacy 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 recommending 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, 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 designate a PIC for more than two medical cannabis pharmacies at one time.~~

**R383-7-5. Operating Standards—Supervision.**

~~(1) A medical cannabis pharmacy is in charge of the medical cannabis pharmacy's PIC, but it 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 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.~~

**R383-7-6. Security Standards.**

~~(1) A medical cannabis pharmacy shall comply with security standards established in Section 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 equip their entrances with secure locks.~~  
~~(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, 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 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 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 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 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 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, 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 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 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 26B, Chapter 4, Part 2 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 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 outside vendor, contractor, or visitor visits the pharmacy, the pharmacy shall:~~

~~(a) 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:~~

~~(i) wears this badge at all times when on the premise of the medical cannabis pharmacy;~~

~~(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) escort the visitor at all times by an employee authorized to enter the medical cannabis pharmacy;~~

~~(c) ensure that the visitor is logged in and out; and~~

~~(d) that the log is available for inspection by the Department at all times.~~

~~(10)(a) Product inside a medical cannabis pharmacy, 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 is identified by the posting of a sign, that 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 is unique, to ensure that each PMP, or pharmacy agent, can be identified.~~

~~(c) An identical initial or identification code, may not be used for two or more PMPs, or pharmacy agents.~~

### **R383-7-7. Operating Standards—Inventory.**

~~(1) A medical cannabis pharmacy shall 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.~~

#### **R383-7-8. 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 medical cannabis product and medical cannabis devices is returned, the cannabis production establishment shall:~~

~~(a) log it into the ICS;~~  
~~(b) store it in a locked container with clear and bold lettering: "Return"; and~~

~~(c) 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 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.~~

#### **R383-7-9. Operating Standards—Product Labeling and Packaging.**

~~(1) A medical cannabis pharmacy shall deliver a medical cannabis product in the following dosage forms 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 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.~~

#### **R383-7-10. 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 26B-4-229 and 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 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 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 is made unusable;~~
- ~~\_\_\_\_\_ (g) cannabis waste, which is not designated as hazardous, 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.~~

#### **R383-7-11. 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 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.~~

#### **R383-7-12. 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.~~

#### **R383-7-13. 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 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.~~

**~~R383-7-14. Abandonment of a 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.~~

**~~R383-7-15. 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, drive thru, and curbside service transactions shall occur at a licensed location that is owned, leased, or rented by the licensed entity and 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, 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: video surveillance of a cardholder;~~

~~(b) cardholder vehicle;~~

~~(c) the medical cannabis pharmacy employee verifying the cardholder's 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 are angled to ensure the capture of clear and certain identification of a cardholder and their vehicle's license plate.~~

~~(7)(a) The medical cannabis pharmacy shall ensure that the individual receiving the delivery of a product from the medical cannabis pharmacy employee via walk up, drive thru, or curbside pick up is a cardholder.~~

~~(b) When drive thru service is used, the medical cannabis cardholder shall:~~

~~(i) verify their ID to the medical cannabis pharmacy; and~~

~~(ii) the ID is visible to cameras and to the medical cannabis pharmacy employee who is helping them.~~

~~(8) Children under age 18 may be present in a vehicle that arrives for drive thru or curbside pick up service.~~

~~(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.~~

~~(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 is contained within a box or an opaque bag.~~

~~(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.~~

**~~R383-7-16. 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 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.~~

**~~R383-7-17. 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 26B, Chapter 4, Part 2, Cannabinoid Research and Medical Cannabis, and this rule.~~

~~(2) To comply with educational event minimum age restrictions established in Title 26B, Chapter 4, Part 2, Cannabinoid Research and Medical Cannabis, entry to an educational event in~~

which a medical cannabis pharmacy participates requires verification of a:

~~(i) government issued photo identification for individuals 21 years and older; or~~

~~(ii) a 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 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 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 R383-7-16.~~

#### **R383-7-18. Targeted Marketing.**

~~(1) A medical cannabis pharmacy may engage in targeted marketing as it is defined in 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 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.~~

#### **R383-7-19. 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 pursuant to Subsection 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.~~

#### **R383-7-20. 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~~



## NOTICES OF PROPOSED RULES

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 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 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:** ~~October 23, 2023~~

**Authorizing, and Implemented or Interpreted Law:** ~~63G-3; 26B-1-213(1); 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:** Repeal

<b>Rule or Section Number:</b>	<b>R383-8</b>	<b>Filing ID:</b> <b>55873</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 144340
<b>City, state and zip:</b>	Salt Lake City, UT 84114-4340

### Contact persons:

Name:	Phone:	Email:
Jeremiah Sniffin	801-538-6504	jsniffin@utah.gov
Jordan Miera	385-267-0058	jmiera@utah.gov

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

### General Information

#### 2. Rule or section catchline:

R383-8. Medical Cannabis Pharmacy Agent

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

Rule R383-8 is being repealed because the Utah Department of Agriculture and Food (UDAF) now has regulatory authority over medical cannabis pharmacy agents.

This statute changed during the 2023 General Session with H.B. 72. UDAF will take over regulating pharmacy agents on 01/01/2024.

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

Rule R383-8 is being repealed in its entirety.

### Public Hearing Information:

A public hearing will be held on 11/28/2023 at 11:00 AM at the MASOB, 195 N 1950 W, Room 2125, Salt Lake City, UT.

Please click the link below to join the webinar:  
<https://utah.gov.zoom.us/j/82967792081>

Or One tap mobile : +12532158782,,82967792081

### Fiscal Information

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

##### A) State budget:

Any fiscal impact on the state budget is seen in the fiscal note of H.B. 72 (2023). This proposed rule does not result in a fiscal impact to the state budget since it is entirely being repealed.

##### B) Local governments:

Any fiscal impact on local governments is seen in the fiscal note of H.B. 72 (2023). This proposed rule does not result in a fiscal impact to local governments since it is entirely being repealed.

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

Any fiscal impact on small businesses is seen in the fiscal note of H.B. 72 (2023). This proposed rule does not result in a fiscal impact to small businesses since it is entirely being repealed.

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

Any fiscal impact on non-small businesses is seen in the fiscal note of H.B. 72 (2023). This proposed rule does not result in a fiscal impact to non-small businesses since it is entirely being repealed.

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

Any fiscal impact on persons other than small businesses, non-small businesses, state, or local governments is seen in the fiscal note of H.B. 72 (2023). This proposed rule does not result in a fiscal impact to these entities since it is entirely being repealed.

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

Any compliance costs for affected persons is seen in the fiscal note of H.B. 72 (2023). This proposed rule does not result in a fiscal impact to these persons since it is entirely being repealed.

**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:** 12/15/2023

**B) A public hearing (optional) will be held:**

Date:	Time:	Place (physical address or URL):
11/21/2023	11:00 AM	See information in Box 4 above.

**9. This rule change MAY become effective on:** 12/22/2023

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>	10/22/2023
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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-1-202(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 26B, Chapter 4, Part 2, Cannabinoid Research and Medical Cannabis.~~  
~~(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 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 requirements.~~

~~(5) The Department will notify the pharmacy agent that their application is denied unless the applicant corrects the deficiency within the time period specified in the notice, and otherwise meets all 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 26B, Chapter 4, Part 2, Cannabinoid Research and Medical Cannabis.~~

~~(2) Each pharmacy agent registration card applicant shall apply 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) A denial notice shall advise the applicant that the renewal application is incomplete and that their renewal application is denied unless the applicant corrects the deficiency within the time period specified in the notice, 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 on the Department's website.~~

~~(7) The Department shall send renewal notices by email 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 five days after its expiration date.~~

~~(b) Failure to renew an expired pharmacy agent registration card within five days after its expiration date shall result in the applicant having to resubmit 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 that is offered or approved by the Department.~~

~~KEY: medical cannabis, medical cannabis pharmacy, medical cannabis pharmacy agent, marijuana~~

~~Date of Last Change: October 23, 2023~~

~~Authorizing, and Implemented or Interpreted Law: 63G-3; 26B-1-213(1); 26B-4; 26B-4-213(5)]~~

**NOTICE OF PROPOSED RULE**

**TYPE OF FILING:** Repeal

<b>Rule or Section Number:</b>	<b>R383-9</b>	<b>Filing ID:</b> <b>55874</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 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	
Jordan Miera	385-267-0058	jmiera@utah.gov	

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

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

R383-9. Home Delivery and Courier

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

Rule R383-9 is being repealed because the Utah Department of Agriculture and Food (UDAF) will take over regulation of medical cannabis home delivery and courier facilities and courier agents.

This change took place during the 2023 General Session with H.B. 72. UDAF will take over regulating medical cannabis courier facilities and courier agents on 01/01/2024.

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

Rule R383-9 is being repealed in its entirety.

**Public Hearing Information:**

A public hearing will be held on 11/28/2023 at 11:00 AM at the MASOB, 195 N 1950 W, Room 2125, Salt Lake City, UT.

Please click the link below to join the webinar:

<https://utah-gov.zoom.us/j/82967792081>

Or One tap mobile : +12532158782,,82967792081

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

Any fiscal impact on the state budget is seen in the fiscal note of H.B. 72 (2023). This proposed rule does not result in a fiscal impact to the state budget since it is entirely being repealed.

**B) Local governments:**

Any fiscal impact on local governments is seen in the fiscal note of H.B. 72 (2023). This proposed rule does not result in a fiscal impact to local governments since it is entirely being repealed.

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

Any fiscal impact on small businesses is seen in the fiscal note of H.B. 72 (2023). This proposed rule does not result in a fiscal impact to small businesses since it is entirely being repealed.

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

Any fiscal impact on non-small businesses is seen in the fiscal note of H.B. 72 (2023). This proposed rule does not result in a fiscal impact to non-small businesses since it is entirely being repealed.

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

Any fiscal impact on persons other than small businesses, non-small businesses, state, or local governments is seen in the fiscal note of H.B. 72 (2023). This proposed rule does not result in a fiscal impact to these entities since it is entirely being repealed.

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

Any compliance costs for affected persons is seen in the fiscal note of H.B. 72 (2023). This proposed rule does not result in a fiscal impact to these persons since it is entirely being repealed.

**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>		12/15/2023
<b>B) A public hearing (optional) will be held:</b>		
<b>Date:</b>	<b>Time:</b>	<b>Place</b> (physical address or URL):
11/28/2023	11:00 AM	See information in Box 4 above.

**9. This rule change MAY become effective on:** 12/22/2023

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>	10/22/2023
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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-1-202(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 26B-4-240 through 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 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 agent 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.~~

~~\_\_\_\_\_ (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;~~

~~\_\_\_\_\_ (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.~~

### **R383-9-3. Home Delivery Agent—Operating Standards.**

~~\_\_\_\_\_ (1) In addition to operating standards established in Sections 26B-4-240 through 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, 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 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 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 requirements, established under 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 requirements.~~

~~(b) The Department shall provide to the applicant a written notice of incomplete application and that the application is denied unless the applicant corrects the deficiency within the time period specified in the notice, and otherwise meets all requirements.~~

~~(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.~~

~~(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 26B, Chapter 4, Part 2, Cannabinoid Research and Medical Cannabis.~~

~~(2) Each applicant renewing their registration card 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 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 requirements.~~

~~(b) The Department shall provide to the applicant a written notice of an incomplete application and that the renewal application is denied unless the applicant corrects the deficiency within the time period specified in the notice and otherwise meets all card requirements.~~

~~(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.~~

~~(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.~~

~~(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.~~

~~(8) It shall be the responsibility of each cardholder to maintain a current email address and mailing address with the Department.~~

~~(9) A renewal notice shall advise each cardholder that their courier agent registration card automatically expires on the expiration date and is no longer valid.~~

~~(10)(a) A courier agent shall renew their courier agent registration card with the Department within five days after the courier agent registration card's expiration date.~~

~~(b) Failure to renew an expired courier agent registration card within five days after its expiration date shall result in the applicant having to submit 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 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: October 23, 2023**

**Authorizing, and Implemented or Interpreted Law: 63G-3; 26B-1-213(1); 26B-4; 26B-4-241; 26B-4-239(14); 26B-4-242]**

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

**TYPE OF FILING:** Repeal

**Rule or Section Number:**

**R383-14**

**Filing ID:**  
**55875**

#### **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 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
Jordan Miera	385-267-0058	jmiera@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>
<p>Rule R383-14 is being repealed because the Utah Department of Agriculture and Food (UDAF) now has regulatory authority over medical cannabis pharmacy agents, courier agents, medical cannabis couriers, and medical cannabis pharmacies.</p> <p>This regulation changed during the 2023 General Session with H.B. 72. UDAF will take over regulation of these entities on 01/01/2024. With these changes in regulation, the Department of Health and Human Services (DHHS) no longer has the ability to administer administrative penalties over medical cannabis pharmacies as this ability has shifted to UDAF.</p>
<b>4. Summary of the new rule or change:</b>
<p>Rule R383-14 is being repealed in its entirety.</p> <p><b>Public Hearing Information:</b> A public hearing will be held on 11/28/2023 at 11:00 AM at the MASOB, 195 N 1950 W, Room 2125, Salt Lake City, UT.</p> <p>Please click the link below to join the webinar: <a href="https://utah-gov.zoom.us/j/82967792081">https://utah-gov.zoom.us/j/82967792081</a></p> <p>Or One tap mobile : +12532158782,,82967792081</p>

**Fiscal Information**

<b>5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:</b>
<b>A) State budget:</b>
Any fiscal impact on the state budget is prompted by H.B. 72 (2023) and is seen in the fiscal note of H.B. 72. This proposed rule does not result in a fiscal impact to the state budget since it is entirely being repealed.

<b>B) Local governments:</b>																				
Any fiscal impact on local governments is prompted by H.B. 72 (2023) and is seen in the fiscal note of H.B. 72. This proposed rule does not result in a fiscal impact to local governments since it is entirely being repealed.																				
<b>C) Small businesses</b> ("small business" means a business employing 1-49 persons):																				
Any fiscal impact on small businesses is seen in the fiscal note of H.B. 72 (2023). This proposed rule does not result in a fiscal impact to small businesses since it is entirely being repealed.																				
<b>D) Non-small businesses</b> ("non-small business" means a business employing 50 or more persons):																				
Any fiscal impact on non-small businesses is prompted by H.B. 72 (2023) and is seen in the fiscal note of H.B. 72. This proposed rule does not result in a fiscal impact to non-small businesses since it is entirely being repealed.																				
<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> ):																				
Any fiscal impact on persons other than small businesses, non-small businesses, state, or local governments is prompted by H.B. 72 (2023) and is seen in the fiscal note of H.B. 72. This proposed rule does not result in a fiscal impact to these entities since it is entirely being repealed.																				
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<b>Regulatory Impact Table</b>																				
<table border="1"> <thead> <tr> <th>Fiscal Cost</th> <th>FY2024</th> <th>FY2025</th> <th>FY2026</th> </tr> </thead> <tbody> <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> <tr> <td>Non-Small Businesses</td> <td>\$0</td> <td>\$0</td> <td>\$0</td> </tr> </tbody> </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
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## NOTICES OF PROPOSED RULES

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)		

## 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>		12/15/2023
<b>B) A public hearing (optional) will be held:</b>		
<b>Date:</b>	<b>Time:</b>	<b>Place</b> (physical address or URL):
11/28/2023	11:00 AM	See information in Box 4 above.
<b>9. This rule change MAY become effective on:</b>		
		12/22/2023
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>	10/22/2023
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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 Subsection 26B-1-202(1) and Subsection 26B-4-221(3), this rule establishes a fine schedule for administrative penalties for violations of Title 26B, Chapter 4, Part 2, Cannabinoid Research and Medical Cannabis and applicable administrative rules.

## R383-14.2. Entities and Individuals Subject to Fine Schedule.

This rule governs the fine schedule for which an administrative penalty is authorized pursuant to Section 26B-4-221.

## R383-14.3. Fine Schedule.

(1) Pursuant to Section 26B-4-221 the following fine schedule shall apply:

(a) for an initial violation of Title 26B, Chapter 4, Part 2, Cannabinoid Research and Medical Cannabis or Title R383 a fine of \$500-\$2,000 per violation; and

(b) for a subsequent violation of Title 26B, Chapter 4, Part 2, Cannabinoid Research and Medical Cannabis 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.

## R383-14.4. 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.

## R383-14.5. 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.

## R383-14.6. 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 26B, Chapter 4, Part 2, Cannabinoid Research and Medical Cannabis, and applicable administrative rules.

#### **~~R383-14-7. 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: October 23, 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:** Amendment

<b>Rule or Section Number:</b>	<b>R392-702</b>	<b>Filing ID:</b> <b>55954</b>
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#### **Agency Information**

<b>1. Department:</b>	Health and Human Services		
<b>Agency:</b>	Population Health,	Environmental Health	
<b>Room number:</b>	Second Floor		
<b>Building:</b>	Cannon Health Building		
<b>Street address:</b>	288 N 1460 W		
<b>City, state and zip:</b>	Salt Lake City, UT 84116		
<b>Mailing address:</b>	PO Box 142102		
<b>City, state and zip:</b>	Salt Lake City, UT 84114-2102		
<b>Contact persons:</b>			
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>	
Karl Hartman	801-538-6191	khartman@utah.gov	

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

#### **General Information**

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

R392-702. Cosmetology Facility Sanitation

##### **3. Reason for this change:**

H.B. 376, which passed in the 2023 General Session, modified Section 11-68-101 and Subsection 26A-1-114(12) to prohibit a local health department from requiring a person to obtain a health permit to engage in a practice described in Subsection 58-11a-304(5).

#### **4. Summary of this change:**

In order to avoid conflict with statute, this filing exempts from the requirements of this rule any person who engages in the practice of barbering, cosmetology/barbering, hair design, esthetics, master-level esthetics, electrology, or nail technology without compensation, as described in Subsection 58-11a-304(5).

#### **Fiscal Information**

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

###### **A) State budget:**

There is no anticipated cost or savings to the state budget, as this rule is clerical in nature and will have no impact on how the Department of Health and Human Services (Department) functions or the parties this applies to.

###### **B) Local government:**

This rule change is not expected to have a fiscal impact on local governments' revenues or expenditures. This rule change only clarifies pre-existing requirements for districts.

Specifically, only two of the local health departments require health permits for cosmetology facilities, and they do not require a health permit for any person who engages in the practice of barbering, cosmetology/barbering, hair design, esthetics, master-level esthetics, electrology, or nail technology without compensation, as described in Subsection 58-11a-304(5).

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

This rule change will not have a fiscal impact on small businesses because they do not engage in the practice of barbering, cosmetology/barbering, hair design, esthetics, master-level esthetics, electrology, or nail technology without compensation, as described in Subsection 58-11a-304(5).

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

This rule change will not have a fiscal impact on non-small businesses because they do not engage in the practice of barbering, cosmetology/barbering, hair design, esthetics, master-level esthetics, electrology, or nail technology without compensation, as described in Subsection 58-11a-304(5).

###### **E) Persons other than small businesses, non-small businesses, or 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 will not have a fiscal impact on persons other than small businesses, non-small businesses, or state or local government entities.

Only two of the local health departments require health permits for cosmetology facilities, and they do not require a health permit for any person who engages in the practice of barbering, cosmetology/barbering, hair design, esthetics, master-level esthetics, electrology, or nail technology without compensation, as described in Subsection 58-11a-304(5).

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

There is no anticipated cost or savings to the state budget, as this rule is clerical in nature and will have no impact on how the Department functions or the parties this applies to.

**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
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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-7-402 |

#### 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:** 12/15/2023

**9. This rule change MAY become effective on:** 12/22/2023

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>	10/22/2023
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#### R392. Health and Human Services, Population Health, Environmental Health.

##### R392-702. Cosmetology Facility Sanitation.

##### R392-702-1. Authority and Purpose.

(1) This rule is authorized under Sections 26B-1-202 and 26B-7-402.

(2) This rule establishes minimum standards for the sanitation, operation, and maintenance of a cosmetology facility, as defined by this rule, and provides for the prevention and control of health hazards associated with a cosmetology facility that are likely to affect public health including risk factors contributing to injury, sickness, death, and disability.

##### R392-702-2. Applicability.

(1) This rule applies to facilities in which one or more individuals are engaged in any of the following practices, unless specifically exempted:

- (a) barbering;
- (b) barbering instruction;
- (c) cosmetology/barbering;
- (d) cosmetology/barbering instruction;
- (e) electrology;
- (f) electrology instruction;
- (g) esthetics;
- (h) master-level esthetics;

- (i) esthetics instruction;
- (j) hair design;
- (k) hair design instruction;
- (l) nail technology; or
- (m) nail technology instruction.
- (2) This rule applies to the following school facilities:
  - (a) a barbering school;
  - (b) a cosmetology/barbering school;
  - (c) an electrology school;
  - (d) an esthetics school;
  - (e) a hair design school; or
  - (f) a nail technology school.
- (3) This rule does not apply to:

(a) physicians, surgeons, nurses, other medical persons, or morticians, if licensed to practice their respective professions in Utah, and if engaged in the personal performance of the duties of their respective profession;

(b) a commissioned physician or surgeon serving in the armed forces of the United States or another federal agency;

(c) a person who visits the state to engage in instructional seminars, advanced classes, trade shows, or competitions of a limited duration;

(d) a person who engages in the practice of barbering, cosmetology/barbering, hair design, esthetics, master-level esthetics, electrology, or nail technology without compensation;

([d]e) a person providing instruction in workshops, seminars, training meetings, or other educational programs whose purpose is to provide continuing professional development to licensed barbers, cosmetologists/barbers, hair designers, estheticians, master estheticians, electrologists, or nail technicians;

([e]f) an employee of a company that is primarily engaged in the business of selling products used in the practice of barbering, cosmetology/barbering, esthetics, master-level esthetics, electrology, or nail technology when demonstrating the company's products to a potential customer; or

([f]g) the practice of ear piercing[;], body art[;], body painting[;], body piercing[;], face painting[;], henna tattoos and permanent tattoos[;], threading[;], microblading[;], permanent makeup[;], tanning by UV radiation and spray tanning units[;], injectables[;], mortuary services[;], massage[;], body wraps when performed by a massage therapist[;], or hair braiding.

### **R392-702-3. Definitions.**

As used in this rule:

(1) "Barber" means an individual who is licensed by the Utah Division of ~~[Occupational and]~~ Professional Licensing to perform barbering; or any person engaged in the practice of barbering for the public generally, with or without compensation, whether as owner, operator, instructor, or demonstrator.

(2) "Chemical disinfectant" means:

(a) a solution of EPA-registered bactericidal, fungicidal, and virucidal disinfectants used according to manufacturer's directions; or

(b) a chlorine bleach solution in a concentration range of between 200 ppm and 500 ppm.

(3) "Clean" means the condition of being visibly free from dirt, soil, debris, or other materials not intended to be a part of the object in question.

(4) "Client" means any person who enters a cosmetology facility, or school facility as listed in Subsection R392-702-2(2), with the intent to receive cosmetology services.

(5) "Cosmetologist/Barber" means an individual who is licensed by the Utah Division of ~~[Occupational and]~~ Professional Licensing to perform cosmetology/~~or~~ barbering[;] or any person engaged in the practice of cosmetology/barbering for the public generally, with or without compensation, whether as owner, operator, instructor, or demonstrator.

(6) "Cosmetology facility" means any structure, dwelling, or business where cosmetology, barbering, or associated professional services, as listed in Subsection R392-702-2(1), are practiced.

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

(8) "Disinfection" means the use of a chemical disinfectant to destroy pathogens on reusable implements and other non-porous, nonliving surfaces or to prevent the growth of pathogenic organisms, which thereby renders an item safe for handling and use.

(9) "Dwelling" means a building or structure that is intended or designed to be used, rented, leased, let or hired out for human habitation. A mobile vehicle or mobile structure is not a dwelling.

(10) "Electrologist" means an individual who is licensed by the Utah Division of ~~[Occupational and]~~ Professional Licensing to engage in the practice of electrology; or any person engaged in the practice of electrology for the public generally, with or without compensation, whether as owner, operator, instructor, or demonstrator.

(11) "Esthetician" means an individual who is licensed by the Utah Division of ~~[Occupational and]~~ Professional Licensing who engages in the practice of basic esthetics or master esthetics; or any person engaged in the practice of basic esthetics or master esthetics for the public generally, with or without compensation, whether as owner, operator, instructor, or demonstrator.

(12) "Eyelash technician" means an individual who is engaged in the practice of eyelash technology and is licensed by the Utah Division of Occupational and Professional Licensing to engage in the practice of cosmetology/barbering or esthetics; or any person engaged in the practice of eyelash technology for the public generally, with or without compensation, whether as owner, operator, instructor, or demonstrator.

(13) "Eyelash technology" means the application, removal, and trimming of threadlike natural or synthetic fibers to an eyelash, including the cleansing of the eye area and lashes.

(14) "Foot bath" means any basin, tub, sink, or bowl using non-circulating water in the practice of cosmetology, esthetics, or nail technology.

(15) "Hair braiding" has the same meaning as provided in Subsection 58-11a-102(18).

(16) "Hair designer" means an individual who is licensed by the Utah Division of ~~[Occupational and]~~ Professional Licensing to engage in the practice of hair design; or any person engaged in the practice of hair design for the public generally, with or without compensation, whether as owner, operator, instructor, or demonstrator.

(17) "Hot water" means water heated to a temperature of not less than 110° F at the outlet.

(18) "Imminent health hazard" means a significant threat or danger to health that is considered to exist when there is evidence sufficient to show that a product, practice, circumstance, or event creates a situation that can cause infection, disease transmission, vermin infestation, or hazardous condition that requires immediate correction or cessation of operation to prevent injury, illness, or death.

## NOTICES OF PROPOSED RULES

(19) "Informational notice" means a notice developed by the department that contains:

- (a) a local health department's contact information;
- (b) a link to the website containing this rule;
- (c) a list of specific provisions of this rule commonly found out of compliance in a cosmetology facility;
- (d) a link or QR code to an official complaint form; and
- (e) any other information the department determines relevant for encouraging sanitary conditions in a cosmetology facility.

(20) "Licensed professional" means a barber, cosmetologist/barber, electrologist, esthetician, hair designer, nail technician, as defined in this rule, or an instructor in a school facility as listed in Subsection R392-702-2(2).

(21) "Linens" means towels, sheets, headbands, robes, capes, drapes and other reusable textiles commonly used in a cosmetology facility.

(22) "Local health department" has the same meaning as provided in Subsection 26A-1-102(5).

(23) "Local health officer" means the health officer of the local health department having jurisdiction, or a designated representative.

(24) "Nail technician" means an individual who is licensed by the Utah Division of ~~Occupational and~~ Professional Licensing to engage in the practice of nail technology; or any person engaged in the practice of nail technology for the public generally, with or without compensation, whether as owner, operator, instructor, or demonstrator.

(25) "Operator" means any licensed professional as defined in this rule, or any person who owns, leases, manages or controls, or who has the duty to manage or control a cosmetology facility.

(26) "Pedicure" means any of the following:

- (a) cleaning, trimming, softening, or caring for the nails or cuticles of the feet;
- (b) the use of manual instruments or implements on the nails or cuticles of the feet;
- (c) callus removal by sanding, buffing, or filing including electric filing; or
- (d) massaging of the feet or lower portion of the leg.

(27) "Plumbing Code" means International Plumbing Code as incorporated and amended in Title 15A, State Construction and Fire Codes Act.

(28) "Plumbing fixture" means a receptacle or device that is connected to the water supply system of the premises; or discharges wastewater, liquid-borne waste materials, or sewage to the drainage system of the premises.

(29) "Practice of barbering" has the same meaning as provided in Subsection 58-11a-102(29).

(30) "Practice of basic esthetics" has the same meaning as provided in Subsection 58-11a-102(31).

(31) "Practice of cosmetology/barbering" has the same meaning as provided in Subsection 58-11a-102(32).

(32) "Practice of electrology" has the same meaning as provided in Subsection 58-11a-102(34).

(33) "Practice of hair design" has the same meaning as provided in Subsection 58-11a-102(37).

(34) "Practice of master-level esthetics" has the same meaning as provided in Subsection 58-11a-102(39).

(35) "Practice of nail technology" has the same meaning as provided in Subsection 58-11a-102(40).

(36) "Service Animal" has the same meaning as provided in Section 35.104 of the Americans with Disabilities Act Title II Regulations.

(37) "Waxing" means a treatment in which superfluous hair is removed from a client's face or body by:

(a) covering the hair with a thin layer of soft wax after which a paper or fabric strip is applied and pressed firmly into the wax and then quickly pulled away, removing the wax and body hair; or

(b) covering the hair with a thin layer of heated hard wax after which the wax is allowed to cool, and is then quickly pulled away, removing the wax and body hair.

(38) "Whirlpool foot spa" means any basin using circulating water, either in a self-contained unit or in a unit that is connected to other plumbing in the cosmetology facility. A drain-and-fill circulating foot spa is considered a self-contained whirlpool foot spa.

### **R392-702-4. General Requirements.**

(1) Except as specified in Subsection (2), this rule does not require a construction change in any portion of the cosmetology facility if the facility was operating in compliance with applicable laws and ordinances in effect before enactment of this rule. A cosmetology facility that is newly established more than 90 days after the enactment date of this rule shall operate in full compliance with the rule.

(2) The local health officer may require construction changes consistent with this rule if it is determined the cosmetology facility or portion thereof is dangerous, unsanitary, a nuisance or menace to life, health or property, or that it creates an imminent health hazard.

(3) A cosmetology facility located in a private residence or dwelling shall be exempt from the requirements of Section R392-702-5.

(4) Any operator of a cosmetology facility involved in the practice of nail technology, waxing, eyelash extensions, or esthetics; or the instruction thereof, shall:

- (a) obtain a free informational notice from:
  - (i) the local health department with jurisdiction over the cosmetology facility location; or
  - (ii) the department's website; and
- (b) post the informational notice in a location that is readily visible to an individual entering the cosmetology facility.

(5) Subsection (4) does not apply to any cosmetology facility with a current permit issued by the local health department.

(6) The local health department may impose a fine in accordance with Section 26B-1-224 for a violation of Subsection (4).

(7) The department shall revise and update the informational notice as needed.

### **R392-702-5. Construction and Operating Requirements.**

(1)(a) Floors and interior walls in areas where licensed services are performed, including restrooms and areas where chemicals are mixed or stored, or where water may splash, shall be constructed with smooth, durable, non-porous, and easily cleanable materials, except that anti-slip applications or plastic floor coverings may be used for safety reasons. Carpet is permitted in all other areas.

(b) Subsection (1)(a) does not apply to licensed cosmetic laser services. A commercial grade, low profile carpet may be used as an alternative in areas where only cosmetic laser devices are used.



(2) Except in a lobby or reception area, tables, counters, chairs, and equipment in the cosmetology facility shall be constructed of durable, easily cleanable materials, and shall be maintained in good repair.

(3) The operator shall maintain floors, walls, ceilings, shelves, furniture, furnishings, and fixtures in good condition, clean and free from an accumulation of hair, nails, skin, wax, liquids, and other debris.

(4) The operator shall provide adequate covered waste receptacles conveniently located in the facility to contain debris and other solid waste and to prevent the accumulation of solid waste in or around the cosmetology facility or its premises.

(5)(a) Plumbing in the facility shall comply with Plumbing Code, including backflow prevention requirements.

(b) Plumbing fixtures shall be free from any cracks or disrepair that would prevent proper cleaning, and shall be maintained in a clean and operable condition.

(c) The water heater shall be of sufficient size to accommodate each attached appliance and fixture when used simultaneously.

(6) Each cosmetology facility, or adjacent common area, shall have a restroom that is accessible to operators and clients, and is equipped with:

(a) a toilet;

(b) a handwashing sink with hot and cold running water;

(c) liquid or foam soap and toilet tissue in suitable dispensers;

(d) single-use towels or an alternate hand drying method approved by the local health officer; and

(e) a solid, durable, and easily cleanable waste receptacle.

(7)(a) In addition to the handwashing sink required in Subsection (6)(b), each operator shall have unobstructed access within the facility to at least one handwashing sink that is equipped with:

(i) hot and cold running water;

(ii) liquid or foam soap in a suitable dispenser;

(iii) single-use towels or an alternate hand drying method approved by the local health officer; and

(iv) a solid, durable, and easily cleanable covered waste receptacle;

(b) A shampoo bowl may be used as a handwashing sink when it meets the requirements of Subsection (7)(a).

(c) A foot bath or whirlpool foot spa may not be used as a handwashing sink.

(8)(a) A cosmetology facility shall be equipped with a closable cabinet, bin, or room for:

(i) storage of cleaning and disinfecting chemicals; and

(ii) storage of chemicals or products used in licensed practices.

(b) Any hazardous cleaning agents, chemicals, or employee medications located in the restroom shall be kept in a locked cabinet not accessible to the public.

(9) A cosmetology facility shall be equipped with a designated area for the storage of disinfected implements, and an area for the storage of clean towels and linens.

(10)(a) When not in use, each clean and disinfected implement, tool, and material shall be stored in a designated area, separate from soiled implements and materials.

(b) An operator shall store personal items away from clean and disinfected implements and materials.

(11)(a) Each area having a nail station where a nail technician files or shapes an acrylic nail, as defined in rule by the

Division of [~~Occupational and~~] Professional Licensing, shall comply with Section 15A-3-402.

(b) Cosmetologists/barbers, estheticians, and nail technicians shall limit the accumulation of strong, irritating vapors in a cosmetology facility by:

(i) ventilating any areas where such vapors originate;

(ii) keeping the applicable chemical products in a separate room with a closable, tight-fitting door; and

(iii) closing the packages or containers of chemical products after use; or

(iv) selecting chemical products without strong, irritating vapors.

(12) The cosmetology facility shall be provided with a light source equivalent to at least 25 foot-candles 30 inches off the floor, except that at least 60 foot-candles shall be provided at the level where the licensed service is being performed and where instruments are disinfected.

(13) An operator shall perform services only in areas that are dedicated solely for licensed practice.

(14) A cosmetology facility located in a mobile vehicle or mobile structure shall operate in compliance with this rule, and with city and county laws, regulations, and ordinances regarding water storage, wastewater disposal, electrical and power supply, commercial motor vehicles, vehicle insurance, safety, noise, signage, parking, commerce, business, and other local government requirements. It is the responsibility of the operator to investigate applicable mobile cosmetology facility requirements in each jurisdiction where the mobile cosmetology facility operates, and to ensure compliance with the requirements.

#### **R392-702-6. General Cleaning, Sanitation, Operational, and Maintenance Requirements.**

(1)(a) An operator shall use good personal hygiene habits while providing licensed services.

(b) Before providing any licensed service to a client, operators shall thoroughly wash their hands with soap and water and dry them with single-use towels or an alternate hand drying method approved by the local health officer.

(c) An operator may use a liquid or foam hand sanitizer in lieu of handwashing when changing gloves or switching tasks while providing any licensed service to the same client.

(2)(a) Before disinfecting any surface or item, any visible debris and disposable parts shall be removed and the surface or item shall be washed with detergent and water or wiped with an all-purpose cleaning agent, rinsed thoroughly, and disinfected according to manufacturer's directions.

(b) Any cleaning agent or chemical disinfectant not in the original container shall have a legible label with the name of the agent and directions. If the original container with directions is available, directions are not required to be repeated on the new container label.

(3)(a) Except when washable or disposable covers are replaced after each client, equipment such as facial chairs, beds, and headrests shall be cleaned and disinfected after each client.

(b) Equipment such as chairs, counter surfaces, cupboards, drawers, mats, and dryers shall be maintained clean.

(4) Before use on a new client, any non-electric multi-use implements or tools intended to touch skin or hair shall be cleaned and disinfected in the following sequential manner:

(a) remove visible debris;

(b) clean with detergent and water;

(c) rinse with water;

(d) disinfect by:



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(i) completely immersing the implement or tool, including handles, in a chemical disinfectant according to manufacturer's directions; or

(ii) spraying or wiping the implement or tool with a chemical disinfectant according to manufacturer's directions;

(e) rinse with water; and

(f) dry before storing as specified in Subsection R392-702-5(10).

(5) At the conclusion of each client service, electric equipment including electric clippers, nail e-files, curling irons, flat irons, glass or metal electrodes, high frequency wands, esthetic machines, steamers, diffusers, wax pots and paraffin warmers, or other electric or electronic tools that cannot be immersed in liquid shall be cleaned and disinfected, including the equipment body, handle, and attached cord, before each use in the following sequential manner:

(a) remove visible debris;

(b) disinfect with a chemical disinfectant spray or wipe according to the manufacturer's directions; and

(c) store as specified in Subsection R392-702-5(10).

(6) Plastic guards and any nonmetal removable parts shall be removed, cleaned, and disinfected as required in Subsection (4).

(7) Skin care machines and equipment shall be cleaned and disinfected according to the manufacturer's directions.

(8) Chemical disinfectants, including sprays and wipes, shall be prepared and used according to the manufacturer's directions, including contact time, safety precautions, dilution requirements if any, and proper disposal.

(9)(a) If concentrated chemical disinfectants must be diluted with water, measuring devices shall be readily available and used to ensure an effective solution is made.

(b) Unless otherwise directed by the disinfectant label, chemical disinfectant solutions shall be made at least weekly.

(c) Chemical disinfectant solutions shall be disposed of and replenished immediately if visible debris is present or if a lack of disinfection effectiveness is otherwise indicated.

(10) The operator may use a chlorine bleach solution as a chemical disinfectant when the following requirements are met:

(a) before dilution by the operator, chlorine bleach contains 5.25% to 6.15% sodium hypochlorite;

(b) bleach contains no fragrances, thickeners, or foaming agents;

(c) chlorine test strips are accessible to the operator, and are used to verify chlorine concentration is between 200 and 500 ppm; and

(d) chlorine bleach is not placed or stored near other chlorine-reactive chemicals used in cosmetology facilities including acrylic monomers, alcohol, ammonia, or other disinfecting products, or near flame.

(11) Immediately after use on a single client, the operator shall dispose of single-use equipment, implements, tools, or porous items including nail files, pedicure files, natural pumice, sanding bands, sleeves, heel and toe pumice, exfoliating blocks, buffer blocks, cotton swabs, cotton balls, cotton pads, sponges, gauze, cuticle pushers, disposable applicators, lancets, fabric strips, single-use gloves, neck strips, tissues, thread, disposable wipes, and disposable towels.

(12) Hair cuttings shall be removed from the floor and deposited in a waste receptacle after each haircut.

(13)(a) The operator shall comply with manufacturer's directions for product and equipment use.

(b) When the manufacturer's directions require a patch test, the operator shall:

(i) offer a patch test; and

(ii) provide information to the client regarding the risk of potential adverse reactions to the product.

(14)(a) Wax pots and paraffin warmers shall be kept covered and the exterior cleaned daily.

(b) If debris is found in the wax pot or paraffin warmer, or if the wax or paraffin has been contaminated by contact with skin, unclean applicators, or double-dipping, the wax pot or paraffin warmer shall be emptied, the wax shall be discarded, and the pot or warmer shall be disinfected as required in Subsection (5).

(c) Disposable spatulas and wooden sticks shall be dipped into the wax only once and then discarded without using the other end.

(d) Applicators shall be dipped only once into the wax unless the wax is a single-service item and unused wax is discarded after each service.

(e) Any surface touched by a used wax stick shall be cleaned and disinfected immediately after the service.

(f) Paraffin wax shall be portioned out for each client in a bag or other container, or dispensed in a manner that prevents contamination of the unused supply.

(15) Any solid waste that may create a nuisance or imminent health hazard that is generated at a cosmetology facility and stored on its exterior premises shall be stored in a leak-proof, non-absorbent container with a tight-fitting lid that shall be kept closed except when placing waste in or emptying waste from the container.

(16) Solid wastes shall be disposed with sufficient frequency and in such a manner as to prevent insect breeding, rodent haborage, or nuisance.

### **R392-702-7. Linens and Laundry Service.**

(1) The operator shall maintain a sufficient supply of clean linens, as defined in this rule, for each client's use.

(2)(a) Any linens used to cover or protect a client ~~shall~~ may not be used for more than one client and shall be deposited in a vented container or hamper labeled "soiled" immediately after use, and not used again until laundered.

(b) The operator shall launder used linens either by regular commercial laundering or by a noncommercial laundering process that includes washing with detergent and hot water in a washing machine, drying on hot with no moisture remaining, and immediately storing in accordance with Subsection (3).

(c) A laundry washing machine located in a cosmetology facility shall only be used for washing soiled linens.

(d) Plastic or nylon capes and aprons shall be washed in a laundry washing machine and:

(i) dried on any setting in a dryer; or

(ii) disinfected with a spray disinfectant.

(e) Clean linens ~~shall~~ may not come in contact with soiled linens at any time.

(3) After washing and drying as required, the operator shall maintain and store linens in a clean and sanitary manner at a location free from the likelihood of contamination by vermin, wastewater, filth, or toxic chemicals in either:

(a) a clean, closed cabinet;

(b) a clean, solid, and easily cleanable closed container; or

(c) a designated room on a clean shelf.

(4) Laundry carts, baskets, and hampers shall be constructed with smooth, durable, non-porous, and easily cleanable

materials, and shall be maintained in good condition. Washable laundry bags and liners are permitted.

(5) If laundry is processed at the cosmetology facility, the operator shall use the following procedures to prevent cross contamination from laundry hampers, carts, or baskets:

- (a) visible debris is cleaned from laundry carts and baskets;
- (b) carts and baskets used to store or transport used linens are disinfected each day of use with a chemical disinfectant; and
- (c) separate containers including carts, baskets, hampers, and laundry bags are designated and used for storing and transporting clean and soiled linens.

**R392-702-8. Specific Health and Sanitation Requirements -- Practice of Nail Technology.**

(1) Before performing any nail technology services, nail technicians shall wash their hands with soap and water. After which, nail technicians shall clean the areas of the client's body on which the service is to be performed.

(2) Manicure tables and surfaces that may contact the client's hands, wrists, or arms shall be cleaned and disinfected before use for each client.

(3)(a) The nail technician shall portion products from multi-use containers into individual-use containers for each client, as required by manufacturer's directions and recognized industry standards.

(b) When finger bowls or reusable containers are used during nail technology services, they shall be replaced with cleaned and disinfected containers for each client.

(4) Before use for each client, the operator shall clean and disinfect each whirlpool foot spa in the following sequential manner:

- (a) water is drained and visible debris is removed from the spa basin;
- (b) the spa basin is cleaned with detergent, rinsed with clean water, and drained; and
- (c) after cleaning, the whirlpool foot spa is disinfected with chemical disinfectant according to manufacturer's directions for 10 minutes or the time stated on the label as follows:
  - (i) the spa basin is filled with clean water;
  - (ii) the appropriate amount of chemical disinfectant is added;
  - (iii) the unit is turned on to circulate the chemical disinfectant for the entire contact time; and
  - (iv) after disinfection, the whirlpool foot spa is drained and rinsed with clean water.

(5) Before use for each client, the operator shall clean and disinfect each non-circulating foot bath, as defined in this rule, in the following sequential manner:

- (a) drain the foot bath and remove any visible debris;
- (b) scrub the foot bath with a clean brush, detergent, and water;
- (c) rinse the foot bath with clean water;
- (d) disinfect the foot bath with a chemical disinfectant according to the manufacturer's directions for 10 minutes or the time stated on the label;
- (e) rinse the foot bath with clean water; and
- (f) allow the foot bath to air dry if not placed immediately back into service.

(6) At the conclusion of each business day, the operator shall clean and disinfect each used whirlpool foot spa in the following sequential manner:

(a) remove the filter screen, inlet jets, and other removable parts from the basin and clean out any debris trapped behind or in them;

(b) using a brush, scrub the parts described in Subsection (6)(a) with detergent;

(c) rinse the parts described in Subsection (6)(a) with clean water and place them back into the basin apparatus;

(d) fill the basin with clean water and add a chemical disinfectant, following label directions;

(e) turn the unit on and circulate the system with the chemical disinfectant solution for 10 minutes or the time stated on the label; and

(f) after disinfection, drain the spa basin, rinse with clean water, and air dry.

(7)(a) A local health officer may exempt an operator from the requirements of Subsection (5) when the operator uses a removable spa basin liner in a non-circulating foot bath when the liner is discarded after each client.

(b) The operator shall adhere to the requirements of Subsections (4) and (6) even when using a removable spa basin liner in a whirlpool foot spa.

(8)(a) Before soaking a client's feet in a foot bath or whirlpool foot spa, the operator shall examine the client's feet and legs for any condition that may weaken the skin barrier.

(b) If open sores or skin wounds are present, including insect bites, scratches, or scabbed-over wounds, the operator shall explain to the client that the foot bath or whirlpool foot spa should not be used.

(9) Only electric files or machines specifically designed and manufactured for use in the practice of nail technology may be used in any cosmetology facility for performing nail technology services. Craft, hardware, and hobby, or other similar type tools, or kitchen utensils ~~shall~~ may not be used under any circumstances.

(10) After each use on a single client, diamond, carbide, and metal bits shall be:

- (a) cleaned of visible debris by either:
  - (i) using a brush;
  - (ii) using an ultrasonic cleaner according to manufacturer's directions; or
  - (iii) immersing the bit in acetone for 10 minutes; and
- (b) disinfected by complete immersion in a chemical disinfectant according to manufacturer's directions.

**R392-702-9. Specific Health and Sanitation Requirements -- Practice of Basic and Master Esthetics.**

(1) Estheticians shall wash their hands with soap and water before performing any licensed services on a client. Gloves shall be worn during any type of extraction.

(2) Equipment, multi-use implements, and tools and materials shall be properly cleaned and disinfected after servicing each client as described in Section R392-702-6.

(3) The following items that are used during services shall be replaced with clean items for each client:

- (a) disposable and cloth towels;
- (b) hair caps;
- (c) headbands;
- (d) brushes;
- (e) gowns;
- (f) makeup brushes; and
- (g) other items used for a similar purpose.

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(4)(a) Items subject to possible cross contamination such as creams, cosmetics, astringents, lotions, removers, waxes, moisturizers, masks, oils and other preparations shall be used in a manner so as not to contaminate the remaining product.

(b) Applicators ~~shall~~ may not be re-dipped in product.

(c) The following procedures are permitted to avoid cross contamination:

(i) dispose of the remaining product before beginning services on each client;

(ii) use a single-use disposable applicator device to apply product and disposing of such device after use;

(iii) use an applicator bottle to apply the product; and

(iv) dispense product from a multi-use container into a separate container for single client use.

(5) An esthetician ~~shall~~ may not dispense any service product directly from a container with ungloved fingers.

### **R392-702-10. Specific Health and Sanitation Requirements -- Eyelash Extension Services.**

(1) The practice of eyelash extension services shall only be performed by a licensed cosmetologist/barber, esthetician or master esthetician.

(2) Eyelash technicians shall wash their hands thoroughly with soap and water before performing any licensed services on a client.

(3) Equipment, implements, and materials including eyelash stands, holders, pallets, and trays shall be cleaned and disinfected in accordance with Section R392-702-6 before providing any licensed service.

(4) Glue pallets and holders shall be:

(a) used on only one client, and disposed according to Subsection R392-702-6(11) after each client; or

(b) cleaned and disinfected in accordance with Subsection R392-702-6(4) before use with each client.

(5) Reusable items that are used during services shall be replaced with clean items for each client, including:

(a) cloth towels;

(b) hair caps, headbands, and gowns; and

(c) brushes and spatulas that contact skin or products from multi-use containers.

(6) An operator shall use only properly labeled semi-permanent glue and semi-permanent glue remover, intended and approved for use on humans around the eyes, in accordance with the manufacturer's directions.

(7) Eyelash extensions shall be stored in a clean, closed container or sealed in the original packaging, and shall be kept in a clean, dry, debris-free storage area.

(8)(a) Contaminated eyelash extensions ~~shall~~ may not be used or reused on a client.

(b) When removing eyelashes from the container or package to portion out eyelashes for a service, an eyelash technician shall use disinfected scissors, blade, or other tool to snip a portion of a strip, or a disinfected tweezer to portion out the lashes for each service.

### **R392-702-11. Prohibited Products and Practices.**

(1) Operators ~~shall~~ may not use any of the following substances or products in performing cosmetology services:

(a) Methyl Methacrylate Liquid Monomers (MMA);

(b) razor-type callus shavers designed and intended to cut or shave growths of skin such as corns and calluses, including credo

blades or "microplanes," unless licensed with the Utah Division of Professional Licensing as a Master Esthetician;

(c) styptic pencil, alum, or other astringent in stick or lump form except that alum or other astringents in powder or liquid form are acceptable; and

(d) fumigants such as formalin or formaldehyde tablets or liquids.

(2) Multiple-use roll-on wax is prohibited. Single-use roll-on wax cartridges are acceptable but shall be disposed of immediately after service. Roll-on wax cartridges warming in a wax heater shall have an intact seal. The heating unit is subject to the requirements of Subsection R392-702-6(5), and shall be cleaned and disinfected after each use.

(3) UV sterilizers or light boxes ~~shall~~ may not be used as an infection control device in a cosmetology facility. This does not apply to UV dryers or ultraviolet lamps used to dry or cure nail products.

(4) Electric or battery-operated equipment or implements not specifically manufactured for use on humans are prohibited.

(5) Live fish, leeches, snails, and other living creatures ~~shall~~ may not be used in the practice of cosmetology/barbering, esthetics, or nail technology.

(6)(a) Only service animals assisting persons with disabilities are permitted in a cosmetology facility. Pets, emotional support animals, comfort animals, and therapy animals are not permitted.

(b) Animal beautification or pet grooming services ~~shall~~ may not be performed in a cosmetology facility.

(7) An operator ~~shall~~ may not perform licensed cosmetology services on a client if:

(a) the operator has a known contagious disease of a nature that may be transmitted by performing the procedure, unless the operator takes medically approved measures to prevent transmission of the disease; or

(b) the client has a known contagious disease of a nature that may be transmitted by performing the procedure, unless the operator takes medically approved measures to prevent transmission of the disease.

### **R392-702-12. Food Service.**

When food or beverage service is provided for cosmetology clients, food service, storage, and preparation shall comply with the FDA Model Food Code as incorporated and amended in Rule R392-100, Food Service Sanitation, and local health department regulations.

### **R392-702-13. Inspections and Investigations.**

(1) Upon presenting proper identification, the operator shall permit the local health officer to enter upon the premises of a cosmetology facility to perform inspections, investigations, and other actions as necessary to ensure compliance with this rule.

(2) The operator shall have access to all cosmetology facility space, including leased space, and shall provide the local health officer with access to all cosmetology facility space.

### **R392-702-14. Closing or Restricting Use of a Cosmetology Facility.**

(1) If a local health officer deems a cosmetology facility or portion thereof to be an imminent health hazard, the cosmetology facility may be closed or its use may be restricted, as determined by the local health officer.

(2) The operator shall restrict public access to the impacted area of any cosmetology facility closed or restricted to use by a local health officer within a reasonable time as ordered by the local health officer.

(3) It shall be unlawful for an operator to allow the public to utilize any cosmetology facility or portion thereof that has been deemed unfit for use until written approval of the local health officer is given.

**KEY:** cosmetologist/barber, hair salon, nail salon, esthetician

**Date of Last Change:** [August 17,] 2023

**Authorizing, and Implemented or Interpreted Law:** 26B-1-202; 26B-7-402

#### NOTICE OF PROPOSED RULE

**TYPE OF FILING:** Amendment

<b>Rule or Section Number:</b>	<b>R396-100</b>	<b>Filing ID:</b> <b>56044</b>
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#### Agency Information

<b>1. Department:</b>	Health and Human Services	
<b>Agency:</b>	Disease Control and Prevention, Immunization	
<b>Room number:</b>	2nd Floor	
<b>Building:</b>	Cannon Health Building	
<b>Street address:</b>	288 N 1460 W	
<b>City, state and zip:</b>	Salt Lake City, UT 84116	
<b>Contact persons:</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Rich Lakin	801-554-9827	rlakin@utah.gov

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

#### General Information

<b>2. Rule or section catchline:</b>
R396-100. Immunization Rule for Students
<b>3. Purpose of the new rule or reason for the change:</b>
Following the recodification of the Department of Health and Human Services (Department) statute in the 2023 General Session, the Department is proposing an amendment to update code references.
<b>4. Summary of the new rule or change:</b>
This filing updates the name of the Department, defines additional terms, simplifies sections by omitting birth year, and includes grades in place.
Additionally, this amendment adds language to lend clarity to the documentation of immunization.

It also updates the required reporting date from November 30 to January 30, for each year.

#### Fiscal Information

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

##### A) State budget:

These changes are technical in nature and will not affect cost or savings.

##### B) Local governments:

These changes are technical in nature and will not affect cost or savings for local governments.

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

These changes are technical in nature and will not affect cost or savings for small businesses.

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

These changes are technical in nature and will not affect cost or savings 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*):

These changes are technical in nature and will not affect cost or savings to persons other than small businesses, non-small businesses, state, or local government entities.

##### 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 with these rule changes.

**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

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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-7-118

**Incorporations by Reference Information**
**7. Incorporations by Reference:**
**A) This rule adds, updates, or removes the following title of materials incorporated by references:**

<b>Official Title of Materials Incorporated (from title page)</b>	General Recommendations on Immunization
<b>Publisher</b>	Centers for Disease Control and Prevention (CDC)
<b>Issue Date</b>	January 28, 2011
<b>Issue or Version</b>	60(2)

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

<b>Official Title of Materials Incorporated (from title page)</b>	Licensure of a Diphtheria and Tetanus Toxoids and Acellular Pertussis, Inactivated Poliovirus, <i>Haemophilus Influenzae</i> Type b Conjugate, and
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	Hepatitis B Vaccine, and Guidance for Use in Infants
<b>Publisher</b>	Centers for Disease Control and Prevention (CDC)
<b>Issue Date</b>	February 7, 2020
<b>Issue or Version</b>	69(5)

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

<b>Official Title of Materials Incorporated (from title page)</b>	Prevention of Pertussis, Tetanus, and Diphtheria with Vaccines in the United States: Recommendations of the Advisory Committee on Immunization Practices (ACIP)
<b>Publisher</b>	Centers for Disease Control and Prevention (CDC)
<b>Issue Date</b>	April 27, 2018
<b>Issue or Version</b>	67(2)

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

<b>Official Title of Materials Incorporated (from title page)</b>	Use of Tetanus Toxoid, Reduced Diphtheria Toxoid and Acellular Pertussis Vaccines Among Adolescents
<b>Publisher</b>	Centers for Disease Control and Prevention (CDC)
<b>Issue Date</b>	March 24, 2006
<b>Issue or Version</b>	55(RR03)

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

<b>Official Title of Materials Incorporated (from title page)</b>	Use of Tetanus Toxoid, Reduced Diphtheria Toxoid, and Acellular Pertussis Vaccines: Updated Recommendations of the Advisory Committee on Immunization Practices
<b>Publisher</b>	Centers for Disease Control and Prevention (CDC)
<b>Issue Date</b>	January 24, 2020
<b>Issue or Version</b>	69(3)

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

<b>Official Title of Materials Incorporated (from title page)</b>	A Comprehensive Immunization Strategy to Eliminate Transmission of Hepatitis B Virus Infection in the United States. Part 1: Immunization of Infants, Children and Adolescents
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<b>Publisher</b>	Centers for Disease Control and Prevention (CDC)
<b>Issue Date</b>	December 23, 2005
<b>Issue or Version</b>	54(RR-16)

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

<b>Official Title of Materials Incorporated (from title page)</b>	Prevention of Hepatitis B Virus Infection in the United States: Recommendations of the Advisory Committee on Immunization Practices
<b>Publisher</b>	Centers of Disease Control and Prevention (CDC)
<b>Issue Date</b>	January 12, 2018
<b>Issue or Version</b>	67(1)

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

<b>Official Title of Materials Incorporated (from title page)</b>	Prevention and Control of Haemophilus influenzae Type b Disease: Recommendations of the Advisory Committee on Immunization Practices (ACIP) Recommendations and Reports
<b>Publisher</b>	Centers for Disease Control and Prevention (CDC)
<b>Issue Date</b>	February 28, 2014
<b>Issue or Version</b>	63(RR01)

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

<b>Official Title of Materials Incorporated (from title page)</b>	Measles, Mumps, Rubella Vaccine (PRIORIX): Recommendations of the Advisory Committee on Immunization Practices
<b>Publisher</b>	Centers for Disease Control and Prevention (CDC)
<b>Issue Date</b>	November 18, 2022
<b>Issue or Version</b>	71(46)

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

<b>Official Title of Materials Incorporated (from title page)</b>	Prevention of Measles, Rubella, Congenital Rubella Syndrome, and Mumps, 2013 -- Summary Recommendations of the Advisory Committee on Immunization Practices (ACIP)
<b>Publisher</b>	Centers for Disease Control and Prevention (CDC)

<b>Issue Date</b>	June 14, 2013
<b>Issue or Version</b>	62(RR04)

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

<b>Official Title of Materials Incorporated (from title page)</b>	Use of Combination Measles, Mumps, Rubella, and Varicella Vaccine--Recommendations of the Advisory Committee on Immunization Practices
<b>Publisher</b>	Centers for Disease Control and Prevention (CDC)
<b>Issue Date</b>	May 7, 2010
<b>Issue or Version</b>	59(RR-3)

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

<b>Official Title of Materials Incorporated (from title page)</b>	Poliomyelitis Prevention in the United States
<b>Publisher</b>	Centers for Disease Control and Prevention (CDC)
<b>Issue Date</b>	May 19, 2000
<b>Issue or Version</b>	49(RR-05)

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

<b>Official Title of Materials Incorporated (from title page)</b>	Prevention of Hepatitis A Virus Infection in the United States: Recommendations of the Advisory Committee on Immunization Practices
<b>Publisher</b>	Centers for Disease Control and Prevention (CDC)
<b>Issue Date</b>	July 3, 2020
<b>Issue or Version</b>	69(5)

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

<b>Official Title of Materials Incorporated (from title page)</b>	Use of 15-Valent Pneumococcal Conjugate Vaccine Among U.S. Children: Updated Recommendations of the Advisory Committee on Immunization Practices-US
<b>Publisher</b>	Centers for Disease Control and Prevention (CDC)
<b>Issue Date</b>	September 16, 2022
<b>Issue or Version</b>	71(37)

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

<b>Official Title of Materials Incorporated (from title page)</b>	Preventing Pneumococcal Disease Among Infants and Young Children
<b>Publisher</b>	Centers for Disease Control and Prevention (CDC)
<b>Issue Date</b>	October 6, 2000
<b>Issue or Version</b>	49(RR-09)

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

<b>Official Title of Materials Incorporated (from title page)</b>	Meningococcal Vaccination: Recommendations of the Advisory Committee on Immunization Practices
<b>Publisher</b>	Centers for Disease Control and Prevention (CDC)
<b>Issue Date</b>	September 25, 2020
<b>Issue or Version</b>	69(9)

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

<b>Official Title of Materials Incorporated (from title page)</b>	Licensure of a Meningococcal Conjugate Vaccine (Menveo) and Guidance for Use--Advisory Committee on Immunization Practices (ACIP)
<b>Publisher</b>	Centers for Disease Control and Prevention (CDC)
<b>Issue Date</b>	March 12, 2010
<b>Issue or Version</b>	59(09)

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

<b>Official Title of Materials Incorporated (from title page)</b>	Updated Recommendations for Use of Meningococcal Conjugate Vaccines
<b>Publisher</b>	Centers for Disease Control and Prevention (CDC)
<b>Issue Date</b>	January 28, 2011
<b>Issue or Version</b>	60(03)

**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>	12/15/2023
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<b>9. This rule change MAY become effective on:</b>	12/22/2023
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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>	10/30/2023
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**R396. Health and Human Services, Disease Control and Prevention, Immunization.****R396-100. Immunization Rule for Students.****R396-100-1. Purpose and Authority.**

(1) This rule implements the immunization requirements of Title 53G, Chapter 9, Part 3 Immunization Requirements. It establishes minimum immunization requirements for attendance at a public, private, elementary, or secondary school through grade 12, nursery school or ~~[K]~~kindergarten, licensed day care center, child care facility, family home care, or Head Start program in this state. It establishes:

(a) required doses and frequency of vaccine administration;

(b) reporting of statistical data; and

(c) time periods for conditional enrollment.

(2) ~~[This rule is required by]~~Section 53G-9-305 ~~[and authorizes]~~~~[d]~~ this rule~~[by Section 53G-9-308]~~.

**R396-100-2. Definitions.**

The definitions in Section 53G-9-301 apply to this rule. In addition, a[~~A~~]s used in this rule:

(1) "Department" means the Utah Department of Health and Human Services created in Section 26B-1-201.

(2) "Early ~~[C]~~childhood ~~[P]~~program" means a nursery or preschool, licensed day care center, child[-]care facility, family care home, or Head Start program.

(3) "Exemption" means a relief from the statutory immunization requirements by ~~[reason of]~~qualifying under Section 53G-9-303.

~~["Parent" means a biological or adoptive parent who has legal custody of a child; a legal guardian, or the student, if of legal age.~~

~~"School" means a public, private, or parochial kindergarten, elementary, or secondary school through grade 12.~~

~~"School entry" means a student, at any grade, entering a Utah school or an early childhood program for the first time.~~

~~"Student" means an individual enrolled or attempting to enroll in a school or early childhood program.]~~

**R396-100-3. Required Immunizations.**

~~(1) A student born before July 1, 1993 must meet the minimum immunization requirements of the ACIP prior to school entry for the following antigens: Diphtheria, Tetanus, Pertussis, Polio, Measles, Mumps, and Rubella.~~

~~(2) A student born after July 1, 1993 must meet the minimum immunization requirements of the ACIP prior to school~~



entry for the following antigens: Diphtheria, Tetanus, Pertussis, Polio, Measles, Mumps, Rubella, and Hepatitis B.

(3) A student born after July 1, 1993, must also meet the minimum immunization requirements of the ACIP prior to entry into the seventh grade for the following antigens: Tetanus, Diphtheria, Pertussis, Varicella, and Meningococcal conjugate.

(4) A student born after July 1, 1996 must meet the minimum immunization requirements of the ACIP prior to school entry for the following antigens: Diphtheria, Tetanus, Pertussis, Polio, Measles, Mumps, Rubella, Hepatitis B, Hepatitis A, and Varicella.

(5) To attend a Utah early childhood program, a student must meet the minimum immunization requirements of the ACIP for the following antigens: Diphtheria, Tetanus, Pertussis, Polio, Measles, Mumps, Rubella, Haemophilus Influenza Type b, Hepatitis A, Hepatitis B, Pneumococcal, and Varicella vaccines prior to school entry.]

(1) A student enrolling in kindergarten through sixth grade shall be immunized in accordance with the Advisory Committee on Immunization Practices (ACIP) Recommendations, as listed in Subsection R396-100-3(4), before school entry for the following vaccines and doses:

(a) Measles, Mumps, Rubella (MMR)- 2 doses;

(b) Varicella- 2 doses;

(c) Hepatitis B- 3 doses;

(d) Polio- 4 doses, dose number 4 is not necessary if dose 3 was administered at age 4 years or older and at least 6 months after the previous dose;

(e) Hepatitis A- 2 doses; and

(f) Diphtheria, Tetanus, and Pertussis (DTaP)- 5 doses, dose 5 is not necessary if dose 4 was administered at age 4 years or older and at least 6 months after dose 3.

(2)(a) A student enrolling in seventh through twelfth grade:

(b) Must be immunized in accordance with the ACIP Recommendations, as listed in Subsection R396-100-3(4), before school entry for the following vaccines and doses:

(i) Tetanus, Diphtheria, and acellular Pertussis (Tdap)- One dose;

(ii) Measles, Mumps, Rubella (MMR)- 2 doses;

(iii) Varicella- 2 doses;

(iv) Hepatitis B- 3 doses;

(v) Polio- 4 doses, dose 4 is not necessary if dose 3 was administered at age 4 years or older and at least 6 months after the previous dose;

(vi) Hepatitis A- 2 doses; and

(vii) Meningococcal Conjugate Vaccine- One dose.

(c) Must provide proof of previously receiving five doses of DTaP vaccine or 4 doses if dose 4 was administered at age 4 years or older and at least 6 months after dose 3. A student who has never been vaccinated with DTaP vaccine or who was not fully vaccinated with DTaP vaccine as provided by Subsection R396-100-3(1)(f), must be immunized with the appropriate number of doses of Tetanus, Diphtheria (Td) or Tdap vaccine in accordance with the catch-up Immunization schedule for children and adolescents who start late or who are more than one month behind.

(3) To attend a Utah early childhood program, a student must meet the minimum immunization requirements of the ACIP listed in Subsection R396-100-3(4) for the following antigens:

(a) Diphtheria;

(b) Tetanus;

(c) Pertussis;

(d) Polio;

(e) Measles;

(f) Mumps;

(g) Rubella;

(h) Haemophilus Influenza Type b;

(i) Hepatitis A;

(j) Hepatitis B;

(k) Pneumococcal; and

(l) Varicella vaccines before school entry.

[(6)4] The vaccinations must be administered according to the recommendations of the United States Public Health Service's Advisory Committee on Immunization Practices (ACIP) [as listed below] which are incorporated by reference into this rule:

(a) General Recommendations on Immunization: MMWR, December 1, 2006/Vol. 55/No. RR-15;

(b) General Recommendations on Immunization: MMWR, January 28, 2011; 60(RR02):1-60;

[(b)g] Immunization of Adolescents: MMWR, November 22, 1996/Vol. 45/No. RR-13;

[(e)g] Combination Vaccines for Childhood Immunization: MMWR, May 14, 1999/Vol. 48/No. RR-5;

[(e)g] Use of Diphtheria Toxoid-Tetanus Toxoid-Acellular Pertussis Vaccine as a Five-Dose Series: Supplemental Recommendations of the Advisory Committee on Immunization Practices: MMWR November 17, 2000/Vol. 49/No. RR-13;

(f) Licensure of a Diphtheria and Tetanus Toxoids and Acellular Pertussis, Inactivated Poliovirus, Haemophilus influenzae Type b Conjugate, and Hepatitis B Vaccine, and Guidance for Use in Infants: MMWR, February 7, 2020, 69 (5):136-139;

(g) Prevention of Pertussis, Tetanus, and Diphtheria with Vaccines in the United States: Recommendations of the Advisory Committee on Immunization Practices (ACIP): MMWR, April 27, 2018; 67 (2):1-44;

[(e)h] Updated Recommendations for Use of Tetanus Toxoid, Reduced Diphtheria Toxoid and Acellular Pertussis (Tdap) Vaccine from the Advisory Committee on Immunization Practices, 2010: MMWR, January 14, 2011[Vol. 60/No. 4]; 60(01):13-15;

(i) Use of Tetanus Toxoid, Reduced Diphtheria Toxoid and Acellular Pertussis Vaccines Among Adolescents: MMWR, March 24, 2006, Vol. 55(RR03):1-49;

(j) Use of Tetanus Toxoid, Reduced Diphtheria Toxoid, and Acellular Pertussis Vaccines: Updated Recommendations of the Advisory Committee on Immunization Practices: MMWR, January 24, 2020, Vol. 69 (3):77-83;

[(f)k] [A Comprehensive Strategy to Eliminate Transmission of Hepatitis B Virus Infection in the United States: MMWR, December 23, 2005/Vol. 54/No. RR-6;]A Comprehensive Immunization Strategy to Eliminate Transmission of Hepatitis B Virus Infection in the United States. Part 1: Immunization of Infants, Children and Adolescents: MMWR, December 23, 2005, Vol. 54(RR-16):1-39;

(l) Prevention of Hepatitis B Virus Infection in the United States: Recommendations of the Advisory Committee on Immunization Practices: MMWR, January 12, 2018; 67 (1): 1--31;

[(g)m] Haemophilus b Conjugate Vaccines for Prevention of Haemophilus influenza Type b Disease Among Infants and Children Two Months of Age and Older: MMWR, January 11, 1991/Vol. 40/No. RR-1;

[(h)n] Recommendations for Use of Haemophilus b Conjugate Vaccines and a Combined Diphtheria, Tetanus, and Pertussis, and Haemophilus b Vaccine: MMWR, September 17, 1993/Vol. 42/No. RR-13;

(o) Prevention and Control of Haemophilus influenzae Type b Disease: Recommendations of the Advisory Committee on Immunization Practices (ACIP) Recommendations and Reports: MMWR, February 28, 2014; 63(RR01):1-14;

(~~i~~)~~p~~ Updated Recommendations of the Advisory Committee on Immunization Practices (ACIP) for the Control and Elimination of Mumps: MMWR, June 9, 2006/Vol. 55/No. RR-22;

(q) Measles, Mumps, Rubella Vaccine (PRIORIX): Recommendations of the Advisory Committee on Immunization Practices --- United States, 2022: MMWR, November 18, 2022, 71 (46); 1465-1470;

(r) Prevention of Measles, Rubella, Congenital Rubella Syndrome, and Mumps, 2013 -- Summary Recommendations of the Advisory Committee on Immunization Practices (ACIP): MMWR, June 14, 2013; 62(RR04):1-34;

(s) Use of Combination Measles, Mumps, Rubella, and Varicella Vaccine--Recommendations of the Advisory Committee on Immunization Practices: MMWR, May 7, 2010; 59(RR--3):1 -- 16;

(~~j~~)~~t~~ Updated Recommendations of the Advisory Committee on Immunization Practices (ACIP) Regarding Routine Poliovirus Vaccination: MMWR, August 7, 2009/Vol. 58/No. 30;

(u) Poliomyelitis Prevention in the United States: MMWR May 19, 2000 / Vol. 49 / No. RR-05;

(~~k~~)~~v~~ Prevention of Varicella: MMWR, June 22, 2007/Vol. 56/No. RR-4;

(~~h~~)~~w~~ Prevention of Hepatitis A Through Active or Passive Immunization: MMWR, May 29, 2006/Vol. 55/No. RR-7;

(x) Prevention of Hepatitis A Virus Infection in the United States: Recommendations of the Advisory Committee on Immunization Practices: MMWR, July 3, 2020, Vol. 69 (5):1-38;

(~~m~~)~~y~~ Licensure of a 13-Valent Pneumococcal Conjugate Vaccine (PCV13) and Recommendations for Use Among Children-Advisory Committee on Immunization Practices, (ACIP), 2010: MMWR March 12, 2010/Vol. 59/No. 09;[and]

(z) Use of 15-Valent Pneumococcal Conjugate Vaccine Among U.S. Children: Updated Recommendations of the Advisory Committee on Immunization Practices-US, 2022: MMWR, September 16, 2022, 71(37):1174--1181;

(aa) Preventing Pneumococcal Disease Among Infants and Young Children: MMWR October 6, 2000 /Vol. 49 / No. RR-09;

(~~m~~)~~bb~~ Prevention and Control of Meningococcal Disease: Recommendations of the Advisory Committee on Immunization Practices (ACIP): March 22, 2013/62(RR02);1-22[=];

(cc) Meningococcal Vaccination: Recommendations of the Advisory Committee on Immunization Practices: MMWR, September 25, 2020, Volume 69(9): 1--41;

(dd) Licensure of a Meningococcal Conjugate Vaccine (Menveo) and Guidance for Use--Advisory Committee on Immunization Practices (ACIP), 2010: MMWR, March 12, 2010; 59(09):273; and

(ee) Updated Recommendations for Use of Meningococcal Conjugate Vaccines--Advisory Committee on Immunization Practices (ACIP), 2010: MMWR, January 28, 2011; 60(03):72-76.

#### **R396-100-4. Official Utah School Immunization Record (USIR).**

(1) Schools and early childhood programs shall use the official Utah School Immunization Record (USIR) form as the record of each student's immunizations. The ~~[D]~~department shall provide copies or electronic copies of the USIR to schools, early childhood programs, physicians, and local health departments upon each of their requests.

(2) Each school or early childhood program shall accept an~~[y]~~ immunization record as a certificate of immunization if:

(a) ~~[provided by a licensed physician, registered nurse, or public health official as certification of immunization. It shall transfer this information to the USIR with the following information:]~~it is received from a statewide registry, the student's former school, or the student's legally responsible individual;

(b) it relates to a student regarding required vaccinations that the student has received; and

(c) it includes the date each vaccine was administered, as verified by a licensed health care provider, an authorized representative of a local health department, an authorized representative of the department, a registered nurse, or a pharmacist.

(3) The school or early childhood program shall transfer the following information from each certificate of immunization to the USIR:

(a) name of the student;

(b) student's date of birth;

(c) vaccine administered; and

(d) the month, day, and year each dose of vaccine was administered.

(3)~~(a)~~ ~~[Each school and early childhood program shall maintain a file of the USIR for each student in all grades and an exemption form for each student claiming an exemption.]~~Each school and early childhood program must maintain the following information in the file of each enrolled student:

(i) the completed USIR for each student;

(ii) an exemption form for each student claiming an exemption; and

(iii) immunity documents for each student claiming previously infection with measles, mumps, rubella (MMR), varicella, or hepatitis A disease. The immunity documents must include the results of serologic testing for immunity, titer testing, and a written statement signed by a health care provider confirming that, based on positive laboratory test results, the student does not need to receive the MMR, varicella, or hepatitis A vaccines. Immunity through serologic testing is only acceptable and allowed for those students who were previously infected with measles, mumps, rubella, varicella, or hepatitis A.

(~~[a]~~)~~b~~ The school and early childhood programs shall maintain up-to-date records of the immunization status for all students in all grades such that it can quickly exclude all non-immunized students if an outbreak occurs.

(~~[b]~~)~~c~~ If a student withdraws, transfers, is promoted, or otherwise leaves school, the school or early childhood program shall either:

(i) return the USIR, any immunity documents, and any exemption form to the ~~[parent]~~legally responsible individual of a student; or

(ii) transfer the USIR, any immunity documents, and any exemption form with the student's official school record to the new school or early childhood program upon the request of the student's legally responsible individual.

(4) A representative of the ~~[D]~~department or the local health department may examine, audit, and verify immunization records maintained by any school or early childhood program.

(5) Schools and early childhood programs may meet the record keeping requirements of this section by keeping its official school immunization records in the Utah Statewide Immunization Information System (USIIS).

**R396-100-5. Exemptions.**

(1) A ~~[parent]~~legally responsible individual of a student claiming an exemption to immunization for medical, religious, or personal reasons, as allowed by Section 53G-9-303, shall provide to the student's school or early childhood program the exemption form as set forth and required in Section 53G-9-304.

(2) Also, to qualify for the exemption, the school or early childhood program shall attach the Section ~~[26-7-9]~~26B-7-118 Health Education form to the student's USIR indicating the parent received the required health education by online module or from an authorized local health authority.

**R396-100-6. Reporting Requirements.**

(1) Each school and early childhood program shall report the following to the ~~[D]~~department in the form or format prescribed by the ~~[D]~~department:

(a) by ~~[November]~~January 30 of each year, a statistical report of the immunization status of students enrolled in a licensed day care center, Head Start program, and kindergartens;

(b) by ~~[November]~~January 30 of each year, a statistical report of the two-dose measles, mumps, and rubella immunization status of all kindergarten through twelfth grade students;

(c) by ~~[November]~~January 30 of each year, a statistical report of tetanus, diphtheria, pertussis, hepatitis B, varicella, and the two-dose measles, mumps, and rubella immunization status of all seventh grade students; and

(d) by June 15 of each year, a statistical follow-up report of those students not appropriately immunized from the ~~[November]~~January 30 report in all public schools, kindergarten through twelfth grade.

(2) The information that the ~~[D]~~department requires in the reports shall be in accordance with the Centers for Disease Control and Prevention guidelines.

**R396-100-7. Conditional Enrollment, Extended Conditional Enrollment, and Exclusion.**

~~[A school or early childhood program may conditionally enroll a student who is not appropriately immunized as required in this rule. To be conditionally enrolled, a student must have received at least one dose of each required vaccine and be on schedule for subsequent immunizations. The student must begin receiving required immunizations within 21 days of school enrollment.](1) A student that at the time of enrollment has not provided a school or early childhood program with a complete immunization record, as required in this rule, may attend the school or early childhood program on a conditional enrollment for:~~

~~(a) the period in which the student's immunization record is under review by the school or early childhood program; or~~

~~(b) 30 calendar days after the day the school or early childhood program provides a notice as described in Subsection 53G-9-308(3) to the enroller.~~

~~[(1)]2~~ A school or early childhood program with conditionally ~~and extended conditionally~~ enrolled students shall routinely review every 30 days the immunization status of all conditionally enrolled students until each student has completed the subsequent doses and provided written documentation to the school or early childhood program.

~~[(2)]3~~ Once the student has met the requirements of this rule, the school or early childhood program shall take the student off conditional status.

**R396-100-8. Exclusions of Students Who Are Under Exemption, ~~and~~ Conditionally, or Extended Conditionally Enrolled Status.**

(1) A local or state health department representative may exclude a student, ~~as authorized by Section 53G-9-302, who has claimed an exemption to all vaccines or to one vaccine[or who is conditionally enrolled], who is not immune to the outbreak disease, or who is conditionally or extended conditionally enrolled~~ from school attendance if there is good cause to believe that the student has a vaccine~~[-]~~preventable disease, or:

(a) has been exposed to a vaccine-preventable disease; or

(b) will be exposed to a vaccine-preventable disease as a result of school attendance.

(2) An excluded student may not attend school until the local health officer is satisfied that a student is no longer at risk of contracting or transmitting a vaccine-preventable disease.

~~(3) Schools and early childhood programs shall comply with disease outbreak management options as described in Subsection 53G-9-309(3)(c).~~

**R396-100-9. Penalties.**

Enforcement provisions and penalties for the violation or for the enforcement of public health rules, including this Immunization Rule for Students, are prescribed under Section ~~[26-23-6]~~26B-1-224.

**KEY: immunizations, rules and procedures**

**Date of Last Change: 2023[January 13, 2020]**

**Notice of Continuation: May 22, 2023**

**Authorizing, and Implemented or Interpreted Law: Title 53G Chapter 9 Part 3; ~~[26-7-9]~~26B-7-118**

**NOTICE OF PROPOSED RULE**

**TYPE OF FILING:** Amendment

**Rule or Section Number:**

**R398-4**

**Filing ID:**  
**56061**

**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**

<b>2. Rule or section catchline:</b>
R398-4. Cytomegalovirus Public Health Initiative
<b>3. Purpose of the new rule or reason for the change:</b>
The reason for this change is to update statute citations and titles associated with the recodifications related to the Department of Health and Human Services (Department) consolidation and the recodification of the Department's 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.
Additionally, this amendment updates authorizing citations, makes technical changes and structural changes following the consolidation and recodification of the Department.

**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.

**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 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-7-105

**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:** 12/15/2023

**9. This rule change MAY become effective on:** 12/22/2023

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>	10/30/2023
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**R398. Health and Human Services, Family Health[and Preparedness], Children with Special Health Care Needs.**

**R398-4. Cytomegalovirus Public Health Initiative.**

**R398-4-1. Authority and Purpose.**

(1) Authority for this rule is [authorized by] found in Section [26-10-10]26B-7-105.

(2) The purposes of this rule are 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.

**R398-4-2. Definitions.**

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

(2) "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 or physician using the Department-approved instrumentation, protocols, and pass or refer criteria.

(3) "Medical practitioner" means the newborn infant's primary medical caregiver.

[~~(4) "Parent" means a natural biological parent, a stepparent, adoptive parent, legal guardian, or other legal custodian of a child.~~]

**R398-4-3. Clarification of When a Newborn Must Be Referred for CMV Testing.**

(1) The newborn must be referred for CMV testing if the infant fails both the initial hearing screen routinely done at birth and the subsequent follow-up screen.

(2) The newborn must be referred for CMV testing when the initial failed screen is obtained after 14 days of age.

(3) The newborn must be referred for CMV testing if they have failed an inpatient screening and have not completed or been able to complete the outpatient screening before 14 days of age.

(4) The Department may make referrals to help coordinate care and provide resources for the affected child and their family.

**R398-4-4. Special Populations of Newborns.**

(1) In special populations of newborns where newborn hearing screening cannot be accomplished before 21 days of age, testing for CMV is left to the discretion of the medical practitioner caring for the newborn.

(2) Special populations of newborns may include[?] premature or medically fragile newborns or newborns receiving ongoing medical care.

**R398-4-5. Reporting Requirements.**

(1) Medical practitioners are required to submit results of the CMV testing to the Department for each newborn under their care who is referred for CMV testing within ten days of receiving results.

(2) Laboratories testing for the presence of congenital CMV must submit results of the CMV testing to the Department within ten days of receiving results.

**R398-4-6. CMV Registry.**

Pursuant to Section [26-1-30]26B-7-105, the Department shall maintain a database of infants tested as well as a Positive Congenital CMV Registry that contains results, demographics, symptomology, specialist services, long-term outcomes, and other items as deemed necessary.

**R398-4-7. Confidentiality of Reported Information.**

(1) The 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 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 Department.

**KEY: cytomegalovirus, CMV, newborn hearing screening**

**Date of Last Change: 2023[February 14, 2022]**

**Notice of Continuation: August 28, 2023**

**Authorizing, and Implemented or Interpreted Law: [26-10-40]26B-7-105**

**NOTICE OF PROPOSED RULE**

**TYPE OF FILING:** Amendment

<b>Rule or Section Number:</b>	<b>R406-100</b>	<b>Filing ID:</b> <b>55962</b>
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**Agency Information**

<b>1. Department:</b>	Health and Human Services
<b>Agency:</b>	Family Health, WIC Services
<b>Room number:</b>	3032

## NOTICES OF PROPOSED RULES

<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>	
Rick Wardle	801-580-7932	rwardle@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>
R406-100. Special Supplemental Nutrition Program for Women, Infants and Children
<b>3. Purpose of the new rule or reason for the change:</b>
The reason for the amendment is to update statute citations and titles associated with the recodifications related to the Department of Health and Human Services (Department) consolidation and the recodification of the Department's statute in the 2023 General Session.
Additionally, the change updates the revision dates of incorporations by reference.
<b>4. Summary of the new rule or change:</b>
This amendment updates names, terms, and entities in the text.
Additionally, this amendment updates authorizing citations, makes technical changes and structural changes following the consolidation and recodification of the Department.
This amendment also updates the revision dates of the materials incorporated by reference.

### 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 filing is the result of the consolidation of the Department and the recodification of the Department's statute.

This amendment filing is technical in nature and will not result in any fiscal cost or savings to the state budget.

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

This amendment filing is the result of the consolidation of the Department and the recodification of the Department's statute.

This amendment filing is technical in nature and will not result in any fiscal cost or savings to local governments.

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

This amendment filing is the result of the consolidation of the Department and the recodification of the Department's statute.

This amendment filing is technical in nature and will not result in any fiscal cost or savings to small businesses.

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

This amendment filing is the result of the consolidation of the Department and the recodification of the Department's statute.

This amendment filing is technical in nature and will not result in any fiscal cost or savings to non-small businesses.

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

This amendment filing is the result of the consolidation of the Department and the recodification of the Department's statute.

This amendment filing is technical in nature and will not result in any fiscal cost or savings to persons other than small businesses, non-small businesses, or state or local government entities.

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

This amendment filing is the result of the consolidation of the Department and does not carry any compliance costs.

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



Regulatory Impact Table			
Fiscal Cost	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 26B-1-202	Section 26B-1-208	

**Incorporations by Reference Information**

<b>7. Incorporations by Reference :</b>	
<b>A) This rule adds, updates, or removes the following title of materials incorporated by references:</b>	
<b>Official Title of Materials Incorporated (from title page)</b>	PART 246--SPECIAL SUPPLEMENTAL NUTRITION PROGRAM FOR WOMEN, INFANTS AND CHILDREN
<b>Publisher</b>	Code of Federal Regulations

<b>Issue Date</b>	01/01/2022
<b>Issue or Version</b>	01/01/2022 edition

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

<b>Official Title of Materials Incorporated (from title page)</b>	Fiscal Year 2024 Utah WIC State Plan of Program Operations and Administration
<b>Publisher</b>	State of Utah
<b>Issue Date</b>	Fiscal Year 2024
<b>Issue or Version</b>	2024

**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>	12/15/2023
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<b>9. This rule change MAY become effective on:</b>	12/22/2023
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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>	10/22/2023
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**R406. Health and Human Services, Family Health[~~—and Preparedness~~], WIC Services.**

**R406-100. Special Supplemental Nutrition Program for Women, Infants and Children.**

**R406-100-1. Purpose and Authority.**

(1) The purpose of this rule is to establish requirements for participation in the Special Supplemental Nutrition Program for Women, Infants and Children (WIC). This rule describes program objectives and the authority under which the program operates. This rule also determines the materials that are incorporated by reference.

(2)(a) The Department of Health and Human Services establishes this rule in accordance with the WIC program under the Child Nutrition Act of 1966, 42 USC Sec. 1786.

(b) Acceptance and approval of the Utah WIC State Plan along with an executed Federal-State agreement between the USDA FNS and the Utah Department of Health and Human Services authorizes and provides funding for the WIC program to the state.

(3) Section 26B-1-202 authorizes the Department to adopt rules.

(4) The Utah Department of Health and Human Services is authorized under Section 26B-1-208, which allows the executive



director to accept federal funding to operate the WIC program in Utah.

#### **R406-100-2. Program Objectives.**

(1) WIC is a supplemental foods and nutrition education program funded by the United States Department of Agriculture (USDA) Food and Nutrition Service (FNS) and is administered by the Utah Department of Health and Human Services, Division of Family Health ~~and Preparedness~~, through clinics operated by local health departments. The purpose of the WIC program is to provide nutritious supplemental foods and nutrition education to eligible persons. The program serves as an adjunct to good healthcare, during critical times of growth and development, to prevent the occurrence of health problems and improve the health status of program participants.

(2) WIC serves pregnant, postpartum and breastfeeding women; and infants and children up to five years of age. WIC participants belong to families that are found to have inadequate income and are determined by competent health professionals to be at nutritional risk.

(3) A primary concern of the program is to deliver preventive healthcare through screening for anemia, completion of anthropometric measurements, immunization screening, dietary counseling, nutrition education and providing breastfeeding support. In addition, participants needing other health or social services are identified at the time of certification and referred to the appropriate agency.

#### **[ R406-100-3. Authority.**

~~\_\_\_\_\_ (1) Congress established the WIC Program under the Child Nutrition Act of 1966 (42 USC Sec. 1786 et seq.), as amended.~~

~~\_\_\_\_\_ (a) Acceptance and approval of the Utah WIC State Plan along with an executed Federal State agreement between the USDA FNS and the Utah Department of Health authorizes and provides funding for the WIC program to the state.~~

~~\_\_\_\_\_ (2) The Utah Department of Health is authorized under Section 26-1-15, which allows the Executive Director to accept federal funding to operate the WIC program in Utah.~~

~~]~~

#### **R406-100-[4]3. Incorporations by Reference.**

(1) The Utah WIC Program adopts the standards of the Special Supplemental Nutrition Program for Women, Infants and Children provided in 7 CFR 246, ~~[01/01/2021]~~01/01/2022 edition, which is incorporated by reference.

(2)~~(a)~~ The Utah WIC Program incorporates by reference the Fiscal Year ~~[2022]~~2024 Utah WIC State Plan of Program Operations and Administration.

~~([a])~~(b) The Utah WIC State Plan of Program Operation and Administration contains program policies and procedures including those mandated by USDA federal regulations and details specific to Utah's program. Eligibility and participation requirements for program applicants and participants are included as well as instructions and guidelines for clinic operations and retail vendor participation in the program.

~~([b])~~(c) The Utah WIC State Plan is available on the Utah WIC website at: <https://wic.utah.gov/about/wic-policies/proposed-state-plan/>. Proposed revisions to the Utah WIC State Plan are posted annually to the Utah WIC website for public comment. The State Plan is submitted annually to the USDA FNS, for approval.

#### **R406-100-[5]4. Requirements.**

(1) ~~Applicants shall meet~~ [F]the following criteria ~~[shall be met]~~ to be eligible to participate in the program and receive supplemental foods:

~~(a) [C]category and [A]age, those eligible include;[-]~~

~~(i) [Those eligible include-]~~pregnant women during their pregnancy and up to six weeks postpartum;

~~(ii) breastfeeding women up to 12 months past delivery;~~

~~(iii) postpartum women up to six months past delivery; and~~

~~(iv) infants and children up to five years of age;[-]~~

~~(b) [R]residence[-], [A]applicants must be residents of areas or members of populations served by the local agency and within the jurisdiction of the state[-];~~

~~(c) [I]income[-], [A]applicants must be a member of a family or household which has a gross income at or below 185% of the federal poverty guideline[-], [O]or, is determined to be adjunctively eligible through participation in the Medicaid Program, Supplemental Nutrition Assistance Program, or Temporary Assistance for Needy Families[-]; and~~

~~(d) [N]nutritional [R]risk[-], [A]applicants must be certified to have a nutritional need through a medical or nutritional assessment by a competent professional authority on staff at the WIC clinic.~~

~~([e])~~(2) Participants shall be certified annually to determine their eligibility for the program. Pregnant women shall be certified for the length of their pregnancy. The length of certification periods for participants is determined by USDA regulations as listed in 7 CFR 246.7(g).

~~([f])~~(3) Upon certification onto the program, participant families shall be issued an electronic benefit card to use for obtaining prescribed supplemental foods at authorized grocery retailers.

~~([2])~~(4)(a) ~~[Local Agencies;-]~~The Utah WIC Program shall authorize only local public health departments within the state as WIC local agencies.

~~([a])~~(b) Should a local health department no longer be able, willing or authorized by the Utah Department of Health and Human Services to operate the WIC program within their jurisdiction, bordering local health departments shall be given first priority to serve WIC participants in that area.

~~([b])~~(c) Should any area within the state not be served by an authorized local health department, the Utah WIC Program, in collaboration with the executive director of the Utah Department of Health and Human Services, shall consider other public or private health agencies for authorization as a WIC local agency.

~~(3)[-Vendors;-]~~

~~\_\_\_\_\_ (a) Grocery retailers who wish to become authorized as a WIC vendor shall complete a vendor application and submit required documentation.~~

~~(b) Program staff shall review the application and consider the limiting and selection criteria as described in the Utah WIC State Plan to determine if the applicant vendor is needed and qualified to become an authorized vendor.~~

~~(c) Upon approval of the application and successful completion of a site visit and initial authorization training by WIC staff, vendors shall enter into an agreement with the State WIC Office to be authorized to accept WIC transactions.~~

~~(d) Authorized vendors must agree to and remain in compliance with the WIC vendor agreement.~~

~~(e) WIC purchases and subsequent payments to the vendor shall be processed using electronic benefits transfer (EBT). The retailer shall submit a daily claim file to the State WIC Office's~~

contracted EBT host processor bank. Any claim files not submitted within 60 days of the purchase date are ineligible to receive payment.

**KEY:** nutrition, women, children, infants

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

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

**Authorizing, and Implemented or Interpreted Law:** ~~[26-1-45]~~26B-1-202; 26B-1-208

#### NOTICE OF PROPOSED RULE

**TYPE OF FILING:** Amendment

<b>Rule or Section Number:</b>	<b>R414-22</b>	<b>Filing ID:</b> <b>55906</b>
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#### Agency Information

<b>1. Department:</b>	Health and Human Services	
<b>Agency:</b>	Integrated Healthcare	
<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>
R414-22. Administrative Sanction Procedures and Regulations
<b>3. Purpose of the new rule or reason for the change:</b>
The purpose of this change is to update and clarify the rule text as needed.
<b>4. Summary of the new rule or change:</b>
This amendment updates and clarifies terms within the text. 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 there are only minor changes and technical updates.

#### B) Local governments:

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

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

There is no impact on small businesses as this amendment only clarifies current electronic visit verification requirements, and is covered under previous appropriations for electronic visit verification compliance.

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

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

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

There is no impact to other persons or entities as there are only minor changes and technical updates.

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

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

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

#### Regulatory Impact Table

Fiscal Cost	FY2024	FY2025	FY2026
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Cost</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

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 fiscal analysis.			
Businesses will see neither costs nor revenue as this amendment only clarifies names and terms within the text.			

**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>	12/15/2023
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<b>9. This rule change MAY become effective on:</b>	12/22/2023
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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>	10/23/2023
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**R414. Health and Human Services, ~~Health-Care Financing, Coverage and Reimbursement Policy~~ Integrated Healthcare.**

**R414-22. Administrative Sanction Procedures and Regulations.**

**R414-22-1. Introduction and Authority.**

(1) ~~[In order to]~~ To maintain the integrity of the Medicaid program~~[.]~~ and to assure the safety of Medicaid members, the ~~[D]~~ department may implement administrative sanctions against providers who abuse or improperly apply the benefit program or otherwise conduct themselves contrary to law.

(2) This rule is authorized by Sections 26B-1-~~[§]~~213 and ~~[Subsection]~~26B-~~[+8]~~3-~~[3]~~108~~[(7)]~~.

**R414-22-2. Definitions.**

The definitions in Rule R414-1 apply to this rule. ~~[.]~~In addition:

(1) "Abuse" means provider practices that are inconsistent with sound fiscal, business, or medical practices, and result in reimbursement for services that are either not medically necessary or ~~[that]~~ fail to meet professionally recognized standards for health care.

(2) "Conviction" or "~~[C]~~convicted" means a criminal conviction entered by a federal or state court for fraud involving Medicare or Medicaid regardless of whether an appeal from ~~[that]~~ judgment is pending.

(3) "Fiscal agent" means an organization that processes and pays provider claims on behalf of the ~~[D]~~ department.

(4) "Fraud" means intentional deception or misrepresentation made by a person that results in some unauthorized Medicaid benefit to ~~[himself]~~ the person or someone else~~[other person]~~. ~~[.]~~It includes any act that constitutes fraud under applicable state law.

(5) "Member" means an individual who is determined eligible for Medicaid.

(6) "Offense" means any of the grounds for sanctioning set forth in Section R414-22-4.

(7) "Person" means any natural person, company, firm, association, corporation, or other legal entity.

(8) "Practitioner" means a physician or other individual licensed under state law to practice ~~[his]~~ their profession.

(9) "Provider" means an individual or other entity ~~[who has been]~~ approved by the ~~[D]~~ department to provide services to Medicaid members~~[, and who]~~ that has signed a provider agreement with the ~~[D]~~ department.

(10) "Provider Sanction Committee" means the committee within the ~~[D]~~ department ~~[of Health]~~ that determines whether a Medicaid provider with a conviction or other sanction identified in Subsection R414-22-3-(3), (4), or (5) may enroll or remain in the Medicaid program. ~~[.]~~This committee consists of a designee of the Executive Director of the ~~[D]~~ department~~[of Health]~~, a designee of the Office of Inspector General of Medicaid Services (OIG), and the ~~[bureau]~~ office director over provider enrollment.

(11) "Suspension" means a status in which the Division of Professional Licensing (DOPL) or an equivalent entity in another state classifies a provider, which results in the department not adjudicating or reimbursing claims submitted by that provider. ~~[that Medicaid items or services provided by a provider under suspension shall not be reimbursed by the Department].~~

(12) "Termination from participation" means termination of the existing provider agreement.

**R414-22-3. Grounds for Excluding Providers.**

(1) Upon learning of the crime, misdemeanor or misconduct, the [D]department shall exclude a prospective Medicaid provider who:

(a) has a current suspension from ~~[the Division of Professional and Occupational Licensing - (DOPL)]~~ or another state's equivalent agency for sexual misconduct with a child, minor, or non-consenting adult under Title 76, Utah~~[of the]~~ Criminal Code; or

(b) is serving any term, completing any associated probation or parole, or still making complete court~~[-]~~imposed restitution for a felony conviction ~~[involving]~~that involves the following:

- (i) a sexual crime;
- (ii) a controlled substance;~~[-or]~~
- (iii) health care fraud; or

(c) the provider is serving any term, completing any associated probation or parole, or still making complete court~~[-]~~imposed restitution for a misdemeanor conviction that involves a controlled substance.

(2) Upon learning of the crime, misdemeanor or misconduct, the [D]department shall terminate a current Medicaid provider for any violation stated in Subsection ~~[R414-22-3]~~(1).

(3) If a prospective or current Medicaid provider has a current restriction or probation on their license from DOPL or another state's equivalent agency to treat only a certain age group or gender, or DOPL requires another medical professional to supervise and restrict the provider's activity, then the [D]department will require the provider to submit the same documentation to the [D]department that the provider is required to submit to DOPL or another state's equivalent agency to demonstrate compliance with the restriction. [ ]Failure to submit ~~[such]~~the required documentation to the [D]department is a basis for suspension or termination of enrollment with Medicaid.

(4) Subject to approval of the Provider Sanction Committee, the [D]department may enroll a provider who has served any term, completed any associated probation or parole, or made complete court-imposed restitution for an ~~an~~ [prior]earlier felony conviction involving:

- (a) a sexual crime;
- (b) a controlled substance; or
- (c) health care fraud.

(5) Subject to approval of the Provider Sanction Committee, the [D]department may enroll a provider or allow a provider to remain in the Medicaid program if the provider has a previous restriction, suspension, or probation from DOPL for sexual misconduct with a child, minor, or non-consenting adult under Title 76, Utah~~[of the]~~ Criminal Code.

(6) Subject to approval of the Provider Sanction Committee, the [D]department may allow a provider to remain in the Medicaid program ~~[when]if [the Office of Inspector General of Medicaid Services]OIG~~ has recommended the program consider termination of the provider.

(7) The Provider Sanction Committee may consider the need to maintain member access to services when making a determination related to convictions or sanctions described in Subsection R414-22-3(4), (5), or (6).

(8) The Provider Sanction Committee may use any grounds described in Section R414-22-4 to exclude providers from Medicaid.

(9) The [D]department may exclude a prospective Medicaid provider who has a current suspension from DOPL or another state's equivalent agency.

(10) The Provider Sanction Committee may exclude a prospective provider for significant misconduct or substantial evidence of misconduct that creates a substantial risk of harm to the Medicaid program.

(11) If after review, the Provider Sanction Committee finds there is ~~[prior]~~earlier misconduct outlined in Section R414-22-3 or Section R414-22-4, the committee retains discretionary authority to not renew a provider agreement, to not reinstate a provider agreement, and to not enroll a provider until the provider has completed ~~[all]~~the requirements deemed necessary by the committee.

**R414-22-4. Grounds for Sanctioning Providers.**

(1) The [D]department may impose sanctions against a provider who:

(1a) knowingly presents, or causes to be presented~~[-]~~ to Medicaid, any false or fraudulent claim~~[-]~~ other than simple billing errors~~[-]~~ for services or merchandise;~~[-or]~~

(2b) knowingly submits, or causes to be submitted, false information ~~to[for the purpose of]~~ obtain~~ing~~ greater ~~[Medicaid]~~ reimbursement than ~~[the provider is]~~allowed~~[-legally entitled to]~~; or

(3c) knowingly submits, or causes to be submitted~~[-]~~ for Medicaid reimbursement, any claims on behalf of a provider who has been terminated or suspended from the Medicaid program, unless the claims for that provider were included for services or supplies provided ~~[prior to]~~before ~~[his-]~~the provider's suspension or termination from the Medicaid program;~~[-or]~~

(4d) knowingly submits, or causes to be submitted, false information ~~to[for the purpose of]~~ meet~~ing~~ Medicaid prior authorization requirements;~~[-or]~~

(5e) fails to keep necessary records~~[-that are necessary]~~ to substantiate services provided to Medicaid ~~[recipients]~~members;~~[-or]~~

(6f) fails to disclose or make available to the [D]department, its authorized agents, or the ~~[State-]~~Medicaid Fraud Control Unit, records or services provided to Medicaid members or records of payments made for those services; or

(7g) fails to provide services to Medicaid members in accordance with accepted medical community standards as adjudged by either a body of peers or appropriate state regulatory agencies;~~[-or]~~

(8h) breaches the terms of the Medicaid provider agreement;~~[-or]~~

(9i) fails to comply with the terms of the provider certification on the Medicaid claim form;~~[-or]~~

(10j) overutilizes the Medicaid program by inducing, providing, or otherwise causing a Medicaid member to receive services or merchandise that is not medically necessary;~~[-or]~~

(11k) rebates or accepts a fee or portion of a fee or charge for a Medicaid member referral;~~[-or]~~

(12l) violates ~~[the provisions of the Medical Assistance Act under-]~~Title 26B, Chapter 3~~[48]~~, Health Care - Administration and Assistance, or any other applicable rule or regulation;~~[-or]~~

(13m) knowingly submits a false or fraudulent application for Medicaid provider status;~~[-or]~~

(14n) violates any laws or regulations governing the conduct of health care occupations, professions,~~[-or]~~ regulated industries;~~[-or]~~

## NOTICES OF PROPOSED RULES

(~~15~~)o) is convicted of a criminal offense relat~~ing~~ed to performance as a Medicaid provider;~~[-or]~~

(~~16~~)p) conducts a negligent practice resulting in death or injury to a patient as determined in a judicial proceeding;~~[-or]~~

(~~17~~)q) fails to comply with standards required by state or federal laws and regulations for continued participation in the Medicaid program;~~[-or]~~

(~~18~~)r) conducts a documented practice of charging Medicaid members for Medicaid~~[-]~~covered services ~~[over and above]~~that exceed amounts paid by the ~~[D]~~department, unless there is a written agreement signed by the member that ~~[such]~~applicable charges will be paid by the member;~~[-or]~~

(~~19~~)s) refuses to execute a new Medicaid provider agreement ~~[when]~~if doing so is necessary to ensure compliance with state or federal law or regulations;~~[-or]~~

(~~20~~)t) fails to correct any deficiencies listed in a Statement of Deficiencies and Plan of Correction, ~~[CMS Form 2567,]~~in provider operations within a specific time frame agreed to by the ~~[D]~~department and the provider, or pursuant to a court or formal administrative hearing decision;~~[-or]~~

(~~21~~)u) is suspended or terminated from participation in Medicare for failure to comply with the laws and regulation governing that program;~~[-or]~~

(~~22~~)v) fails to obtain or maintain ~~[all]~~licenses required by state or federal law to legally provide Medicaid services; or

(~~23~~)w) fails to repay or make arrangements for repayment of any identified Medicaid overpayments~~[-]~~ or otherwise erroneous payments, as required by the Utah Medicaid State Plan, court order, or formal administrative hearing decision.

(~~24~~)2) The ~~[D]~~department may sanction a Medicaid provider who has a current suspension~~[from DOPL or another state's equivalent agency]~~.

(~~25~~)3) The Provider Sanction Committee may sanction a provider if the committee finds the provider either engaged in ~~[for]~~significant misconduct or there is substantial evidence of misconduct that creates a substantial risk of harm to the Medicaid program.

(~~26~~)4) If after review, the Provider Sanction Committee finds there is ~~[prior]~~earlier misconduct outlined in Section R414-22-3 or Section R414-22-4, the committee retains discretionary authority to not renew a provider agreement, to not reinstate a provider agreement, and to not enroll a provider until the provider has completed ~~[all]~~requirements deemed necessary by the committee.

### R414-22-5. Sanctions.

Sanctions for violating ~~[any subsection of]~~Section R414-22-4 are:

(1) ~~[T]~~termination from participation in the Medicaid program; or

(2) ~~[S]~~suspension of participation in the Medicaid program.

### R414-22-6. Imposition of Sanction.

(1) Before the ~~[D]~~department ~~[decides to]~~imposes a sanction, it shall notify the provider~~[-]~~ in writing~~[-]~~ of:

(a) the findings of any investigation by the ~~[D]~~department, its agents, or ~~[the Office of Inspector General of Medicaid Services]~~OIG; and

(b) any possible sanctions the ~~[D]~~department may impose.

(2) Providers ~~[shall]~~must respond in writing to the findings of any investigation within [have]30 days after the notice date~~[to respond in writing to the findings of any investigation]~~. ~~[-]~~The

department may grant [A]a written request for additional time of less than 30 days ~~[may be granted by the Department]~~for good cause shown.

(3) The Provider Sanction Committee has the discretion to impose sanctions after receiving the provider's input.

(4) The Provider Sanction Committee may consider the following factors when determining which sanction to impose:

(a) seriousness of offense;

(b) extent of offense;

(c) history of prior violations of Medicaid or Medicare law;

(d) ~~[prior]~~previous imposition of sanctions by the ~~[D]~~department;

(e) extent of ~~[prior]~~earlier notice, education, or warning given to the provider by the ~~[D]~~department pertaining to the offense for which the provider is being considered for sanction;

(f) adequacy of assurances by the provider that the provider will comply prospectively with Medicaid requirements related to the offense;

(g) whether a lesser sanction will be sufficient to remedy the problem;

(h) sanctions imposed by licensing boards or peer review groups and professional health care associations pertaining to the offense; and

(i) suspension or termination from participation in another governmental medical program for failure to comply with the laws and regulations governing these programs.

(5) ~~[When]~~If the ~~[D]~~department decides to impose a sanction, it shall notify the provider at least ten calendar days before the sanction's effective date.

### R414-22-7. Scope of Sanction.

(1) Once a provider is suspended or terminated, the ~~[D]~~department ~~[shall]~~may only pay claims for services ~~[provided prior to]~~before the suspension or termination.

(2) The ~~[D]~~department may suspend or terminate any individual, clinic, group, corporation, or other similar organization~~[-]~~ ~~[who]~~ that allows a sanctioned provider to bill Medicaid under the clinic, group, corporation, or organization provider number.

### R414-22-8. Notice of Sanction.

(1) ~~[When]~~If a provider is sanctioned for a period exceeding 15 days, the ~~[D]~~department may notify the applicable professional society, board of registration or licenser, and federal or state agencies.

(2) The department shall include in the [N]notice~~[includes]~~:

(a) the findings made; and

(b) the sanctions imposed.

(3) The ~~[D]~~department shall timely notify any appropriate Medicaid member of the provider's suspension or termination from the Medicaid program.

### R414-22-9. Monitoring.

(1) If the ~~[D]~~department is aware that an applicant or provider has had an action against them related to the following issues, the applicant will be subject to additional monitoring. ~~[-]~~The issues include:

(a) claims for excessive charges;

(b) providing unnecessary services;

(c) failing to disclose required information; or

(d) a misdemeanor conviction that involves health care fraud.

(2) The [D]department [will]shall refer applicants or providers described in Subsection [R414-22-9](1) to [the Office of Inspector General of Medicaid Services]OIG to be monitored for at least six months.

#### **R414-22-10. Provider Application.**

The [D]department shall review any Medicaid provider agreement application for previous sanctions before approving the provider agreement.

#### **KEY: Medicaid**

Date of Last Change: ~~2023~~~~February 14, 2020~~

Notice of Continuation: November 7, 2022

Authorizing, and Implemented or Interpreted Law: ~~26B-1-5~~~~213~~; ~~26B-148~~~~3-3~~~~108~~(7)

### **NOTICE OF PROPOSED RULE**

**TYPE OF FILING:** Amendment

<b>Rule or Section Number:</b>	<b>R414-42</b>	<b>Filing ID:</b> <b>56049</b>
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#### **Agency Information**

<b>1. Department:</b>	Health and Human Services	
<b>Agency:</b>	Integrated Healthcare	
<b>Building:</b>	Cannon Health Building	
<b>Street address:</b>	288 N 1460 W	
<b>City, state and zip:</b>	Salt Lake City, UT 84116	
<b>Mailing address:</b>	PO Box 143102	
<b>City, state and zip:</b>	Salt Lake City, UT 84114-3102	
<b>Contact persons:</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Craig Devashrayee	801-538-6641	cdevashrayee@utah.gov
Jonah Shaw	385-310-2389	jshaw@utah.gov
<b>Please address questions regarding information on this notice to the persons listed above.</b>		

#### **General Information**

<b>2. Rule or section catchline:</b>
R414-42. Telehealth
<b>3. Purpose of the new rule or reason for the change:</b>
The purpose of this change is to update and implement by rule current telehealth policy, including the reimbursement provision for audio-only telehealth set forth in H.B. 437, passed in the 2023 General Session.

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

This amendment updates and implements by rule current telehealth policy.

It also updates the authorizing citation in the rule to be in accordance with recodification requirements.

#### **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 this change solely implements by rule current telehealth policy.

It neither affects member services nor provider reimbursement.

##### **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 this change solely implements by rule current telehealth policy.

It neither affects member services nor provider reimbursement.

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

There is no impact on non-small businesses as this change solely implements by rule current telehealth policy.

It neither affects member services nor provider reimbursement.

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

There is no impact to other persons or entities as this change solely implements by rule current telehealth policy.

It neither affects member services nor provider reimbursement.

##### **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 change solely implements by rule current telehealth policy.

It neither affects member services nor provider reimbursement.

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

**Regulatory Impact Table**

Fiscal Cost	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.

Businesses will see neither costs nor revenue as this change solely implements by rule current telehealth policy, and does not affect member services nor provider reimbursement.

**Citation Information**

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

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

**Public Notice Information**

**8. The public may submit written or oral comments to the agency identified in box 1.** (The public may also request a hearing by submitting a written request to the agency. See Section 63G-3-302 and Rule R15-1 for more information.)

**A) Comments will be accepted until:** 12/15/2023

**9. This rule change MAY become effective on:** 12/22/2023

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>	10/30/2023
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**R414. ~~[Health, Health Care Financing, Coverage and Reimbursement Policy]~~Health and Human Services, Integrated Healthcare.**

**R414-42. Telehealth.**

**R414-42-1. Introduction and Authority.**

(1) This rule outlines access requirements, coverage, limitations, and reimbursement for telehealth services. This rule is authorized by Section 26B-~~[48]~~~~3~~-~~[43]~~122.

(2) Telehealth services are in accordance with privacy and security measures set forth under the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and the Health Information Technology for Economic and Clinical Health (HITECH) Act, Pub. L. No. 111-5, 123 Stat. 226, 467, to ensure that patient communications and records, including recordings of telehealth encounters, are secure and remain confidential.

(a) A provider is responsible to ensure the encounter is HIPAA compliant.

(b) Security measures for transmission may include password protection, encryption, and other reliable authentication techniques.

**R414-42-2. Definitions.**

(1) "Audio-only" means telehealth services by telephone or other forms of communication without video.

(2) "Asynchronous" also called "store and forward," means the electronic transmission of medical information to a practitioner who uses the information to evaluate the case or provide a service outside of a real-time or live interaction.

~~\_\_\_\_\_ (1) "Telehealth services" means the transmission of health-related services or information through the use of electronic communication or information technology.~~

~~\_\_\_\_\_ (2) "Teledentistry" means the use of information technology and telecommunications for dental care, consultation, and education.~~

~~\_\_\_\_\_ (3) "Telepsychiatric consultation" means a consultation between a licensed provider and a board-certified psychiatrist that utilizes:~~



~~(a) the health records of the member, provided from the member or the referring provider; and~~

~~(b) a written, evidence-based member questionnaire.~~

~~(4) "Authorized provider" means a provider that signs a provider agreement with the Utah Medicaid Program, in which the provider agrees to abide by all state and federal laws related to the Medicaid program.]~~

~~([5]3) "Distant site or hub site" means where the provider delivering the service is located when the service is provided via telecommunications system.[the physical location of a licensed provider that delivers health care services via a telecommunication system.]~~

~~([6]4) "Originating site or spoke site" means the location of the Medicaid member at the time the service is being furnished via telecommunications.[the physical location of a member at the time the service is being furnished via a telecommunication system.]~~

~~(5) "Remote patient monitoring (RPM)" means the deployment and use of technology to capture biometric information that is automatically shared with a remote provider. The transmission of patient data and clinical information to the provider may occur either through in-home devices or information entered and transmitted electronically by the patient.~~

~~([7]6) "Synchronous [interaction]care" means a live two-way interaction via telecommunication technology between a member at an originating site and a provider at a distant site that includes audiovisual or audio-only communication.[real-time communication through interactive technology that enables a provider at a distant site and a member at an originating site to interact simultaneously through two-way audio or video transmission.]~~

~~(7) "Telehealth" means use of electronic information and telecommunications technologies that support distant healthcare providers to deliver health assessments, diagnostics, intervention, consultations, supervision, and education.~~

### **R414-42-3. Covered Services.**

~~(1) Medicaid covers telehealth services when performed via synchronous care. Telecommunication technologies that support synchronous care include:~~

~~(a) live video two-way, face-to-face interaction between the member and the provider using audiovisual communication, including e-visits through an online patient portal; and~~

~~(b) audio-only visits.~~

~~(2) A licensed provider may deliver services via synchronous telehealth, as clinically appropriate.~~

~~(3) There are no geographic restrictions surrounding the use of telehealth services.~~

~~(4) Audio-only synchronous care, or care that does not clinically require visual inspection, is covered for a limited number of services. These services are limited to:~~

~~(a) behavioral and mental health services;~~

~~(b) substance use disorder services;~~

~~(c) diabetic self-management;~~

~~(d) speech and hearing services;~~

~~(e) nutritional counseling;~~

~~(f) tobacco cessation;~~

~~(g) education for chronic kidney disease; and~~

~~(h) advanced care planning.~~

~~(5) Medicaid does not cover asynchronous services.~~

~~(6) Medicaid does not cover services not otherwise covered when delivered via telehealth.[A licensed provider may deliver services via synchronous telehealth, as clinically appropriate. Services include consultation services, evaluation and management services, teledentistry services, mental health services, substance use disorder services, and telepsychiatric consultations.]~~

### **[R414-42-4. Limitations.**

~~(1) Telehealth services must comply with privacy and security measures set forth under the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and the Health Information Technology for Economic and Clinical Health (HITECH) Act, Pub. L. No. 111-5, 123 Stat. 226, 467, to ensure that all patient communications and records, including recordings of telehealth encounters, are secure and remain confidential. The provider is responsible to ensure the encounter is HIPAA compliant. Security measures for transmission may include password protection, encryption, and other reliable authentication techniques.~~

~~(2) A provider must comply with the Utah Health Information Network (UHN) standards for telehealth. These standards provide a uniform standard of billing for claims and encounters delivered via telehealth.~~

~~(3) The originating site receives no reimbursement for the use of telehealth services.~~

~~(4) Medicaid does not cover services via telehealth which are not otherwise covered.]~~

### **R414-42-[5]4. Reimbursement of Services.**

~~(1) The [Ø]department pays the lesser of the amount billed or the rate on the fee schedule. A provider may not charge the [Ø]department a fee that exceeds the provider's usual and customary charges for the provider's private pay patients.~~

~~(2) The originating site receives no reimbursement for the use of telehealth services.~~

### **KEY: Medicaid**

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

**Notice of Continuation:** June 14, 2023

**Authorizing, and Implemented or Interpreted Law:** 26B-[48]3-[43]122

### **NOTICE OF PROPOSED RULE**

**TYPE OF FILING:** Amendment

<b>Rule or Section Number:</b>	<b>R414-70</b>	<b>Filing ID:</b> <b>56007</b>
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### **Agency Information**

<b>1. Department:</b>	Health and Human Services
<b>Agency:</b>	Integrated Healthcare
<b>Building:</b>	Cannon Health Building
<b>Street address:</b>	288 N 1460 W
<b>City, state and zip:</b>	Salt Lake City, UT 84116
<b>Mailing address:</b>	PO Box 143102
<b>City, state and zip:</b>	Salt Lake City, UT 84114-3102

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

**General Information**

2. Rule or section catchline:
R414-70. Medical Supplies, Durable Medical Equipment, and Prosthetic Devices
3. Purpose of the new rule or reason for the change:
The purpose of this change is to update and clarify policy for Medicaid members who use durable medical equipment (DME), prosthetics, orthotics, and related supplies.
4. Summary of the new rule or change:
This amendment clarifies DME policy and updates authorizing citations in accordance with new recodification requirements.

**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 this amendment simply clarifies existing policy and recodifies current statutes.
It neither affects member services nor payments to providers.
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 this amendment simply clarifies existing policy and recodifies current statutes.
It neither affects member services nor payments to providers.
D) Non-small businesses ("non-small business" means a business employing 50 or more persons):

There is no impact on non-small businesses as this amendment simply clarifies existing policy and recodifies current statutes.

It neither affects member services nor payments to providers.

**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 this amendment simply clarifies existing policy and recodifies current statutes.

It neither affects member services nor payments to providers.

**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 Medicaid provider or Medicaid member as this amendment simply clarifies existing policy and recodifies current statutes.

It neither affects member services nor payments to 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>
<b>H) Department head comments on fiscal impact and approval of regulatory impact analysis:</b>			
The Executive Director of the Department of Health and Human Services, Tracy S. Gruber, has reviewed and approved this fiscal analysis.			
Businesses will see neither costs nor revenue as this amendment only recodifies statutes. It neither affects member services nor payments to providers.			

**Citation Information**

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

**Public Notice Information**

<b>8. The public may submit written or oral comments to the agency identified in box 1. (The public may also request a hearing by submitting a written request to the agency. See Section 63G-3-302 and Rule R15-1 for more information.)</b>	
<b>A) Comments will be accepted until:</b>	12/15/2023

<b>9. This rule change MAY become effective on:</b>	12/22/2023
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>	10/27/2023
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**R414. Health and Human Services, [Health Care Financing, Coverage and Reimbursement Policy] Integrated Healthcare.**

**R414-70. [Medical Supplies,] Durable Medical Equipment, [and] Prosthetics, [Devices] Orthotics, and Supplies.**

**R414-70-1. Introduction and Authority.**

(1) This rule governs the [provision] coverage and reimbursement policies of services related to [of medical supplies,] durable medical equipment (DME), [and] prosthetics [device], orthotics, and supplies (DMEPOS) [services].

(2) This rule is authorized by 42 CFR 440.70, Sections 26B-[48]3-[3]108, [and] 26B-1-[5]213, and 26B-3-104.

[~~As required by Section 26-18-2.3, the Department provides these services in an efficient, economical manner, safeguarding against unnecessary, unreasonable, or inappropriate use of these services.~~]

**R414-70-2. Definitions.**

[As used in] The following definitions apply to this rule:

(1) "Durable medical equipment" ~~or~~ "(DME)" means ~~equipment that~~ items primarily and customarily used to serve a medical purpose and are not generally beneficial to an individual in the absence of a disability, illness, or injury, can withstand repeated use, and can be reusable or removable. [.]

(2) "Durable medical equipment, prosthetics, orthotics, and supplies (DMEPOS)" means the items covered under the provisions of this rule.

[~~(a) can withstand repeated use;~~

[~~(b) is primarily and customarily used to serve a medical purpose; and~~

[~~(c) generally is not useful to a person in the absence of an illness or injury.~~

(2) "Entitled to nursing facility services" means an individual who:

(a) is in a nursing facility and whose nursing facility stay is covered by Medicaid; or

(b) is receiving services in a waiver program for individuals who require nursing facility level of care.

(3) "Individual eligible for optional services" means an individual who is not entitled to nursing facility services.

(4) "Individual entitled to mandatory services" means an individual who is entitled to nursing facility services.

(5) "Medical supplies" means items for medical use that are disposable or semi-disposable and are non-reusable.]

(3) "Orthotic Device" means an orthopedic appliance or apparatus used to support, align, prevent, or correct deformities or to improve the function of movable parts of the body.

[~~(6) "Medical Supplies and Durable Medical Equipment Manual" means services described in the Utah Medicaid Provider Manual, Section 2, Medical Supplies and Durable Medical Equipment, as incorporated in Section R414-1-5.~~]

([7]4) "Prosthetic device" means a replacement, corrective, or supportive device[s] to artificially replace a missing portion of the body, prevent or correct physical deformity or malfunctions, including promotion of adaptive functioning, or support a weak or deformed part of the body. [such as braces, orthoses, or prosthetic limbs prescribed by a physician or other licensed practitioner of the healing arts within the scope of his or her practice as defined by state law to:

(a) artificially replace a missing portion of the body;

(b) prevent or correct physical deformities or malfunctions; or

(c) support a weak or deformed portion of the body.]

(5) "Supplies" means items that are consumable, disposable, or cannot withstand repeated use by more than one individual and is required to address an individual medical disability, illness, or injury.

**R414-70-3. [Services] Member Eligibility Requirements.**

DMEPOS services are available to categorically and medically needy individuals.

[~~(1) Medical supplies, DME, and prosthetic devices are optional services.~~]

## NOTICES OF PROPOSED RULES

~~(2) Medical supplies, DME, and prosthetic devices are limited to services described in the Medical Supplies and Durable Medical Equipment Manual.~~

~~(3) The Medical Supplies and Durable Medical Equipment Manual specifies the reasonable and appropriate amount, duration, and scope of the service sufficient to reasonably achieve its purpose.~~

~~(4) Medical supplies, DME, and prosthetic devices may be provided to an individual only as part of a written plan that is reviewed at least annually by a physician.~~

~~(5) The home health agency must meet the face-to-face requirement, as stated in Section R414-1-30, or the Department may deny or recover reimbursement.]~~

### **R414-70-4. Program Access Requirements.**

(1) Requested service must meet the criteria of the ordered DMEPOS as determined through an evidence-based criteria review process, when applicable.

(2) The Division of Integrated Healthcare shall deny a DMEPOS request for reimbursement if the member does not meet the evidence-based criteria, when applicable.

### **R414-70-5. Service Coverage.**

(1) DMEPOS are covered services when determined to be medically necessary and, when applicable, evidence-based criteria are met.

(2) The Medical Supplies and Durable Medical Equipment Manual further outlines the coverage policies and criteria related to DMEPOS.

### **[R414-70-4. Services for Individuals Eligible for Optional Services.**

~~(1) An individual eligible for optional services may receive medical supplies, DME, and prosthetic devices as described in the Medical Supplies and Durable Medical Equipment Manual.~~

~~(2) An individual eligible for optional services must meet the criteria established in the Medical Supplies and Durable Medical Equipment Manual and obtain prior approval if required.~~

### **R414-70-5. Services for Individuals Eligible for Mandatory Services.**

~~(1) An individual entitled to mandatory services may receive medical supplies, DME, and prosthetic devices as described in the Medical Supplies and Durable Medical Equipment Manual.~~

~~(2) An individual eligible for mandatory services must meet the criteria established in the Medical Supplies and Durable Medical Equipment Manual and obtain prior approval if required.~~

~~(3) An individual entitled to mandatory services may request an agency review to seek medical supplies and DME not listed in the Medical Supplies and Durable Medical Equipment Manual.~~

### **R414-70-6. Services for Individuals Residing in Long Term Care Facilities.**

~~(1) The Department provides medical supplies, DME, and prosthetic devices to individuals residing in a nursing care facility or an ICF/MR as part of the per diem payment.~~

~~(2) An individual residing in a nursing care facility or ICF/MR may receive additional medical supplies, DME, and prosthetic devices only as specifically indicated in the Medical Supplies and Durable Medical Equipment Manual.~~

~~(3) An individual residing in a nursing care facility or an ICF/MR may request an agency review to seek medical supplies and DME not listed in the Medical Supplies and Durable Medical Equipment Manual.~~

### **R414-70-7. Less Costly Alternative.**

~~The Department may provide at its discretion services not described in the Medical Supplies and Durable Medical Equipment Manual as provided in Section R414-1-6.]~~

### **R414-70-[8]6. Reimbursement.**

~~[Medical supplies, DME, and prosthetic devices]DMEPOS [are-]reimburse[d]ment is in accordance with the [-using the fee schedule in Attachment 4.19 B of the] Medicaid State Plan[-and incorporated by reference in Section R414-1-5].~~

**KEY:** Medicaid, medical supplies, durable medical equipment, prosthetics

**Date of Last Change:** 2023[July 1, 2017]

**Notice of Continuation:** August 22, 2022

**Authorizing, and Implemented or Interpreted Law:** 26B-1-[5]213; 26B-[48]3-[2-3]104; 26B-[48]3-[3]108

## **NOTICE OF PROPOSED RULE**

**TYPE OF FILING:** Amendment

<b>Rule or Section Number:</b>	<b>R414-71</b>	<b>Filing ID:</b> <b>55964</b>
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## **Agency Information**

<b>1. Department:</b>	Health and Human Services	
<b>Agency:</b>	Integrated Healthcare	
<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**

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

R414-71. Early and Periodic Screening, Diagnostic and Treatment Program

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

The purpose of this change is to implement new provisions for the Early and Periodic Screening, Diagnostic, and Treatment (EPSDT) Program in accordance with federal law.

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

This amendment includes new provisions for Medicaid members who participate in qualifying clinical trials related to the EPSDT Program.

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

There are costs associated with services outside of routine service coverage.

The Department of Health and Human Services (Department), however, cannot estimate these increases without data to indicate how many clinical trials there may be.

**B) Local governments:**

There is no impact on local governments as they neither fund nor provide services under the EPSDT Program.

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

The Department cannot determine costs nor revenue to small businesses without data to indicate how many clinical trials there may be or which ones may be necessary.

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

The Department cannot determine costs nor revenue to non-small businesses without data to indicate how many clinical trials there may be or which ones may be necessary.

**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 Department cannot determine costs nor revenue to other persons or entities without data to indicate how many clinical trials there may be or which ones may be necessary.

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

The Department cannot determine compliance costs to a single person or entity without data to indicate how many clinical trials there may be or which ones may fall outside mandatory service coverage.

**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 fiscal analysis.

There is no data at this time to indicate business costs or revenue.

**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>	12/15/2023
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<b>9. This rule change MAY become effective on:</b>	12/22/2023
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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>	10/28/2023
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**R414. Health and Human Services, ~~[Health Care Financing, Coverage and Reimbursement Policy]~~ Integrated Healthcare.**

**R414-71. Early and Periodic Screening, Diagnostic, and Treatment Program.**

**R414-71-1. Introduction and Authority.**

(1) The Early and Periodic Screening, Diagnostic, and Treatment (EPSDT) Program provides comprehensive prevention, diagnostic, and treatment services for eligible Medicaid members.

~~[(a) Treatment or services that are necessary to correct or ameliorate defects and physical and mental illnesses or conditions.]~~

(2)(a) EPSDT services provide coverage of ~~[all]~~ medically necessary treatments or services included within the categories of mandatory and optional services listed in Subsection 1905(a) of the Social Security Act.

(b) Medically necessary treatments or services are available to correct or ameliorate physical or mental illnesses or conditions.

(3) The EPSDT Program is authorized by Subsections 1902(a)(43) and 1905(a)(4)(B) of the Social Security Act, 42 CFR 440.40(b), and 42 CFR Part 441~~[7]~~ Subpart B.

**R414-71-2. Definitions.**

In addition to the definitions in Section R414-1-2, the following definitions apply~~[ies]~~ to this rule~~[s]~~.

~~[(1) "EPSDT" means "Early and Periodic Screening, Diagnosis, and Treatment" used to determine physical or mental defects in members. The EPSDT Program provides:~~

~~\_\_\_\_\_ (a) health care;~~

~~\_\_\_\_\_ (b) treatment; and~~

~~\_\_\_\_\_ (c) other measures to correct or ameliorate any defects and chronic conditions discovered.]~~

(1) "Qualifying clinical trial" means a clinical trial in any clinical phase of development that is approved, conducted, or supported, which may include funding through in-kind contributions, by one or more of the following governing bodies.

(a) The National Institutes of Health.

(b) The Centers for Disease Control and Prevention.

(c) The Agency for Healthcare Research and Quality.

(d) The Centers for Medicare and Medicaid Services.

(e) A cooperative group or center of any of the entities described in Subsections (1)(a) through (d), the Department of Defense, or the Department of Veterans Affairs.

(f) A qualified non-governmental research entity identified in the guidelines issued by the National Institutes of Health for center support grants.

(g) The Department of Veterans Affairs, the Department of Defense, or the Department of Energy if the conditions of the clinical trial have been reviewed and approved through a system of peer review determined:

(i) to be comparable to the system of peer review of studies and investigations used by the National Institutes of Health; and

(ii) assures unbiased review of the highest scientific standards by qualified individuals with no interest in the outcome of the review.

(2) "Serious or life-threatening disease or condition means a disease or condition from which the likelihood of death is probable unless the course of the disease or condition is interrupted.

**R414-71-3. Member Eligibility Requirements.**

~~[(4)]~~ Eligible members who are enrolled in Traditional Medicaid, and are zero through 20 years of age, may receive EPSDT services.

~~[(2) Individuals who are 19 through 20 years of age and enrolled in Non-Traditional Medicaid, Adult Expansion Medicaid, or Targeted Adult Medicaid, are not eligible for EPSDT services.]~~

**R414-71-4. Program Access Requirements.**

(1) An eligible member ~~[must]~~ is required to obtain EPSDT services from an enrolled Utah Medicaid ~~[enrolled]~~ provider.

(2) A member enrolled in a managed care entity ~~[must]~~ is required to obtain EPSDT services through that entity's network of providers.

**R414-71-5. Service Coverage and Limitations.**

(1) Medicaid covers [S] screening and diagnostic services to assess for [determine] physical or mental conditions[defects].

(2) ~~[Screening services]~~ Services include:

(a) a comprehensive health and developmental history, including the assessment of physical and mental development;

(b) dental and oral health screening;

(c) comprehensive physical examination;

(d) vision screening;

(e) hearing assessment;

(f) speech and language development;

(g) appropriate immunizations according to age and health history;

(h) laboratory tests, including blood lead level assessment appropriate to age and risk; and

(i) health education, including anticipatory guidance.

(3) When indicated through medical screening, a Medicaid provider shall provide diagnostic services[When a screening indicates the need for further evaluation, diagnostic services must be provided].

(4) Medically necessary services are available for treatment of ~~[all]~~ physical and mental illnesses or conditions discovered by ~~[any]~~ screening or diagnostic evaluations[procedures].

(5) Additional services include:

(a) chiropractic services;

(b) orthodontia;

- (c) occupational therapy;
- (d) physical therapy;
- (e) speech-language pathology services;
- (f) private duty nursing;
- (g) ~~[at a minimum,]~~ diagnosis and treatment for ~~[defects in]~~ vision related conditions, including eyeglasses;
- (h) ~~[at a minimum,]~~ dental services for the relief of pain and infections, restoration of teeth, maintenance of dental health~~[-]~~ including examinations, cleanings, radiographs, and fluoride treatments;
- (i) ~~[at a minimum,]~~ diagnosis and treatment for conditions related to hearing~~[-defects]~~, including hearing aids; and
- (j) additional health care services coverable under Subsection 1905(a) of the Social Security Act and found to be medically necessary to treat, correct, or ameliorate illness and conditions discovered regardless of whether the service is covered in the Medicaid State Plan.
- (6) The ~~[D]~~ department determines whether a service is medically necessary.
- (7) ~~[Medically necessary services do not include]~~ Medicaid does not cover:
- ~~[(a) experimental or investigational treatments;]~~
- ~~[(b)]~~ a reconstructive and cosmetic procedures ~~[as noted]~~ described in Section R414-1-29;
- ~~[(e)]~~ b services for caregivers or for provider convenience;~~[or]~~
- ~~[(d)]~~ c duplicative services; ~~or~~ ~~[-]~~
- (d) experimental or investigational treatments except when the member is participating in a qualifying clinical trial for the prevention, detection, or treatment of any serious or life-threatening disease or condition as outlined in Section 210 of the Consolidated Appropriations Act of 2021.
- (8) The ~~[D]~~ department may consider the relative cost effectiveness of alternatives as part of the prior authorization process described in Section R414-1-2.

**KEY: Medicaid****Date of Last Change:** ~~2023~~ ~~August 29, 2019~~**Authorizing, and Implemented or Interpreted Law:** ~~26B-1-5~~ ~~213~~; ~~26B-18~~ ~~3-3~~ ~~108~~**NOTICE OF PROPOSED RULE****TYPE OF FILING:** Amendment

<b>Rule or Section Number:</b>	<b>R414-302</b>	<b>Filing ID:</b> <b>55966</b>
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**Agency Information**

<b>1. Department:</b>	Health and Human Services
<b>Agency:</b>	Integrated Healthcare
<b>Building:</b>	Cannon Health Building
<b>Street address:</b>	288 N 1460 W
<b>City, state and zip:</b>	Salt Lake City, UT 84116
<b>Mailing address:</b>	PO Box 143102
<b>City, state and zip:</b>	Salt Lake City, UT 84114-3102

**Contact persons:**

<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****2. Rule or section catchline:**

R414-302. Eligibility Requirements

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

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

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

This amendment clarifies current rules and includes new provisions for individuals who reside in institutions for mental disease and psychiatric hospitals.

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 reflect only current Medicaid policy.

**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 reflect only current Medicaid policy.

**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 reflect only current Medicaid policy.

**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 reflect only current Medicaid policy.

**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 reflect only current Medicaid policy.

**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 fiscal analysis.

Businesses will see neither costs nor revenue as these changes reflect only current Medicaid policy.

**Citation Information**

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

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

**Public Notice Information**

**8. The public may submit written or oral comments to the agency identified in box 1.** (The public may also request a hearing by submitting a written request to the agency. See Section 63G-3-302 and Rule R15-1 for more information.)

**A) Comments will be accepted until:** 12/15/2023

**9. This rule change MAY become effective on:** 12/22/2023

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:** 10/28/2023

**R414. Health and Human Services, Integrated Healthcare**~~[Health Care Financing, Coverage and Reimbursement Policy].~~

**R414-302. Eligibility Requirements.**

**R414-302-1. Authority and Purpose.**

This rule is authorized by Section 26B-1-~~[5]~~213 and Section 26B-~~[48]~~3-~~[3]~~108 and establishes eligibility requirements for Medicaid and the Medicare Cost Sharing programs.

**R414-302-2. Definitions.**

The definitions in Rules R414-1 and R414-301 apply to this rule.

**R414-302-3. Citizenship~~[-and Alienage]~~.**

(1) The ~~[D]~~department ~~[incorporates — by reference]~~implements 42 CFR 435.406~~[-October 1, 2012 ed.]~~, which requires applicants and ~~[recipients]~~members to be United States (U.S.) citizens or qualified ~~[aliens]~~non-citizens and to provide verification of their U.S. citizenship or lawful ~~[alien]~~non-citizen status.

(2) The ~~[D]~~department elects to cover applicants and ~~[recipients]~~members who are under 19 years of age and lawfully present as defined in 42 U.S.C. 1396b(v) and 42 U.S.C. 1397gg(e)(1), and referenced in Section S89 of the ~~[Utah]~~Medicaid State Plan.

(3)~~(a)~~ The ~~[D]~~department shall decide if a public or private organization no longer exists or ~~[is unable to]~~cannot meet a ~~[national's]~~non-citizen's needs.

~~(b)~~ The ~~[D]~~department shall base the decision on the evidence ~~the non-citizen submits~~ted to support the claim~~[-]~~, and ~~[T]~~the documentation ~~[submitted by the alien]~~must be sufficient to prove the claim.

(4) One adult household member must declare the citizenship status of ~~[all]~~ household members who will receive Medicaid.

(5) A qualified ~~[alien]~~non-citizen, as defined in Title 8 U.S.C. 1641 who was residing in the U.S. before August 22, 1996, may receive full services under the following programs:

- (a) Medicaid;
- (b) Qualified Medicare Beneficiaries (QMB);
- (c) Specified Low-Income Medicare Beneficiaries (SLMB); or
- (d) Qualifying Individuals (QI);

(6) A qualified ~~[alien]~~non-citizen, as defined in Title 8 U.S.C. 1641 newly admitted into the U.S. on or after August 22, 1996, may receive full ~~[Medicaid, QMB, SLMB, or QI services]~~ services under the following programs after five years have passed from the person's date of entry into the U.S.:

- (a) Medicaid;
- (b) QMB;
- (c) SLMB; or
- (d) QI.

(7) The ~~[D]~~department accepts as verification of citizenship, documents from federally recognized Indian tribes evidencing membership or enrollment ~~[in such tribe]~~, including ~~[those]~~tribes with international borders as required under Subsection 211(b)(1) of the Children's Health Insurance Program Reauthorization Act of 2009, Pub. L. No. 111 3, or as prescribed by the Secretary.

(8) The ~~[D]~~department provides reasonable opportunity for applicants or ~~[clients]~~members to present satisfactory documentation of citizenship as required under Subsection 211(b)(2) of the Children's Health Insurance Program Reauthorization Act of 2009, Pub. L. No. 111 3.

(9)(a) The ~~[D]~~department considers ~~[that]~~an infant born to a mother who is eligible for Medicaid at the time of the infant's birth ~~[has provided]~~to be satisfactory evidence of citizenship.

(b) The ~~[D]~~department does not require further verification of citizenship for the infant as required under Subsection 211(b)(3) of the Children's Health Insurance Program Reauthorization Act of 2009, Pub. L. No. 111 3.

(10)(a) The ~~[D]~~department ~~[adopts and incorporates by reference]~~implements 42 CFR 435.949 and 42 CFR 435.952, ~~[October 1, 2012 ed.]~~

(~~[a]~~)b) The ~~[D]~~department shall verify citizenship and immigration status requirements through the Federal Data Services Hub or through other electronic match systems approved by the Secretary.

(~~[b]~~)c) If the ~~[D]~~department cannot verify citizenship or immigration status through an electronic match system or the electronic data is not reasonably compatible with the ~~[client]~~member statement, the ~~[client]~~member must provide verification of citizenship and identity as described in 42 CFR 435.407.

#### **R414-302-4. Utah Residence.**

(1) The ~~[D]~~department ~~[adopts and incorporates by reference]~~implements 42 CFR 435.403, ~~[October 1, 2012 ed. The Department also adopts and incorporates by reference]~~ and Subsection 1902(b) of the Compilation of the Social Security Laws, ~~[in effect May 8, 2013.]~~

(2) The ~~[D]~~department considers an individual who establishes state residency to be a resident of the state during periods of temporary absence[-] if the individual intends to return to the state when the purpose for the temporary absence ends.

#### **R414-302-5. Deprivation of Supports.**

(1) The ~~[D]~~department ~~[adopts and incorporates by reference]~~implements the definition of ~~["]~~dependent child~~["]~~ found in 42 CFR 435.4, ~~[October 1, 2012 ed.]~~

(2) A child who lives with two parents ~~[is deprived]~~may not receive ~~[of]~~support if at least one parent is working less than 100 hours a month.

(3) The department may not deprive a child of support under Subsection (2) if ~~[A]~~a child ~~[is not considered]~~deprived of support if any of the following situations is true:

- (a) ~~[F]~~the parent is absent because of military service;
- (b) ~~[F]~~the parent is absent for employment, schooling, training, or another temporary purpose;
- (c) ~~[F]~~the parent will return to live in the home within 30 days from the date of the application;
- (d) ~~[F]~~the parent is the primary child care provider and care is frequent enough that the child is not deprived of support, care, and guidance.

(4) A parent is considered incapacitated if the parent meets one of the following criteria:

- (a) ~~[F]~~the parent receives ~~[SSI]~~Social Security Income;
- (b) ~~[F]~~the parent is recognized as 100% disabled by the Veteran's Administration;
- (c) ~~[F]~~the parent is determined disabled by the State Medicaid Disability Office or the Social Security Administration;
- (d)(i) ~~[F]~~the parent provides written documentation completed by a medical professional engaged in the practice of mental health therapy, ~~[which]~~that states ~~[that]~~the parent is incapacitated and the incapacity is expected to last at least 30 days.
- (ii) The medical report must also state that the incapacity substantially reduces the parent's ability to work or care for the child.
- (iii) Full-time employment, however, nullifies the parent's claim of incapacity. ~~[.]~~The written documentation must be completed by one of the following medical professionals:

- (~~[i]~~)A) Medical Doctor (MD);
- (~~[ii]~~)B) Doctor of Osteopathy (DO);
- (~~[iii]~~)C) Advanced Practice Registered Nurse (APRN);
- (~~[iv]~~)D) Physician Assistant (PA); or
- (~~[v]~~)E) Mental Health Therapist who is either a psychologist, licensed clinical social worker, certified social worker, marriage and family therapist, or professional counselor, ~~[MD, DO, or APRN].~~

#### **R414-302-6. Residents of Institutions.**

(1) For purposes of institutions, the definitions in 42 CFR 435.1010 apply.

(2) An individual who resides in a halfway house may receive Medicaid coverage if the halfway house meets the following criteria:

- (a) ~~[F]~~the halfway house allows the individual to work outside the facility;
- (b) ~~[F]~~the halfway house allows the individual to use community facilities at will, such as libraries, grocery stores, recreation areas, or schools; and
- (c) ~~[F]~~the halfway house allows the individual to seek health care treatment in the community to the same extent as other Medicaid ~~[enrollees]~~members.

(3) The ~~[D]~~department does not consider an individual who resides in a temporary shelter for a limited period ~~[of time]~~as a resident of an institution.

(4)(a) An ~~[F]~~individual[s] who ~~[are]~~is an inmate[s] of a public institution~~[s are]~~ is not eligible for Medicaid coverage.

(b) As described in Section R414-308-10, the department neither denies eligibility of incarcerated individuals nor closes their cases. ~~individuals who are incarcerated will not be denied Medicaid eligibility nor will their cases be closed,~~ but places their cases ~~will be placed~~ in a suspended status.

(5) Individuals who reside in an institution for mental disease (IMD) are not eligible for Medicaid coverage ~~with the following exceptions~~ except for:

(a) ~~Individuals who are 65 years of age or older;~~

(b) ~~Individuals who are under 22 years of age who receive inpatient psychiatric services as described in 42 CFR 440.160;~~ ~~and~~

(c) ~~Individuals who reside in an IMD that is licensed as a Substance Use Disorder (SUD) residential treatment program and are receiving treatment for an SUD;~~

(d) individuals 21 through 64 years of age, who reside for a stay of up to 60 days, in an IMD that is licensed as a mental health residential treatment program and has the required certification in accordance with the department's 1115 Demonstration Waiver, and are receiving treatment for a mental health disorder; and

(e) individuals 21 through 64 years of age who are in a licensed psychiatric hospital for a stay of up to 60 days. This exception does not apply to individuals residing in the Utah State Hospital.

#### **R414-302-7. Social Security Numbers.**

(1)(a) The ~~Department~~ ~~adopts and incorporates by reference~~ implements 42 CFR 435.910 ~~October 1, 2012 ed.,~~ which requires the social security number (SSN) of each applicant or beneficiary, specifies the exceptions to requiring the SSN, and specifies agency verification responsibilities.

(b) The ~~Department~~ ~~adopts~~ also implements Section 1137 of the Compilation of the Social Security Laws ~~in effect May 8, 2013, which is incorporated by reference.~~

(2) Acceptable proof of an SSN is an electronic match, a social security card, or an official document from the Social Security Administration, which identifies the correct number. ~~Acceptable proof of an application for an SSN is a social security receipt that confirms the individual has applied for an SSN.~~

(3) The ~~Department~~ requires a new proof of application for an SSN at each recertification if the SSN has not previously been provided.

(4) The ~~Department~~ may assign a unique Medicaid identification number to an applicant or ~~beneficiary~~ member who meets one of the exceptions to the requirement to provide an SSN.

#### **R414-302-8. Application for Other Possible Benefits.**

(1) The ~~Department~~ ~~adopts and incorporates by reference~~ implements 42 CFR 435.608 ~~October 1, 2012 ed.,~~ which requires applicants for and ~~recipients~~ members of medical assistance to apply for and take ~~all~~ reasonable steps to receive other possible benefits.

(2) The ~~Department~~ may not require an applicant for or ~~recipient~~ member of medical assistance to apply for an income benefit if the applicant's or ~~recipient's~~ member's income is not counted ~~for the purpose of~~ when determining eligibility for medical assistance for either that individual or any other household member.

(3)(a) ~~Individuals~~ An individual who may be eligible for Medicare Part B benefits must apply for Medicare Part B and, if eligible, become enrolled in Medicare Part B to be eligible for Medicaid.

(b) The state pays the applicable monthly premium and cost-sharing expenses for Medicare Part B for ~~individuals~~ an individual who ~~are~~ is eligible for both Medicaid and Medicare Part B.

(4) ~~Individuals~~ An individual whose eligibility is determined using non-Modified Adjusted Gross Income (MAGI) methodologies and who may be eligible for a Veterans Administration (VA) apportionment payment of benefits, as defined by the VA, must apply for those benefits.

#### **R414-302-9. Third-Party Liability.**

(1)(a) The ~~Department~~ ~~adopts and incorporates by reference~~ implements 42 CFR 433.138(b), ~~October 1, 2012 ed.,~~ on the collection of health insurance information.

(b) The ~~Department~~ ~~also adopts and incorporates by reference~~ implements Subsection 1915(b) of the Compilation of the Social Security Laws ~~in effect September 9, 2013.~~

(2) The ~~Department~~ requires ~~clients~~ members to report any changes in third-party liability information within 30 days.

(3) The ~~Department~~ considers a ~~client~~ member uncooperative if the ~~client~~ member knowingly withholds third-party liability information without good cause.

(4) The ~~Department~~ shall decide whether employer-provided group health insurance would be cost effective for the state to purchase as a benefit of Medicaid.

(5) The ~~Department~~ requires ~~clients~~ members residing in selected communities to be enrolled in a Health Maintenance Organization (HMO) as their primary care provider.

(6)(a) The ~~Department~~ shall enroll ~~clients~~ and select an HMO for members who do not make a selection ~~in a Health Maintenance Organization that the Department selects.~~

(b) The ~~Department~~ shall notify ~~clients~~ members of the ~~Health Maintenance Organization~~ HMO ~~that~~ they ~~will be~~ are enrolled in and allow ~~ed ten~~ them ten days to contact the ~~Department~~ with a different selection.

(c) If the ~~client~~ member fails to notify the ~~Department~~ to make a different selection within ten days, the enrollment shall become effective for the next benefit month.

#### **R414-302-10. Assignment of Rights and Medical Support Enforcement.**

The ~~Department~~ ~~adopts and incorporates by reference~~ implements 42 CFR 433.145 through 433.148, and 435.610, ~~October 1, 2012 ed.,~~ which spell out the assignment of rights to the state to collect from liable third parties and to cooperate in establishing paternity and medical support.

#### **R414-302-11. Financial Responsibility.**

(1) The ~~Department~~ ~~adopts and incorporates by reference~~ implements 42 CFR 435.602(a), ~~October 1, 2012 ed.,~~ on the financial responsibility of family members.

(2) The ~~Department~~ shall apply the requirements of 42 CFR 435.603 for ~~all~~ individuals eligible for coverage groups subject to the ~~Modified Adjusted Gross Income (MAGI)~~ methodology.

**KEY: state residency, citizenship, third-party liability, Medicaid**

**Date of Last Change: 2023** ~~January 1, 2020~~

**Notice of Continuation: January 6, 2023**

**Authorizing, and Implemented or Interpreted Law: 26B-~~148~~-~~3~~108; 26B-1-213**

NOTICE OF PROPOSED RULE		
TYPE OF FILING: Amendment		
Rule or Section Number:	R414-307	Filing ID: 55969

**Agency Information**

<b>1. Department:</b>	Health and Human Services	
<b>Agency:</b>	Integrated Healthcare	
<b>Building:</b>	Cannon Health Building	
<b>Street address:</b>	288 N 1460 W	
<b>City, state and zip:</b>	Salt Lake City, UT 84116	
<b>Mailing address:</b>	PO Box 143102	
<b>City, state and zip:</b>	Salt Lake City, UT 84114-3102	
<b>Contact persons:</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Craig Devashrayee	801-538-6641	cdevashrayee@utah.gov
Jonah Shaw	385-310-2389	jshaw@utah.gov
<b>Please address questions regarding information on this notice to the persons listed above.</b>		

**General Information**

2. Rule or section catchline:
R414-307. Eligibility for Home and Community-Based Services Waivers
3. Purpose of the new rule or reason for the change:
The purpose of this change is to update and clarify the rule text as needed.
4. Summary of the new rule or change:
This amendment updates and clarifies eligibility requirements for home and community-based services waivers.

**Fiscal Information**

5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:
A) State budget:
There is no impact to the state budget as there are only minor changes and technical updates.
B) Local governments:
There is no impact on local governments as they neither fund nor provide benefits under the Medicaid program.

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

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

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

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

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

There is no impact to other persons or entities as there are only minor changes and technical updates.

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

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

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

Regulatory Impact Table			
Fiscal Cost	FY2024	FY2025	FY2026
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Cost</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
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

# NOTICES OF PROPOSED RULES

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 fiscal analysis.			
Businesses will see neither costs nor revenue as there are only minor changes and technical updates.			

## 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>	12/15/2023
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<b>9. This rule change MAY become effective on:</b>	12/22/2023
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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>	10/28/2023
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**R414. Health and Human Services, Integrated Healthcare|Health Care Financing, Coverage and Reimbursement Policy|.**

**R414-307. Eligibility for Home and Community-Based Services Waivers.**

**R414-307-1. Introduction and Authority.**

(1) Section 26B-[18]3-[3]108 authorizes this rule. [-]It establishes eligibility requirements for Medicaid coverage for home and community-based service (HCBS) waivers.

(2) The [D]department [adopts]-[further implements the HCBS service and eligibility requirements described in 42 CFR 435.217 and 435.726[-, 2011 ed., which are incorporated by reference. The Department adopts Title XIX of the Social Security Act], and in Subsection 1915(c) of the Social Security Act[- in effect April 13, 2012, which is incorporated by reference].

## R414-307-2. Definitions.

The definitions found in [Rules R-]Sections R414-1-2 and R414-301-2 apply to this rule.

## R414-307-3. General Requirements for Home and Community-Based Services Waivers.

(1) The [D]department shall apply [the provisions of]Sec. 2404 of Pub. L. No. 111 148, Patient Protection and Affordable Care Act, which refers to applying [the provisions of]Section 1924 of the Social Security Act to married individuals who are eligible for home and community-based waiver services.

(2) To qualify for Medicaid coverage of home and community-based waiver services, an individual [must]shall meet:

(a) the medical eligibility criteria defined in the [S]state [W]waiver [I]implementation [P]plan[- adopted in Rule R414-61], which applies to the specific waiver under which the individual is seeking services, as verified by the operating agency case manager;

(b) the financial and non-financial eligibility criteria for one of the Medicaid coverage groups selected in the specific waiver implementation plan under which the individual is seeking services; and

(c) other requirements defined in this rule that apply to [all]waiver applicants and [recipients]members, or specific to the waiver for which the individual is seeking eligibility.

(3) Except as otherwise stated in this rule,[The provisions found in] Rules R414-304 and [Rule-]R414-305 apply to eligibility determinations under an [Home and Community-Based Services (HCBS)]waiver[- except where otherwise stated in this rule].

(4) The [D]department shall limit the number of individuals covered by an HCBS waiver as provided in the [adopted]specific waiver implementation plan.

(5)(a) The [D]department [adopts and incorporates by reference]-[implements the requirements for liens, adjustments, recoveries, and the transfers of assets described in 42 U.S.C. 1396p(f)],[- in effect February 7, 2016.-] An individual is ineligible for nursing facility and other long-term care services [when]if an individual has home equity that exceeds the limit set forth in Subsection 1396p(f).

(b)(a) The [D]department sets that limit at the minimum level allowed under Subsection 1396p(f).

(c)(b) An individual who has excess home equity and meets eligibility criteria under a community Medicaid eligibility group defined in the Utah Medicaid State Plan may receive Medicaid for services other than long-term care services provided under the plan or the HCBS waiver.

(d)(e) An individual who has excess home equity and does not qualify for a community Medicaid eligibility group, is ineligible for Medicaid under both the special income group and the medically needy waiver group.

(6)(a) The operating agency or designee shall send a completed waiver referral to the eligibility agency, so the eligibility agency may [To-]determine initial eligibility for a Medicaid coverage group under an HCBS waiver[-, the eligibility agency must receive a completed waiver referral form from the operating agency or designee]. Additionally, [A]an individual who is not eligible for Medicaid [must]shall [also-]complete a Medicaid application.

(b)(a) The operating agency or designee shall verify the form[The waiver referral form must verify the date the individual] meets the level-of-care requirements as defined in the [S]state [W]waiver [I]implementation [P]plan.

(c)(b) The following provisions apply for Medicaid eligibility under the HCBS waiver:

(i) ~~The eligibility agency must approve a client's eligibility.~~ A member shall obtain approval within 60 days of the level-of-care date stated on the waiver referral form for the waiver referral form to remain valid[;], otherwise the operating agency or designee ~~must~~shall submit a new waiver referral form to the eligibility agency to establish a new level-of-care date;

(ii) ~~W~~waiver eligibility cannot begin before the level-of-care date stated on a valid waiver referral form[;] and[;]

(iii) ~~F~~the eligibility start date ~~must~~begins within 60 days of the level-of-care date stated on the valid waiver referral form.

(d[e]) The Medicaid agency may not pay for waiver services before the start date of the individual's approved comprehensive care plan, which may not be earlier than the date the individual meets:

(i) the eligibility criteria for a Medicaid coverage group included in the applicable waiver; and

(ii) the level-of-care date verified on a valid waiver referral form.

(7) In the event an individual is not approved for Waiver Medicaid services due to Subsection ~~R414-307-3~~(6), an individual who otherwise meets Medicaid financial and non-financial eligibility criteria for a Non-Waiver Medicaid coverage group may qualify for Medicaid services other than services under an HCBS waiver.

(8) If an individual's Medicaid eligibility ends and the individual reapplies for Waiver Medicaid, the ~~D~~department shall establish a process of obtaining approval from the operating agency or designee in which the individual continues to meet medical criteria for the ~~W~~waiver. ~~The~~ operating agency or designee approval may establish a new date in which eligibility to receive coverage of waiver services may begin.

(9)(a) An individual denied Medicaid coverage for an HCBS waiver may request a fair hearing.

(b[a]) The ~~D~~department shall conduct[s] hearings on programmatic eligibility for payment of waiver services.

(c[b]) The Department of Workforce Services shall conduct[s] hearings on financial eligibility issues for a Medicaid coverage group.

#### **R414-307-4. Special Income Group.**

~~The following provisions~~This section sets forth financial eligibility requirements for the special income group that apply to individuals seeking Medicaid coverage for services under an HCBS waiver as defined in 42 CFR 435.217.

(1) If the individual's spouse meets the definition of a community spouse, the eligibility agency shall apply ~~the~~income and resources ~~provisions~~as defined in Section 1924 of the Social Security Act and in Section R414-305-3.

(2) If the individual does not have a spouse, or the individual's spouse does not meet the definition of a community spouse, the eligibility agency may only count the individual's resources to determine eligibility.

(a) If both members of a married couple who live together apply for waiver services and meet the criteria for the special income group, the eligibility agency shall count one-half of jointly~~-~~held assets as available to each spouse.

(b) Each spouse must pass the medically needy resource test for one person.

(c[3]) The eligibility agency may only count income determined under the most closely associated cash assistance program to decide if the individual passes the income eligibility test for the special income group.

(d) The eligibility agency may not count income of the individual's spouse except for ~~actual~~contributions from the spouse.

(e[4]) If the individual is a minor child, the eligibility agency may not count income and resources of the child's parents to decide if the child passes the income and resource tests for the special income group.

(f) The eligibility agency shall count ~~actual~~contributions from a parent, including court-ordered support payments as income of the child.

(g[5]) The individual's income cannot exceed three times the payment that would be made to an individual with no income under Subsection 1611(b)(1) of the Social Security Act.

(h[6]) The eligibility agency shall apply the transfer of assets ~~provisions of~~in accordance with Section 1917 of the Social Security Act.

(i[7]) The individual's cost-of-care contribution is determined by deducting from the individual's total income, the post-eligibility allowances for the specific waiver for which the individual qualifies.

(j[8]) The eligibility agency shall determine financial eligibility for the special income group for an individual based on the level~~-~~of~~-~~care date on a valid waiver referral form as defined in Subsection R414-307-3(~~2~~6).

(k) The eligibility agency shall determine eligibility for ~~prior~~earlier months using the community Medicaid or ~~+~~Institutional Medicaid rules that apply to the individual's situation.

#### **R414-307-5. Medically Needy Waiver Group.**

~~The following~~This section sets forth financial eligibility requirements for the medically needy coverage group, and applies to individuals seeking Medicaid coverage for HCBS under the New Choices Waiver, Community Transitions Waiver, or the Individuals with Physical Disabilities Waiver.

(1) If an individual's spouse meets the definition of a community spouse, the eligibility agency shall apply ~~the~~resources ~~provisions~~as defined in 42 U.S.C. 1396r-5, Section R414-305-3, and Section R414-305-4.

(2) If the individual does not have a spouse or the individual's spouse does not meet the definition of a community spouse, the eligibility agency may only count the individual's resources to determine eligibility.~~When~~

(a) If both members of a married couple who live together apply for waiver services and meet the criteria for the medically needy waiver group, the eligibility agency shall count one-half of jointly held assets available to each spouse.

(b) Each spouse must pass the medically needy resource test for one person.

(c[3]) The eligibility agency may only count income of the individual determined under the most closely associated cash assistance program to decide eligibility for the medically needy waiver group.

(d) The eligibility agency may not count income of the individual's spouse except for actual contributions from the spouse.

(e[4]) If the individual is a minor child, the eligibility agency may only count income and resources of the child and may not count income and resources of the child's parents to decide if the child passes the income and resource tests for the medically needy waiver group.

(f) The eligibility agency shall count ~~actual~~contributions from a parent, including court-ordered support payments as income of the child.

(g[5]) The individual's income must exceed three times the payment that would be made to an individual with no income under 42 U.S.C. 1382(b)(1).

(h[6]) To determine eligibility for an individual, the eligibility agency shall apply the income deductions allowed by the community Medicaid category under which the individual qualifies.

(i[7]) The eligibility agency shall compare countable income to the applicable medically needy income limit for a one-person household to determine the individual's spenddown.

(j) The individual's medical expenses, including the cost of long-term care services, must exceed the spenddown amount.

(k) To receive Medicaid eligibility, the individual must meet the monthly spenddown as defined in Subsection R414-304-11(12[9]).

(l[b]) The eligibility agency shall deduct[s] medical expenses incurred by the individual in accordance with Section R414-304-11.

(m[7]) The eligibility agency shall determine an individual's financial eligibility for the medically needy waiver group based on the level-of-care date on a valid waiver referral form as defined in Subsection R414-307-3(2[6]).

(n) The eligibility agency shall determine eligibility for [prior]earlier months using the community Medicaid or [i]Institutional Medicaid rules that apply to the individual's situation.

#### **R414-307-6. New Choices Waiver Eligibility Criteria.**

(1) An individual must be 65 years of age or older, or at least 18 through 64 years of age and disabled to be eligible for the New Choices Waiver, as defined in Subsection 1614(a)(3) of the Social Security Act. [-]In accordance with the waiver[provisions], the eligibility agency considers an individual to be 18 years of age after the month in which the individual turns 18 years old.

(2) A single individual or any married individual with a community spouse, who is eligible under the [S]special [H]income [G]group, may be required to pay a contribution toward the cost-of-care to receive services under an HCBS waiver. [-]The eligibility agency determines a [client's]member's cost-of-care contribution as follows:

(a) The eligibility agency counts [all-of-]the [client's]member's income unless the income is excluded under other federal laws that exclude certain income from being counted to determine eligibility for federally[-]funded, needs-based medical assistance.

(b) The eligibility agency shall deduct[s] the following amounts from the individual's income:

(i) [A]a personal needs allowance equal to 100% of the federal poverty guideline for a household of one;

(ii) [F]for individuals with earned income, up to \$125 of gross-earned income;

(iii) [Actual-]monthly shelter costs not to exceed \$300. [ ]This deduction includes mortgage, insurance, property taxes, rent, and other shelter expenses;

(iv) [A]a deduction for monthly utility costs equal to the standard utility allowance [Utah-]the state uses under Subsection 5(e) of the Food Stamp Act of 1977. [-]If the waiver [client]member shares utility expenses with others, the allowance is prorated accordingly;

(v) [H]in the case of a married individual with a community spouse, an allowance for a community spouse and dependent family members who live with the community spouse, in accordance with [the provisions of]Section 1924 of the Social Security Act;

(vi) [When]if an individual has a dependent family member at home and [the provisions of]Section 1924 of the Social

Security Act does not apply[-]an allowance for a dependent family member that is equal to one-third of the difference between the minimum monthly spousal needs allowance defined in Section 1924 of the Social Security Act and the family member's monthly income[-]; and

(vii) [H]if more than one individual qualifies for an HCBS waiver or [i]Institutional Medicaid coverage[-] and contributes income to the dependent family member, the combined income deductions of these individuals cannot exceed one-third of the difference between the minimum monthly spousal needs allowance and the family member's monthly income.

(c) The eligibility agency shall end this deduction [when]if the dependent family member enters a medical institution[-]and

(viii) [M]medical and remedial care expenses incurred by the individual are in accordance with Section R414-304-11.

([e]d) The income deduction to provide an allowance to a spouse or a dependent family member may not exceed the amount the individual [actually-]gives to [such]the spouse or dependent family member.

([d]e) The remaining amount of income after the[se] deductions in Subsections (2)(a), (b) and (c) is the individual's cost-of-care contribution.

(3) The individual [must]shall pay the cost-of-care contribution to the eligibility agency each month to receive services under an HCBS waiver.

#### **R414-307-7. Community Supports Home and Community-Based Services Waiver for Individuals with Intellectual Disabilities and Other Related Conditions.**

(1) Medicaid eligibility for the Community Supports Home and Community-Based Services [w]Waiver is limited to individuals with intellectual disabilities and other related conditions.

(2) An individual's resources must be equal to or less than the Medicaid resource limit applicable to an institutionalized person. [-]The treatment of spousal impoverishment resources [provisions]for married[-]and institutionalized individuals in Section R414-305-3[6] apply to a married individual.

(3) An eligible individual may be required to pay a contribution toward the cost-of-care to receive home and community-based services. [-]The eligibility agency shall determine an individual's cost-of-care contribution as follows[-]:

(a) The eligibility agency shall count [all-of-]the individual's income unless such income is excluded under other federal laws that exclude certain income from being counted to determine eligibility for federally-funded, needs-based medical assistance.

(b) The eligibility agency shall deduct the following amounts from the individual's income:

(i) [F]for an individual with earned income, earned income up to the substantial gainful activity level of earnings defined in Subsection 223(d)(4) of the Compilation of the Social Security Laws in effect April 4, 2012, to determine countable earned income[-];

(ii) [A]a personal needs allowance for the individual equal to 100% of the federal poverty level for one person[-];

(iii) [H]in the case of a married individual with a community spouse, a deduction for a community spouse and dependent family members living with the community spouse in accordance with [the provisions of]Section 1924 of the Social Security Act[-];

(iv) [H]in the case of an individual who does not have a community spouse or whose spouse is also eligible for institutional or waiver services, an allowance for a dependent family member that



is equal to one-third of the difference between the minimum monthly spousal needs allowance defined in Section 1924 of the Social Security Act and the family member's monthly income.

(v) If more than one individual who qualifies for a Medicaid home and community-based waiver or [i]Institutional Medicaid coverage contributes income to the dependent family member, the combined income deductions of such individuals cannot exceed one-third of the difference between the minimum monthly spousal needs allowance and the family member's monthly income[-];

(vi) [H]health insurance premiums for the waiver-eligible [recipient]member paid by the [recipient]member, or medical expenses incurred by the [recipient]member in accordance with Section R414-304-11.

(c) The income deduction to provide an allowance to a spouse or a dependent family member cannot exceed the amount the individual [actually-]gives to [such]the spouse or dependent family member.

(d) The remaining amount of income after [such]the deductions is the individual's cost-of-care contribution.

(4) The individual [must]shall pay the contribution to cost-of-care to the eligibility agency each month to receive home and community-based services.

(5) The eligibility agency shall count parental and spousal income only if the individual receives a cash contribution from a parent or spouse.

(6) [The provisions of-]Section R414-305-9 concerning transfers of assets appl[y]ies to individuals seeking eligibility or receiving benefits under this home and community-based services waiver.

#### **R414-307-8. Home and Community-Based Services Waiver for Individuals 65 Years of Age 65 and Older.**

(1) Medicaid eligibility for [H]home and [C]community-[B]based [S]services for individuals 65 years of age and older is limited to individuals eligible for Aged Medicaid who could qualify for skilled nursing home care.

(2) A [client's]member's resources must be equal to or less than the Medicaid resource limit applicable to an institutionalized person. [-]The treatment of spousal impoverishment resources [provisions-]for married[-] and institutionalized individuals in Section R414-305-[3]6 apply to a married individual.

(3) An eligible [client]member may be required to pay a contribution toward the cost-of-care to receive home and community-based services.

(4) The eligibility agency shall determine a [client's]member's cost-of-care contribution as follows:

(a) The eligibility agency shall count [all]the individual's income unless such income is excluded under other federal laws that exclude certain income from being counted to determine eligibility for federally-funded, needs-based medical assistance.

(b) The eligibility agency shall count a spouse's income only if the [client]member receives a cash contribution from a spouse.

(b)c The eligibility agency shall deduct the following amounts from the individual's income:

(i) [A]a personal needs allowance for the individual equal to 100% of the federal poverty level for one person;

(ii) [F]for individuals with earned income, up to \$125 of gross-earned income;

(iii) [Actual-]monthly shelter costs not to exceed \$300. [This deduction includes mortgage, insurance, property taxes, rent, and other shelter expenses;

(iv)(A) [A]a deduction for monthly utility costs equal to the standard utility allowance [Utah-]the state uses under Subsection 5(e) of the Food Stamp Act of 1977.

(B) If the waiver [client]member shares utility expenses with others, the allowance is prorated accordingly;

(v) [F]in the case of a married individual with a community spouse, a deduction for a community spouse and dependent family members who live with the community spouse in accordance with [the provisions of-]Section 1924 of the Social Security Act;

(vi)(A) [F]in the case of an individual who does not have a community spouse or whose spouse is also eligible for institutional or waiver services, an allowance for a dependent family member that is equal to one-third of the difference between the minimum monthly spousal needs allowance defined in Section 1924 of the Social Security Act and the family member's monthly income.

(B) If more than one individual who qualifies for a Medicaid home and community-based waiver or [i]Institutional Medicaid coverage contributes income to the dependent family member, the combined income deductions of such individuals cannot exceed one-third of the difference between the minimum monthly spousal needs allowance and the family member's monthly income;

(vii) [H]health insurance premiums for the waiver-eligible [recipient]member paid by the [recipient]member, or medical expenses incurred by the [recipient]member in accordance with Section R414-304-11.

(e)d The income deduction to provide an allowance to a spouse or a dependent family member cannot exceed the amount the individual [actually-]gives to [such]the spouse or dependent family member.

(e)e The remaining amount of income after [such]the deductions is the individual's cost-of-care contribution.

(4)5 The individual [must]shall pay the contribution to cost-of-care to the eligibility agency each month to receive home and community-based services.

(5)6 [The provisions of-]Section R414-305-9 concerning transfers of assets appl[y]ies to individuals seeking eligibility or receiving benefits under this home and community-based services waiver.

#### **R414-307-9. Home and Community--Based Services Waiver for Technology Dependent[?] or Medically Fragile Individuals.**

(1) To be eligible for admission to this waiver, the individual must be under 21 years of age [24-]at the time of admission to the waiver. [-]An individual is considered to be under 21 years of age [24-]until the month after the month in which the 21st birthday falls.

(2) Once admitted to the waiver, the individual [can]may:

(a) continue to receive waiver benefits and services as long as the individual continues to meet the medical criteria defined by the [D]department in the Technology Dependent [w]Waiver [i]Implementation [p]Plan, non-financial Medicaid eligibility criteria in Rule R414-302[-]; and

(b) a Medicaid category of coverage defined in the waiver implementation plan.

(3) [All other e]Eligibility requirements follow the rules for the Community Supports Home and Community-Based Services Waiver found in Section R414-307-7, except for Subsection R414-307-7(1).

**R414-307-10. Home and Community-Based Services Waiver for Individuals with Acquired Brain Injury.**

(1) To qualify for services under this waiver, the individual must be at least 18 years of age. The ~~[person]~~individual is considered to be 18 years of age in the month in which the 18th birthday falls.

(2) ~~[All other]~~Eligibility requirements follow the rules for the Home and Community-Based Services Waiver for Aged Individuals found in Section R414-307-8, except for Subsection R414-307-8(1).

**R414-307-11. Home and Community-Based Services Waiver for Individuals with Physical Disabilities.**

(1) To qualify for the waiver for individuals with physical disabilities, the individual must meet non-financial criteria for Aged, Blind, or Disabled Medicaid.

(2) A ~~[client's]~~member's resources must be equal to or less than \$2000. ~~[-]The treatment of~~spousal impoverishment resources ~~[provisions]~~for married~~[-]~~ and institutionalized ~~[clients]~~individuals in Section R414-305-~~[3]~~6 apply to this rule.

(3) Countable income is determined using income rules of Aged, Blind, or Disabled Institutional Medicaid. ~~[-]The eligibility agency counts~~ ~~[all]~~income unless the income is excluded under other federal laws that exclude certain income from being counted to determine eligibility for federally~~[-]~~ funded, needs-based medical assistance. ~~[-]Eligibility is determined counting only the gross income of the~~ ~~[client]~~member.

(4) The eligibility agency counts a spouse's income only if the ~~[client]~~member receives a cash contribution from a spouse.

(5)(a) An individual whose income does not exceed 300% of the federal benefit rate may be required to pay a cost-of-care contribution.~~[-The following provisions apply to the determination of cost of care contribution.]~~

(b)(a) The eligibility agency counts ~~[all of]~~the ~~[client's]~~member's income except income that is excluded under other federal laws from being counted to determine eligibility for federally-funded, needs-based medical assistance.

(c)(b) The eligibility agency deducts the maximum allowance available, which is a personal needs allowance equal to 300% of the federal benefit rate payable under Section 1611(b)(1) of the Social Security Act for an individual with no income. ~~[-]No other deductions from income are allowed.~~

(6) An individual whose income exceeds three times the federal benefit rate payable under Section 1611(b)(1) of the Social Security Act may pay a spenddown to become eligible. ~~[-]To determine the spenddown amount, the income rules and medically needy income standard for non-institutionalized aged, blind, or disabled individuals in Rule R414-304 apply except that income is not deemed from the~~ ~~[client's]~~member's spouse.

(7) ~~[The provisions of]~~Section R414-305-9 concerning transfers of assets appl~~[y]~~ies to individuals seeking eligibility or receiving benefits under this home and community-based services waiver.

**R414-307-12. Home and Community-Based Services Waiver for Medically Complex Children.**

(1)(a) An individual must be under 19 years of age to be eligible for the HCBS Waiver for Medically Complex Children.

(b)(a) The eligibility agency shall treat an individual as being under 19 years of age through the month in which the individual turns 19 years old.

(c)(b) The agency shall end waiver eligibility after the month in which the individual turns 19 years old.

(2) The agency shall determine whether an individual meets the disability criteria described in Section R414-303-3.

(3) This waiver is in accordance with ~~[the provisions of the Community Supports Home and Community-Based Services]~~waiver and ~~[all other]~~eligibility requirements found in Section R414-307-7, except for the requirement of Subsection R414-307-7(1).

**R414-307-13. Community Transitions Waiver.**

(1) The Community Transitions Waiver is limited to individuals with intellectual disabilities and other developmental disabilities as defined in 42 CFR 483.102(b)(3), who are moving from intermediate care facilities into home and community-based settings. ~~[-]In addition, individuals from other waiver programs who need professional nursing services due to chronic conditions that state plan services cannot support, may be eligible for this waiver.~~

(2) To qualify, an individual ~~[must]~~shall demonstrate substantial functional limitations in three or more areas of major life activity as described in Section R414-502-8.

(3) An individual's resources must be equal to or less than \$2,000~~[-]~~. ~~[however]~~Nevertheless, the ~~treatment of~~spousal impoverishment resources ~~[provisions]~~for married~~[-]~~ and institutionalized individuals in Section R414-305-6 apply to this rule.

(4) Countable income is determined using the income rules of ~~Section R414-304-7~~ for Aged, Blind, or Disabled Institutional Medicaid. ~~[-]The eligibility agency counts an individual's income except for income excluded under other federal laws to determine eligibility for federally funded, needs-based medical assistance. [~~Eligibility is determined counting only the gross income of an individual.

(5) The eligibility agency counts a spouse's income only if an individual receives a cash contribution from the spouse.

(6)(a) An individual whose income does not exceed 300% of the federal benefit rate may be required to pay a cost-of-care contribution.~~[-The following provisions apply to the determination of cost of care contribution.]~~

(b)(a) ~~[t]~~The eligibility agency counts an individual's income except for income excluded under other federal laws to determine eligibility for federally funded, needs-based medical assistance.

(c)(b) ~~[t]~~The eligibility agency deducts the maximum allowance available, which is a personal needs allowance equal to 300% of the federal benefit rate payable under 42 U.S.C. 1382(b)(1) for an individual with no income. ~~[-]No other income deductions are allowed.~~

(7) An individual whose income exceeds three times the federal benefit rate payable under 42 U.S.C. 1382(b)(1) may pay a spenddown to become eligible. ~~[-]To determine the spenddown amount, the income rules and medically needy income standard for non-institutionalized aged, blind, or disabled individuals in Rule R414-304 apply except that income is not~~ ~~[deemed]~~considered from the individual's spouse.

(8) ~~[The provisions of]~~Section R414-305-9 concerning transfers of assets appl~~[y]~~ies to individuals seeking eligibility or receiving benefits under this ~~[home and community-based services]~~HCBS waiver.

**KEY: eligibility, waivers, special income group**

**Date of Last Change: 2023**~~[November 24, 2020]~~

**Notice of Continuation: March 1, 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:	R414-401	Filing ID: 56054

**Agency Information**

<b>1. Department:</b>	Health and Human Services	
<b>Agency:</b>	Integrated Healthcare	
<b>Building:</b>	Cannon Health Building	
<b>Street address:</b>	288 N 1460 W	
<b>City, state and zip:</b>	Salt Lake City, UT 84116	
<b>Mailing address:</b>	PO Box 143102	
<b>City, state and zip:</b>	Salt Lake City, UT 84114-3102	
<b>Contact persons:</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Craig Devashrayee	801-538-6641	cdevashrayee@utah.gov
Jonah Shaw	385-310-2389	jshaw@utah.gov
<b>Please address questions regarding information on this notice to the persons listed above.</b>		

**General Information**

2. Rule or section catchline:
R414-401. Nursing Care Facility Assessment
3. Purpose of the new rule or reason for the change:
The purpose of this change is to implement and clarify penalties and interest for nursing facilities that do not pay the facility assessment.
4. Summary of the new rule or change:
This amendment specifies penalties and interest for nursing facilities that do not pay the facility assessment.
It also includes a hearing provision, recodifies statutes, and 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 are covered under previous allocations by the Legislature.
Increases in cost are absorbed through the agency's standard budget.

**B) Local governments:**

There is no impact on local governments as they neither fund nor administer nursing facilities 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 are covered under previous allocations by the Legislature.

**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 are covered under previous allocations by the Legislature.

**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 are covered under previous allocations by the Legislature.

**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 are covered under previous allocations by the Legislature.

**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>

## NOTICES OF PROPOSED RULES

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.

Businesses will see neither costs nor revenue as these changes are covered under previous allocations by the Legislature.

#### 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	Section 26B-3-404
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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>	12/15/2023
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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>	Tracy S. Gruber, Executive Director	<b>Date:</b>	10/30/2023
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#### R414. Health and Human Services, [Health Care Financing, Coverage and Reimbursement Policy]Integrated Healthcare.

#### R414-401. Nursing Care Facility Assessment.

##### R414-401-1. Introduction and Authority.

(1) This rule implements the assessment imposed on certain nursing care facilities by Title 26B, Chapter 3[5a], Part 4, Nursing Care Facility Assessment.

(2) This rule implements reporting requirements, which allow the [D]department to have the required occupancy information needed to evaluate requests under Title 26B, Chapter [48]3, Part [5]3, Administration of Medicaid Programs: Drug Utilization Review and Long Term Care Facility Certification.

(3) The rule is authorized by Section 26B-1-[30]202, Title 26B, Chapter 3[5a], Part 4, Nursing Care Facility Assessment and Title 26B, Chapter [48]3, Part [5]3, Administration of Medicaid Programs: Drug Utilization Review and Long Term Care Facility Certification.

##### R414-401-2. Definitions.

(1) The definitions in Section 26B-3[5a-403]-404 apply to this rule.

(2) The definitions in Rule R414-1 apply to this rule.

(3) The definitions in Section 26B-[48-501]3-301 apply to the reporting and auditing requirements found in Section R414-401-4.

##### R414-401-3. Assessment.

(1) The collection agent for the nursing care facility assessment shall be the [D]department, which is vested with the administration and enforcement of the assessment.

(2) The uniform rate of assessment for every facility is \$28.15 per non-Medicare patient day provided by the facility, except that intermediate care facilities for people with intellectual disabilities shall be assessed at the uniform rate of \$9.51 per patient day. Swing bed facilities shall be assessed the uniform rate for nursing facilities.

(3) Each nursing care facility must pay its assessment monthly on or before the last day of the succeeding month, and may not combine payments of assessments with other nursing care facilities owned or controlled by a single entity.

##### R414-401-4. Reporting and Auditing Requirements.

Facilities subject to the assessment in Title 26B, Chapter 3[5a], Health Care - Administration and Assistance shall submit one report for each facility. The reporting and auditing requirements are as follows:

(1) Each nursing care facility, shall file with the [D]department a report for the month on or before the end of the succeeding month.

(2) Each report shall be on the [D]department-approved form, and shall disclose the total number of patient days in the facility, by designated category, during the period covered by the report.

(3) Each nursing care facility shall supply the data required in the report and certify the information is accurate.

(4) Each nursing care facility shall maintain complete and accurate records. The [D]department may inspect the records and the records of the facility's owners to verify compliance.

(5) Separate nursing care facilities owned or controlled by a single entity shall may not combine reports.

(6) Providers may update previously submitted patient day assessment reports for 90 days following the original submission date. Providers that have an audit showing discrepancies in their reported days shall report the discrepancies to the department within

60 days of the audit completion and shall pay any additional amounts owed within 30 days of reporting the discrepancies to the department. The department does not charge penalties or interest that arise from an audit if paid within 30 days of being reported to the department.

(7) Penalties for failure to submit the report are described in Section R432-150-8.

#### **R414-401-5. Penalties and Interest.**

(1) The penalties for failure to file a report~~[.]~~ ~~or [to]~~ pay the assessment due ~~[within the time prescribed, to pay within 30 days of a notice of deficiency of the assessment]~~ are provided in Section 26B-3~~[5a]-[105]~~404. The ~~[D]~~department ~~[shall]~~may suspend ~~[all]~~ Medicaid payments, after giving notice, to a nursing facility until the facility pays the assessment and penalties due in full or until the facility and the ~~[D]~~department reach a negotiated settlement.

(2) The department shall charge penalties as prescribed in Subsections 26B-3-404(1) through 26B-3-404(2).

(~~[2]~~3) The ~~[D]~~department shall charge a nursing facility a negligence penalty as prescribed in Subsection 26B-3~~[5a-105]~~404(3)(a) if the facility does not pay in full within ~~[45]~~60 days of the due date~~[a notice of deficiency of the assessment]~~.

(~~[3]~~4) The ~~[D]~~department shall charge a nursing facility an intentional disregard penalty as prescribed in Subsection ~~[26-35-105]~~26B-3-404(3)(b) if the facility does not pay in full within ~~[45]~~90 days of the due date~~[a notice of deficiency of the assessment two times within a 12-month period, or if the facility does not pay in full within 60 days of a notice of deficiency of the assessment]~~.

(~~[4]~~5) The ~~[D]~~department shall charge a nursing facility an intent to evade penalty as prescribed in Subsection ~~[26-35a-105]~~26B-3-404(4) if the facility does not pay in full within ~~[45]~~120 days of the due date~~[a notice of deficiency of the assessment three times with a 12-month period, or if the facility does not pay in full within 75 days of a notice of deficiency of the assessment]~~.

(6) Penalties and interest accrue according to the statute and rule without notification.

(7) If a facility seeks to have the department waive penalties, a facility must request a state fair hearing to allow an administrative law judge to determine whether the facility has shown good cause for the department to waive penalties.

(8) The department does not waive interest accrued by the facility.

(9) For non-Medicaid certified facilities, the department may refer a delinquent facility to its Division of Licensing and Background Checks based on administrator requirements as noted in Section R432-150-8.

**KEY:** Medicaid, nursing facility

**Date of Last Change:** 2023~~[July 1, 2021]~~

**Notice of Continuation:** November 15, 2018

**Authorizing, and Implemented or Interpreted Law:** 26B-1-~~[30]~~213; 26B-3~~[5a]~~404; 26B-~~[48]~~3-~~[3]~~108

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

**TYPE OF FILING:** Amendment

<b>Rule or Section Number:</b>	<b>R414-508</b>	<b>Filing ID:</b> <b>55968</b>
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#### **Agency Information**

<b>1. Department:</b>	Health and Human Services	
<b>Agency:</b>	Integrated Healthcare	
<b>Building:</b>	Cannon Health Building	
<b>Street address:</b>	288 N 1460 W	
<b>City, state and zip:</b>	Salt Lake City, UT 84116	
<b>Mailing address:</b>	PO Box 143102	
<b>City, state and zip:</b>	Salt Lake City, UT 84114-3102	
<b>Contact persons:</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Craig Devashrayee	801-538-6641	cdevashrayee@utah.gov
Jonah Shaw	385-310-2389	jshaw@utah.gov
<b>Please address questions regarding information on this notice to the persons listed above.</b>		

#### **General Information**

<b>2. Rule or section catchline:</b>
R414-508. Requirements for Transfer of Bed Licenses
<b>3. Purpose of the new rule or reason for the change:</b>
The purpose of this change is to update and clarify the rule text as needed.
<b>4. Summary of the new rule or change:</b>
This amendment updates and clarifies terms and entities in the text and makes other technical changes.

#### **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 they neither fund nor provide benefits under the Medicaid program.
<b>C) Small businesses ("small business" means a business employing 1-49 persons):</b>
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 S. Gruber, has reviewed and approved this fiscal analysis.

Businesses will see neither revenue or costs as this amendment only includes minor changes and technical updates.

**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	Section 26B-3-313
Section 26B-3-115		

**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:** 12/15/2023

**9. This rule change MAY become effective on:** 12/22/2023

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>	10/28/2023
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**R414. Health and Human Services, Integrated Healthcare [Health Care Financing, Coverage and Reimbursement Policy].****R414-508. Requirements for Transfer of Bed Licenses.****R414-508-1. Introduction and Authority.**

(1) This rule implements requirements that a Medicaid[-] certified nursing care facility program must meet to transfer licensed bed capacity for Medicaid certified beds to another entity.

(2) Sections 26B-3-108[26-18-3], 26B-3-115[26-18-5], and 26B-3-313[26-18-505] authorize this rule.

**R414-508-2. Definitions.**

As used in this rule:

[~~—~~ (1) "Bureau of Health Facility Licensing, Certification and Resident Assessment" (BHFLCRA) within the Department of Health is the entity that evaluates nursing care facilities to comply with state and federal regulations.]

[(2)] "Bed [L]license" is the state authorization given by [BHFLCRA]OL to provide nursing care facility services to an individual resident. [~~BHFLCRA only~~]OL issues licenses to a nursing



care facility program to provide services for several individuals. [ ]The number of individuals for which a nursing care facility program can provide service equals the total licensed beds held by the licensee.

(~~3~~)2) "Current (~~O~~)owner" is any one of or combination of the following:

(a) owner of a building from which a nursing care facility program operates[;];

(b) owner of land on which a nursing care facility program operates[;];

(c) owner of a nursing care facility program licensed by the [~~BHFLCRA~~]OL;

(d) owner of Medicaid certification[;];

(e) lessor of the building[;];

(f) lessor of the land[;];

(g) mortgagor of the building[;];

(h) mortgagor of the land[;];

(i) the management team responsible for executing the operations of a nursing care facility program[;];

(j) a holder of a lien security interest in the land[;];

(k) a holder of a lien security interest in the building[;]; and

(l) a holder of a lien security interest in the business operation.

(3) "Office of Licensing (OL) within the Division of Licensing and Background Checks is the entity that evaluates nursing care facilities to comply with state law and federal regulations.

(4) "Medicaid [~~C~~]certification" is the authorization to provide services outlined in the Medicaid State Plan in accordance with Section R414-27-1[;].

(5) "Transfer" is a change of ownership due to sale, lease, or mortgage.

(6) "Transfer [~~A~~]agreement" is a contract for a transfer of bed licenses.

(7) "Transferor" is the entity or nursing care facility program transferring one or more Medicaid beds to another entity or nursing care facility program.

(8) "Transferee" is the entity or nursing care facility program receiving one or more Medicaid beds from the [~~F~~]transferor.

#### **R414-508-3. Bed License Transfer Requirements for the Transferor.**

(1) A nursing care facility program shall meet the requirements of Rule R414-27 to fulfill the transfer requirements found in Subsection 26B-~~48~~3-~~505~~313(2).

(2)(a) Pursuant to Subsection 26B-3-313~~[26-18-505]~~(2), a nursing care facility program shall demonstrate its intent to transfer bed licenses by providing written notice to the Division of [~~Medicaid and Health Financing~~]Integrated Healthcare (DIH) in accordance with timing specified in Section 26B-3-313~~[26-18-505]~~.

(b) To request the transfer under Subsection (a), [~~F~~]the transferring nursing care facility program or entity shall use the form that provides notice of a ["Notice of"]Medicaid [~~B~~]bed [~~F~~]transfer[" form to request the transfer].

(3)(a) The nursing care facility program shall include [~~all~~]necessary information on the [~~"Notice of Medicaid Bed Transfer"]notice form.~~

(b) If the notice form or supporting documentation is deficient, DIH shall return the incomplete notice[~~-shall be returned~~] to the requestor.

(4) The notice date [~~shall be~~]is the [~~postmark~~]date [~~of a~~]the completed [~~"Notice of Medicaid Bed Transfer"]notice form~~

[~~mailed~~]is emailed to [~~the Division of Medicaid and Health Financing~~]DIH at [qii@utah.gov](mailto:qii@utah.gov).

#### **R414-508-4. Bed License Transfer Requirements for the Transferee.**

Pursuant to Subsection 26B-3-313~~[26-18-505]~~(3), an entity that receives bed licenses from a nursing care facility program [~~must~~]shall provide written notice to the [~~Division of Medicaid and Health Financing~~]DIH in accordance with timing specified in Section 26B-3-313~~[26-18-505]~~. [~~—~~]The receiving nursing care facility program or entity shall use the form that requests ["Request for"]Medicaid [~~C~~]certification of [~~F~~]transferred [~~B~~]beds[" form].

(1)(a) The nursing care facility program shall include [~~all~~]necessary information on the [~~"Request for Medicaid Certification of Transferred Beds"]request form.~~

(b) If the request form or supporting documentation is deficient, DIH shall return the incomplete notice [~~shall be returned~~] to the requestor.

(2) The notice date [~~shall be~~]is the [~~postmark~~]date [~~of a~~]the completed [~~"Request for Medicaid Certification of Transferred Beds"]request form is emailed to [~~the Division of Medicaid and Health Financing~~]DIH at [qii@utah.gov](mailto:qii@utah.gov).~~

(3) If the receiving nursing care facility or entity receives bed licenses from more than one nursing care facility or entity and wants to have the multiple beds certified at the same time, the transferee shall complete a request form for each different transferring entity and submit the request forms at the same time.

#### **R414-508-5. Expiration and Forfeiture of Bed Licenses.**

Pursuant to Subsection 26B-3-313~~[26-18-505]~~(3), if the receiving entity does not obtain Medicaid certification within three years of the effective date of the transfer, the transferred bed licenses expire and the receiving entity forfeits the bed licenses available through the transfer. [~~—~~]The transferring nursing care facility program does not regain any right to the transferred beds that have expired.

#### **KEY: Medicaid**

**Date of Last Change:** ~~2023~~**December 7, 2016**

**Notice of Continuation:** May 23, 2023

**Authorizing, and Implemented or Interpreted Law:** 26B-3-108~~[26-1-3]; 26B-3-313~~~~[26-18-505]~~

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

**TYPE OF FILING:** Repeal and Reenact

<b>Rule or Section Number:</b>	<b>R414-510</b>	<b>Filing ID:</b> <b>56029</b>
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#### **Agency Information**

<b>1. Department:</b>	Health and Human Services
<b>Agency:</b>	Integrated Healthcare
<b>Building:</b>	Cannon Health Building
<b>Street address:</b>	288 N.1460 W
<b>City, state and zip:</b>	Salt Lake City, UT 84116
<b>Mailing address:</b>	PO Box 143102
<b>City, state and zip:</b>	Salt Lake City, UT 84114-3102



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

**General Information**

<b>2. Rule or section catchline:</b>
R414-510. Intermediate Care Facility for Persons with Intellectual Disabilities Transition Program and Education
<b>3. Purpose of the new rule or reason for the change:</b>
The purpose of this change is to update and clarify Medicaid policy for the Intermediate Care Facility for Persons with Intellectual Disabilities (ICF) Transition Program.
<b>4. Summary of the new rule or change:</b>
All requirements of the repealed rule are reenacted in the proposed rule.
In contrast to the repealed rule, this new rule restructures policies and includes new provisions for assisted decision-making in the ICF Transition Program.

**Fiscal Information**

<b>5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:</b>
<b>A) State budget:</b>
The state will not see an impact as this update only codifies program responsibilities and policies for the transition program, and does not result in additional expenditures.
<b>B) Local governments:</b>
Local governments will not see an impact as they neither fund nor provide benefits under the Medicaid program.
<b>C) Small businesses</b> ("small business" means a business employing 1-49 persons):
Small businesses will not see an impact as this update only codifies program responsibilities and policies for the transition program, and does not result in additional expenditures for compliance.
<b>D) Non-small businesses</b> ("non-small business" means a business employing 50 or more persons):
Non-small businesses will not see an impact as this update only codifies program responsibilities and policies for the transition program, and does not result in additional expenditures for compliance.

**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**):

Other persons or entities will not see an impact as this update only codifies program responsibilities and policies for the transition program, and does not result in additional expenditures for compliance.

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

A single person or entity will not see an impact as this update only codifies program responsibilities and policies for the transition program, and does not result in additional expenditures for compliance.

**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.

Businesses will see neither costs nor revenue, as this update only codifies program responsibilities and policies for the transition program and does not result in additional expenditures for 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-3-108	Section 26B-6-402	Title 75, Chapter 2a
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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>	12/15/2023
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<b>9. This rule change MAY become effective on:</b>	12/22/2023
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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>	10/28/2023
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**R414. Health and Human Services, [Health Care Financing, Coverage and Reimbursement Policy] Integrated Healthcare.****R414-510. Intermediate Care Facility for Persons with Intellectual Disabilities Transition Program and Education.****[R414-510-1. Introduction and Authority.**

(1) This rule implements the Intermediate Care Facility for Persons with Intellectual Disabilities (ICF) Transition Program, and the education process required for individuals currently residing in ICFs and those considering ICF admission. ICF Transition Program participation is voluntary and allows an individual to transition from a privately-owned ICF to the Community Supports Waiver for Individuals with Intellectual Disabilities and Other Related Conditions.

(2) This rule is authorized by Section 26-18-3. Waiver services are optional and provided in accordance with 42 CFR 440.225.

**R414-510-2. Definitions.**

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

(2) "Division of Services for People with Disabilities (DSPD)" means the entity within the Department of Human Services

that has responsibility to plan and deliver an appropriate array of services and supports to persons with disabilities in accordance with Section 62a-5-102.

(3) "Guardian" means an individual who is legally authorized to make decisions on an individual's behalf.

(4) "Interested individual" means an individual who meets eligibility requirements and expresses interest, either directly or through a guardian, in participating in the Transition Program.

(5) "Intermediate Care Facilities" means privately owned intermediate care facilities for individuals with intellectual disabilities.

(6) "Length of stay" means the length of time an individual has continuously resided in ICFs in the state. The Departments consider a continuous stay to include a stay in which an individual has a temporary break in stay of no more than 31 days. Breaks in stay due to inpatient hospitalization, admission to a nursing facility, or a temporary leave of absence, if due to health concerns related to Coronavirus (COVID-19), will not be considered a break in stay when evaluating Subsection R414-510-3(1)(e).

(7) "Representative" means an individual, who is not a guardian, and does not have decision making authority, but is identified as an individual who assists a potential Transition Program participant.

(8) "State staff" means employees of the Division of Medicaid and Health Financing or DSPD.

(9) "Transition Program" means the Intermediate Care Facility for Persons with Intellectual Disabilities Transition Program.

(10) "Waiver" means the Community Supports Waiver for Individuals with Intellectual Disabilities and Other Related Conditions (CSW).

**R414-510-3. Eligibility Requirements for the Transition Program.**

(1) Waiver services are potentially available to an individual who:

(a) receives ICF benefits under the Medicaid State Plan;

(b) has been diagnosed with an intellectual disability or a related condition;

(c) meets ICF level of care criteria defined in Section R414-502-8;

(d) meets state funding eligibility criteria for DSPD found in Subsection 62A-5-102(4); and

(e) has at least a 12-month length of stay in any Medicaid-certified, privately owned ICF located in Utah.

(2) The Department of Health may consider a length of stay exemption to Subsection (1)(e) when

an individual, or representative, requests an exception to the minimum length of stay requirement during the COVID-19 public health emergency declared by the federal government or the state.

(3) To make a request for a length of stay exemption, an individual or representative, must submit a written request to the Department of Health and include the rationale for the request, including the anticipated risk if the individual remains in the intermediate care facility.

(4) Before deciding upon a request, the Department of Health:

(a) may consult with its healthcare associated infections and antibiotic resistance program;

(b) shall consult with DSPD; and

(c) shall determine whether an alternative placement option is available.

(5) The Department of Health shall deny a request for exemption if funding is not available.

~~\_\_\_\_\_ (6) Other eligibility and access requirements in this rule remain in effect.~~

**R414-510-4. Transition Program Access.**

~~\_\_\_\_\_ (1) Each state fiscal year, the Departments shall identify the number of people projected to participate in the Transition Program.~~

~~\_\_\_\_\_ (2) Based on the funds available for the Transition Program in a given state fiscal year, the Departments shall enroll individuals into the Waiver through the Transition Program until available funds are exhausted.~~

~~\_\_\_\_\_ (3) In a given state fiscal year, if the funds available for the Transition Program are sufficient to enroll all individuals who have expressed interest in participating in the Transition Program, and meet the requirements in Section R414-510-3, the Departments shall enroll all identified individuals. The Departments shall prioritize community transition to all individuals under 22 years of age.~~

~~\_\_\_\_\_ (4) In a given state fiscal year, if the funds available for the Transition Program are not sufficient to allow transition of all individuals who express interest and who meet the requirements in Section R414-510-3, the Departments shall:~~

~~\_\_\_\_\_ (a) Prioritize community transition to all individuals under 22 years of age;~~

~~\_\_\_\_\_ (b) For individuals over 22 years of age, each interested individual will receive a weighted score, and be ranked based on that score, from highest to lowest score. Scores shall be based on:~~

~~\_\_\_\_\_ (i) The number of years the person has expressed interest in participating in the Transition Program since State Fiscal Year 2013;~~

~~\_\_\_\_\_ (ii) Whether the applicant has applied for home and community-based services and is currently on the DSPD waiting list;~~

~~\_\_\_\_\_ (iii) Length of consecutive stay in an ICF in the state of Utah; and~~

~~\_\_\_\_\_ (iv) If there are multiple individuals with the same weighted score, the Departments shall rank individuals based on greatest length of stay.~~

~~\_\_\_\_\_ (c) If an individual is selected for the Transition Program and has a spouse who also resides in a Utah ICF and who meets the eligibility criteria in Section R414-510-3, the Departments shall include the spouse in the Transition Program that same year.~~

~~\_\_\_\_\_ (5) Individuals or their guardians will be informed that they can express interest in participating in the Transition Program at any time in writing, or by any other means through which a reasonable person would believe that the individual is interested in living in the community. Interest can be expressed at any time prior to or after state staff make direct contact with the individual or their guardian and the individual retains the right to amend his or her choice at any time.~~

~~\_\_\_\_\_ (6) In cases where an individual does not initially express a choice to transition to the community or to remain in the ICF, the Departments will identify the individual as "undecided." For individuals identified as "undecided," the Departments will engage in additional in-reach and education to build relationships with the individual, the guardian or representative;~~

~~\_\_\_\_\_ (a) After engaging in additional education, the Departments will re-determine whether individuals are interested in moving to the community or continuing to reside in ICFs; and~~

~~\_\_\_\_\_ (b) For remaining individuals who are incapable of expressing choice, the Departments will identify the individuals as "undetermined";~~

~~\_\_\_\_\_ (7) In cases where an individual has been identified as "undetermined," the Departments will utilize a formal assisted decision-making process to support the individual and their guardian to make an informed choice.~~

**R414-510-5. ICF Transition Program Education for Current ICF Residents.**

~~\_\_\_\_\_ (1) Education about the ICF Transition Program and home and community based services shall be provided by state staff to all individuals residing in ICFs. Education efforts shall be provided on an ongoing basis by state staff and will include, but are not limited to:~~

~~\_\_\_\_\_ (a) Displaying Transition Program and state staff contact information in conspicuous locations within each ICF;~~

~~\_\_\_\_\_ (b) Meeting with individuals living in ICFs, and with their guardians or representatives on a recurring basis;~~

~~\_\_\_\_\_ (c) Providing opportunities for individuals living in ICFs, their guardians or representatives to visit home and community-based services settings; and~~

~~\_\_\_\_\_ (d) Providing opportunities for individuals living in ICFs, their guardians or representatives to receive support from peers who have experienced moving from an ICF to home and community-based services.~~

~~\_\_\_\_\_ (2) Education about the ICF Transition Program and home and community based services shall be provided in multiple ways and in a manner that is responsive to each person's method of communication. Examples include in person, one-on-one or group discussions, interactions in community based settings, and communication over the telephone or through email. Educational materials will be provided in print or other mediums.~~

~~\_\_\_\_\_ (3) As ongoing education about community-based services is provided to individuals without guardians, state staff will work with the individual and anyone the individual invites to participate. At recurring intervals, state staff will work with the individual and anyone the individual invites to participate to express whether he or she wants to participate in the Transition Program. At each interval, state staff shall document and act upon the individual's decision;~~

~~\_\_\_\_\_ (4) As ongoing education about community-based services is provided to individuals with guardians, state staff will work with the guardian and anyone the guardian invites to participate. State staff will rely on the decision rendered by the guardian regarding whether the guardian wants the individual to participate in the Transition Program.~~

~~\_\_\_\_\_ (5) Individuals or their guardians will be informed that they can express interest in participating in the Transition Program at any time in writing, or by any other means through which a reasonable person would believe that the individual is interested in living in the community. Interest can be expressed at any time prior to or after state staff make direct contact with the individual or their guardian, and the individual retains the right to amend his or her choice at any time.~~

**R414-510-6. Education and Referral for Individuals Seeking ICF Services.**

~~\_\_\_\_\_ (1) Prior to admission to an ICF, an individual or guardian must contact state staff to receive education of and referral to local resources.~~

~~\_\_\_\_\_ (a) For individuals under 22 years of age, the state agencies shall perform an additional evaluation of services to determine whether community based services are available to assure informed choice before admission to an ICF. The Director of the Division of Medicaid and Health Financing (or designee) and the Director of the Division of Services for People with Disabilities (or designee) shall authorize in writing all ICF admissions of individuals under 22 years of age.~~

~~\_\_\_\_\_ (b) ICFs shall not admit an individual under 22 years of age, unless the admission has been authorized as stated in Subsection R414-510-6(1)(a) above. After admission, the ICF shall keep a copy of the written authorization in the individual's medical record. An individual who admits to an ICF, who meets the requirements described in Section R414-510-3, is eligible to participate in the Transition Program.~~

~~(c) Upon completing education and referral with state staff, individuals who are over 22 years of age and decide to move into an ICF, shall be given a written confirmation to demonstrate that the education process occurred prior to admission.~~

~~(d) ICFs shall not admit an individual who has not received the required state staff education and referral. After admission, the ICF shall keep a copy of the written confirmation form in the individual's medical record.~~

~~(2) Due to an urgent or emergency need, an individual may be admitted to an ICF immediately, and education and assistance with resources shall be provided after the placement.~~

~~(a) The ICF must:~~

~~(i) notify the Departments of the admission;~~

~~(ii) explain the reason the admission was considered urgent or emergency; and~~

~~(iii) provide contact information for the individual, guardian, or representative.~~

~~(3) Education shall be provided within 30 days of ICF admission unless an individual's health or other external factors make it necessary to provide the education at a later date.~~

~~(4) Once education has been provided, the Departments will provide the ICF with a written confirmation of education form, and the ICF will keep a copy of the form in the individual's medical record.~~

#### **R414-510-7. Service Coverage.**

~~Services and limitations of the Transition Program may be found in the Waiver State Implementation Plan.~~

#### **R414-510-8. Reimbursement Methodology.**

~~The Department of Human Services (DHS) contracts with the Department to set rates for waiver covered services. The DHS rate-setting process is designed to comply with the requirements of Subsection 1915(c) of the Social Security Act and other applicable Medicaid rules. Medicaid requires that rates for services not exceed customary charges.]~~

#### **R414-510-1. Introduction and Authority.**

~~(1) This rule implements the Intermediate Care Facility for Persons with Intellectual Disabilities (ICF) transition program. The ICF transition program participation is voluntary and allows an individual to transition from a privately-owned ICF to the Community Transitions Waiver.~~

~~(2) This rule is authorized under Section 26B-3-108. Waiver services are optional and provided in accordance with 42 CFR 440.225.~~

#### **R414-510-2. Definitions.**

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

~~(2) "Division of Integrated Healthcare (DIH)" means the division within the department that administers the Medicaid program.~~

~~(3) "Division of Licensing and Background Checks (DLBC)" means the entity within the department that licenses foster homes, child care facilities, human services programs, and health facilities.~~

~~(4) "Division of Services for People with Disabilities (DSPD)" means the entity within the department that has responsibility to plan and deliver an appropriate array of services and supports to persons with disabilities in accordance with Subsection 26B-6-402(2).~~

~~(5) "Education and in-reach (EI) staff" means staff employed by the department to provide individuals with information~~

~~and resources to help them make informed decisions about where they want to receive their long-term services and supports.~~

~~(6) "Guardian" means an individual who is legally authorized to make decisions on an individual's behalf.~~

~~(7) "Healthcare decision-making" means decision-making as defined in Subsection 75-2a-103(12).~~

~~(8) "Home and community-based services (HCBS)" means person-centered care delivered in the home and community, designed to enable individuals to stay in their homes, rather than living in a facility for care.~~

~~(9) "Interested individual designation" means the status of an individual who resides in an ICF and expresses interest in participating in the ICF transition program.~~

~~(10) "ICF" means a privately owned intermediate care facility for individuals with intellectual disabilities.~~

~~(11) "Length-of-stay" means the length of time an individual has resided continuously in an ICF within the state. The department considers a continuous stay to include a stay in which an individual has a temporary break-in-stay of no more than 31 days.~~

~~(12) "Long-term services and supports (LTSS)" means a broad range of Medicaid- reimbursed assistance provided to individuals who experience difficulty completing self-care tasks as a result of an intellectual disability or related condition. LTSS may be provided in facilities or in HCBS settings.~~

~~(13) "Representative" means a person, who is not a legal guardian, but is identified as an individual who assists a potential transition program participant.~~

~~(14) "Transition worker" means a staff person employed by the department who is assigned to assist an individual who has expressed interest in moving into HCBS.~~

~~(15) "Supported decision-making (SDM) tool" means the form completed by EI staff to determine an individual's communication abilities and preferences, and to assist in supporting an individual's current ability to engage in decision-making.~~

~~(16) "Unable to determine interest designation" means the status of an individual who cannot clearly express in writing, or by any other means through which a reasonable person would recognize, a preference for where the individual wants to receive LTSS.~~

~~(17) "Undecided designation" means the status of an individual who has yet to make a decision about where to receive LTSS.~~

~~(18) "Waiver" means the Community Transitions Waiver, a Medicaid waiver program authorized under Subsection 1915(c) of the Social Security Act.~~

#### **R414-510-3. Eligibility Requirements for the Transition Program.**

~~(1) Waiver services are available to an individual who:~~

~~(a) receives ICF benefits under the Medicaid State Plan;~~

~~(b) has been diagnosed with an intellectual disability or a related condition;~~

~~(c) meets ICF level-of-care criteria defined in Section R414-502-8;~~

~~(d) meets state funding eligibility criteria for DSPD found in Subsection 26B-6-402(6); and~~

~~(e) has at least a 12-month length-of-stay in any Medicaid-certified, privately owned ICF or nursing facility located in the state.~~

~~(2) The department allows break-in-stay exceptions for:~~

~~(a) inpatient hospitalization;~~

~~(b) admission to a nursing facility; or~~

~~(c) due to the closure of an ICF where an individual resides;~~

(3) The department may also allow break-in-stay exceptions:

- (a) due to substantiated findings of abuse; and
- (b) neglect or exploitation of an individual that occurred while residing in the current ICF.

(4) To request a length-of-stay exception for the reasons noted in Subsection (3)(a)(b), an individual or representative shall submit a written request to the department and include the rationale for the request, including the anticipated risk if the individual remains in the ICF.

(5) The department shall provide a written determination to approve or deny the request within ten business days of receiving it.

#### **R414-510-4. Department Responsibilities to Provide HCBS Education to Individuals Who Reside in ICFs.**

(1) EI staff shall provide ongoing HCBS education to ICF residents and shall:

- (a) display transition program and staff contact information in conspicuous locations within each ICF;
- (b) hold recurring meetings with ICF residents, guardians, or representatives;
- (c) provide opportunities for ICF residents, guardians, or representatives to visit HCBS settings; and
- (d) provide opportunities for ICF residents, guardians, or representatives to receive support from peers who have experienced moving from an ICF to HCBS.

(2) EI staff shall provide education about the transition program and HCBS in multiple ways and in a manner responsive to each person's method of communication. Examples include:

- (a) in-person discussions;
- (b) one-on-one or group discussions;
- (c) interactions in community-based settings; and
- (d) communication by telephone or through email.

(3) EI staff shall provide educational materials in print or other mediums.

(4) As EI staff provide ongoing education about HCBS to individuals without guardians, EI staff shall work with the individual and anyone the individual invites to participate to express whether the individual wants to participate in the transition program. At each interval, EI staff shall document and act upon the individual's decision.

(5)(a) As ongoing education about HCBS is provided to individuals with guardians, EI staff shall work with the guardian and the individual. If the guardian has decision-making authority on where the individual lives, EI staff shall rely on the decision rendered by the guardian regarding whether the guardian wants the individual to participate in the transition program.

(b) If the guardian's decision conflicts with the expressed interest of the individual, the transition worker shall:

- (i) confirm the guardian's authority to make health care decisions;
- (ii) request a meeting with the guardian to discuss the individual's expressed interest in accordance with Subsection 75-5-312(1)(e); and
- (iii) provide a copy of the department letter to guardians about involvement of the ward in decision-making to the extent possible, and the responsibility of the guardian to take into account the preferences of the individual.

(6) EI staff shall inform individuals or guardians that they may express interest in participating in the transition program at any time in writing, or by any other means through which a reasonable

person would believe that the individual is interested in living in the community. Interest may be expressed at any time before or after EI staff contact the individual or their guardian, and the individual retains the right to change a decision at any time.

#### **R414-510-5. HCBS Education - ICF Responsibilities.**

(1)(a) To ensure that EI staff provide transition program education to individuals who reside in ICFs, their legal guardians, and to others the individual may identify to assist in the decision-making process, the ICF administrator shall submit to the department the contact information for each individual on a biannual basis, in July and January of each year.

(b) ICFs shall send updates to the department that include:

- (i) names of each individual who resides at the facility and the individual's known personal contact information, including phone numbers and email addresses;
- (ii) names of individuals, guardians, representatives, family members, and their known contact information including phone numbers, email addresses, and physical addresses.

(c) In between scheduled updates, as ICFs become aware of changes to contact information, ICFs shall communicate the changes in writing directly to the department within ten days of becoming aware of the change.

(2)(a) In accordance with the Utah Medicaid Provider Agreement signed by each ICF, the ICF administrator shall provide to department staff timely access to requested member records.

(b) ICFs shall fulfill written documentation requests they receive from the department within five business days of the request. The department shall report cases of non-compliance to DLBC for investigation.

(3) Within 90 days of ICF employment, ICF direct-care staff shall participate in HCBS general training. The department shall provide the training curriculum and include specialized training for the care of children and youth with intellectual disabilities. An ICF shall provide evidence of employee training records to the department upon request.

(4) The facility administrator and employees shall ensure the rights of individuals are protected and shall:

- (a) provide the means for individuals and guardians to access information about HCBS;
- (b) not discourage an individual from accessing information, making decisions about, learning about, or moving into HCBS; and
- (c) provide necessary support for individuals who decide to move into HCBS.

(5) A facility administrator or employee is considered to have discouraged access to HCBS under Subsection (4)(b) if they seek to prevent member access by:

- (a) limiting member access to information;
- (b) providing false information;
- (c) expressing disapproval to members in the ICF of HCBS;
- (d) seeking to impose individual goals for the individual to meet before seeking HCBS;
- (e) preventing communication with department staff or other outside organizations; or
- (f) interfering with or delaying an individual's move to HCBS.

(6) For allegations of non-compliance with Rule R414-510, the department shall:

- (a) review the allegation with the ICF administrator and seek remedies to address the issue;

- (b) track allegations, and if a pattern of recurrence is detected, require a written plan of correction from the provider; and
- (c) refer cases to DLBC for investigation.

**R414-510-6. HCBS Education - Department Responsibilities.**

(1)(a) Before admission to an ICF, an individual or guardian shall contact EI staff to receive education about, and referral to, HCBS and local resources.

(b) For individuals under 22 years of age, the department shall perform an additional evaluation of services to determine whether HCBS are available to assure informed choice before admission to an ICF.

(c) The DIH director or designee, and the DSPD director or designee, shall authorize in writing ICF admissions of individuals under 22 years of age.

(d) An ICF may not admit an individual under 22 years of age, unless the admission has been authorized as stated in Subsection (1)(a). After admission, the ICF shall keep a copy of the written authorization in the individual's medical record. An individual who admits to an ICF and meets the requirements described in Section R414-510-3, is eligible to participate in the transition program.

(e) Upon completing education and referral with EI staff, an individual who is over 22 years of age and decides to move into an ICF, shall be given a written confirmation verifying the education process occurred before admission.

(f) ICFs may not admit an individual who has not received the required EI staff education and referral. After admission, the ICF shall keep a copy of the written confirmation form in the individual's medical record.

(2)(a) Due to an urgent or emergent need, an individual may admit to an ICF immediately. EI staff shall provide education and assistance with resources after admission.

(b) An ICF shall:

- (i) notify the department of the admission;
- (ii) explain the reason the admission was considered urgent or emergent; and
- (iii) provide contact information for the individual, guardian, or representative.

(c) EI staff shall provide education within 30 days of ICF admission unless an individual's health or other external factors make it necessary to provide education at a later date.

(d) Once EI staff provide education, the department shall provide the ICF with a written confirmation of the education form, and the ICF shall keep the form in the individual's medical record.

**R414-510-7. Categorizing Interest in the Transition Program.**

The department shall inform an individual or guardian that they may express interest in receiving HCBS at any time in writing, or by any other means through which a reasonable person would believe that the individual is interested in living in the community. Interest may be expressed at any time before or after EI staff make direct contact with the individual or guardian, and the individual retains the right to amend the choice at any time. The department designates individual interest into the following categories:

- (1) interest in moving to HCBS;
  - (2) interest in learning more about HCBS;
  - (3) undecided;
  - (4) no interest in learning more about or moving to HCBS;
- and
- (5) unable to determine interest.

**R414-510-8. Formal Decision-Making Process for Individuals Identified as Unable to Determine Interest.**

(1) To support the decision-making process, the department shall train EI staff on best practices and techniques to effectively communicate and best support individuals with intellectual disabilities during interactions, meetings, and interviews. The department shall also train staff on using SDM tools.

(2) EI staff shall meet routinely with an individual or guardian to determine interest in HCBS.

(3) For an individual whose preference has not been determined through routine meetings described in Section R414-510-4, and who does not have a guardian, EI staff shall use the SDM tool. EI staff shall use the SDM tool:

- (a) to help organize and document what is observed when interacting with the person;
- (b) to assist in developing strategies to improve individual access to communication; and
- (c) to better gauge how a person indicates preferences and choice.

(4) Using information obtained from the SDM tool, EI staff shall work closely with the Utah Center for Assistive Technology and others to adapt communication methods to best meet the needs of each person.

(5) EI staff shall ensure American sign language and other language interpretation services are used when needed.

(6) EI staff shall use communication strategies identified through the SDM when engaging with individuals.

(7) If EI staff can determine an individual's preference after using these strategies, they then shall update the individual's interest designation according to the individual's identified preference.

(8)(a) For an individual whom EI staff continues to identify as unable to determine interest, the department shall take the following actions.

(b) For an individual with involved family members or friends, EI staff shall work with family to assist the individual with healthcare decision-making in accordance with Title 75, Chapter 2a, Advance Health Care Directive Act.

(c) For an individual who has family members or friends who are not involved in the individual's life, or if the individual does not have any known family members or friends to assist the individual with healthcare decision-making, EI staff shall refer the case to the Office of Public Guardian (OPG) for review.

**R414-510-9. Referring Undetermined Cases to the Office of Public Guardian (OPG).**

(1) For cases referenced in Section R414-510-8, OPG shall review an individual case to determine whether the case is in accordance with Subsection 75-2a-104(2).

(2) If OPG determines that an individual cannot decide where to receive long-term services and supports, it shall seek to work with family or friends, if known and available, to determine whether they can assist the individual with decision-making in accordance with Section 75-2a-108.

(3) If OPG cannot identify family members or friends for this role, it shall petition the court to obtain the least restrictive guardianship option available that will meet the needs of the individual.

**KEY: Medicaid**

**Date of Last Change: 2023[May 12, 2021]**

# NOTICES OF PROPOSED RULES

Notice of Continuation: September 14, 2021  
 Authorizing, and Implemented or Interpreted Law: ~~26-1-5; 26B-1483-3108; 26B-6-402; Title 75, Chapter 2a~~

## NOTICE OF PROPOSED RULE

**TYPE OF FILING:** Amendment

<b>Rule or Section Number:</b>	<b>R414-511</b>	<b>Filing ID:</b> <b>56116</b>
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## Agency Information

<b>1. Department:</b>	Health and Human Services	
<b>Agency:</b>	Integrated Healthcare	
<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>
R414-511. Medicaid Accountable Care Organization Incentives to Appropriately Use Emergency Room Services
<b>3. Purpose of the new rule or reason for the change:</b>
The purpose of this change is to update and clarify the rule text as needed.
<b>4. Summary of the new rule or change:</b>
This amendment updates and clarifies terms and entities in the text.
It also makes other technical changes.

## 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) Local governments:

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

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

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

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

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

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

There is no impact to other persons or entities as there are only minor changes and technical updates.

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

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

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

### Regulatory Impact Table

Fiscal Cost	FY2024	FY2025	FY2026
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Cost</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
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 fiscal analysis.			
Businesses will see neither costs nor revenue as this amendment only clarifies terms and entities in the text.			

**Citation Information**

<b>6. Provide citations to the statutory authority for the rule. If there is also a federal requirement for the rule, provide a citation to that requirement:</b>		
Section 26B-1-213	Section 26B-3-108	Section 26B-3-204

**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>	12/15/2023

<b>9. This rule change MAY become effective on:</b>	12/22/2023
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>	10/28/2023
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R414. Health and Human Services, Integrated Healthcare~~Health Care Financing, Coverage and Reimbursement Policy~~.

R414-511. Medicaid Accountable Care Organization Incentives to Appropriately Use Emergency Room Services.

**R414-511-1. Introduction and Authority.**

(1) This rule is established under the authority of Section 26B-~~18~~3-~~408~~204.

(2) ~~[The purpose of]~~ This rule ~~[is to]~~ establishes provisions governing Accountable Care Organization (ACO) accountable performance measures for the reduction of non-emergent use of emergency departments by Medicaid beneficiaries.

**R414-511-2. Definitions.**

(1) "Non-emergent medical condition" means a medical condition that does not meet the criteria of an emergency medical condition under 42 U.S.C. 1395dd (e) of the Emergency Medical Treatment and Active Labor Act.

(2) "Non-emergent medical care" means:

~~(a) [M] medical care provided in an emergency room for the treatment of a non-emergent medical condition.~~

(3) "Non-emergent medical care" does not mean:

(a) ~~[M] medically [services necessary] necessary services~~ to conduct a medical screening examination to determine ~~[if] whether~~ the Medicaid ~~[beneficiary] member~~ has an emergent or non-emergent medical condition; and

(b) ~~[M] medical care provided to a Medicaid [beneficiary] member~~ who, using a prudent layperson standard, reasonably believes ~~[he] they are [is]~~ experiencing an ~~[ ] emergency medical condition [ ]~~ as defined by 42 U.S.C. 1395dd(e) of the Emergency Medical Treatment and Active Labor Act.

(4) "Medicaid ~~[Beneficiary] member~~" means a person who enrolls in an ACO in accordance with the ~~[D] department's [ ] Choice of Health Care Delivery Program [ ]~~ ~~(CHCDP)~~ freedom-of-choice waiver under Subsection 1915(b) of the Social Security Act.

**R414-511-3. Performance Measures.**

(1) An ACO that contracts with the ~~[D] department~~ to provide services to Medicaid ~~[beneficiaries] members~~ shall report the following information to the ~~[D] department~~ in accordance with the terms of its contract:

(a) ~~[E] emergency room visits with low acuity CPT codes 99281 or 99282;~~

(b) ~~[A] actions the ACO takes to expand primary care and urgent care for Medicaid [beneficiaries] members who are enrolled in the Accountable Care Plan; and~~

(c) ~~[A] actions the ACO takes to implement emergency room diversion plans that include:~~

(i) ~~[W] weekday, evening, and weekend access to primary care providers and community health centers for Medicaid beneficiaries; and~~

(ii) ~~[O] other innovations for expanding access to primary care [ ]; and~~

~~[(d) iii] [O] other quality of care for Medicaid [beneficiaries] members who are enrolled in an ACO as required by the [D] department.~~

**KEY: Medicaid**

Date of Last Change: 2023~~January 13, 2014~~

Notice of Continuation: September 13, 2023

Authorizing, and Implemented or Interpreted Law: 26B-1-5~~213; 26B-18~~3-~~3~~108; 26B-3~~18~~-~~408~~204

**NOTICE OF PROPOSED RULE**

**TYPE OF FILING:** Amendment

<b>Rule or Section Number:</b>	<b>R414-514</b>	<b>Filing</b>	<b>ID:</b>
		<b>55965</b>	

**Agency Information**

<b>1. Department:</b>	Health and Human Services	
<b>Agency:</b>	Integrated Healthcare	
<b>Building:</b>	Cannon Health Building	
<b>Street address:</b>	288 N 1460 W	
<b>City, state and zip:</b>	Salt Lake City, UT 84116	
<b>Mailing address:</b>	PO Box 143102	
<b>City, state and zip:</b>	Salt Lake City, UT 84114-3102	
<b>Contact persons:</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Craig Devashrayee	801-538-6641	cdevashrayee@utah.gov
Jonah Shaw	385-310-2389	jshaw@utah.gov
<b>Please address questions regarding information on this notice to the persons listed above.</b>		

**General Information**

<b>2. Rule or section catchline:</b>
R414-514. Requirements for Moratorium Exception
<b>3. Purpose of the new rule or reason for the change:</b>
The purpose of this change is to update and clarify the rule text as needed.
<b>4. Summary of the new rule or change:</b>
This amendment updates and clarifies terms and entities in the text.
This change also amends statutory references in this rule to coincide with the Department of Health and Human Services (Department) merger and code recodification, and makes other technical changes.

**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 they neither fund nor provide benefits under the Medicaid program.

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

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

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

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

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

There is no impact to other persons or entities as there are only minor changes and technical updates.

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

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

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

**Regulatory Impact Table**

<b>Fiscal Cost</b>	<b>FY2024</b>	<b>FY2025</b>	<b>FY2026</b>
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Cost</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Fiscal Benefits</b>	<b>FY2024</b>	<b>FY2025</b>	<b>FY2026</b>
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0

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

**H) Department head comments on fiscal impact and approval of regulatory impact analysis:**

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

Businesses will see neither revenue nor costs as this amendment only includes minor changes and technical updates.

**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	Section 26B-3-311
Section 26B-3-115		

**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>	12/15/2023
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<b>9. This rule change MAY become effective on:</b>	12/22/2023
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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>	10/28/2023
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**R414. Health and Human Services, Integrated Healthcare**~~Health Care Financing, Coverage and Reimbursement Policy~~.

**R414-514. Requirements for Moratorium Exception.**

**R414-514-1. Introduction and Authority.**

(1) This rule implements requirements that a Medicaid-certified nursing facility program must meet for certification of additional nursing care facility programs, or for certification of additional beds within an existing nursing care facility program.

(2) This rule is authorized under Sections 26B-3-108~~[26-18-3]~~, 26B-3-115~~[26-18-5]~~, and 26B-3-311~~[26-18-503]~~.

**R414-514-2. Requirements for Additional Nursing Care Facility Programs or Additional Beds Within an Existing Program.**

(1) A Medicaid-certified nursing care facility program ~~[must]~~shall meet the requirements of Section 26B-3-311~~[26-18-503]~~ to acquire additional nursing care facility programs or to acquire additional beds.

(2)(a) Pursuant to Subsection 26B-3-311~~[26-18-503]~~(5), a nursing care facility program ~~[must]~~shall provide ~~[all]~~necessary information on the application for the Utah Medicaid Nursing Facility Moratorium Exception~~[Application]~~.

(b) The ~~[Division of Medicaid and Health Financing]~~Division of Integrated Healthcare (~~[DMHF]~~DIH) shall return the application and provide notice to the requestor if the application or supporting documentation is deficient.

(3) The notice date for the notice under Subsection (2)(b) ~~[shall be]~~is the date the application is sent via email~~[postmark date or other proof of delivery for the application mailed to DMHF]~~. Applications must be emailed to DIH at [qii@utah.gov](mailto:qii@utah.gov).

(4)(a) If ~~[DMHF]~~DIH receives an application described in Subsection (2) from a facility ~~[for the Utah Medicaid Nursing Facility Moratorium Exception]~~in a rural county, and a Medicaid-certified nursing facility program does not meet the quality standards pursuant to Subsection 26B-3-311~~[26-18-503]~~(5)(d)(v), the certified program may provide additional information under Subsection 26B-3-311~~[26-18-503]~~(9)(a)(ii).

(b) Any additional information submitted to ~~[DMHF]~~DIH must be emailed~~[postmarked or have other proof of delivery information]~~ within 14 days of the original notice from ~~[DMHF]~~DIH. ~~[Electronic mail (email) does not meet the notification requirement.]~~

**KEY: Medicaid**

**Date of Last Change:** 2023~~[December 1, 2017]~~

**Notice of Continuation:** June 29, 2022

**Authorizing, and Implemented or Interpreted Law:** 26B-3-108~~[26-18-3]~~; 26B-3-115~~[26-18-503]~~

**NOTICE OF PROPOSED RULE**

**TYPE OF FILING:** New

<b>Rule or Section Number:</b>	<b>R414-526</b>	<b>Filing ID:</b>
		<b>56067</b>

**Agency Information**

<b>1. Department:</b>	Health and Human Services
<b>Agency:</b>	Integrated Healthcare
<b>Building:</b>	Cannon Health Building
<b>Street address:</b>	288 N 1460 W
<b>City, state and zip:</b>	Salt Lake City, UT 84116
<b>Mailing address:</b>	PO Box 143102
<b>City, state and zip:</b>	Salt Lake City, UT 84114-3102

Contact persons:		
Name:	Phone:	Email:
Craig Devashrayee	801-538-6641	cdevashrayee@utah.gov
Jonah Shaw	385-310-2389	jshaw@utah.gov
Jordan Miera	801-538-4171	jmiera@utah.gov
Please address questions regarding information on this notice to the persons listed above.		

### General Information

2. Rule or section catchline:
R414-526. Quality Standards for Inpatient and Outpatient Hospitals
3. Purpose of the new rule or reason for the change:
The purpose of this rule is to incorporate certain factors into the payment rate structure for accountable care organizations, and to establish quality measures and penalties for hospitals that perform inpatient and outpatient services as directed in S.B. 126, passed in the 2023 General Session.
4. Summary of the new rule or change:
This new rule includes quality metrics and standards, requirements for data submission, and specific penalties for non-compliance, to preserve and improve access to quality hospital services.

### 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 expenditures to the hospital provider assessment fund of about \$278,422,600 in fiscal years (FY) 2024 and 2025, are offset by revenues of that same amount.
These estimates are set forth in the fiscal note for S.B. 126 (2023).
B) Local governments:
Local governments will see no impact as they neither fund nor provide hospital services under the Medicaid program.
C) Small businesses ("small business" means a business employing 1-49 persons):

Small businesses will see no impact as they are not subject to the quality measures and penalties set forth in this rule.

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

Hospitals will see revenues generated from the assessment fund of about \$55,197,300 in FY 2024 and \$57,211,300 in FY 2025.

These estimates are set forth in the fiscal note for S.B. 126 (2023).

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

Medicaid members will see no fiscal impact as they are not subject to the quality measures and penalties set forth in this rule.

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

A single Medicaid member will see no fiscal impact as the member is not subject to the quality measures and penalties set forth in 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	\$278,422,600	\$278,422,600	\$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>\$278,422,600</b>	<b>\$278,422,600</b>	<b>\$0</b>
Fiscal Benefits	FY2024	FY2025	FY2026
State Government	\$278,422,600	\$278,422,600	\$0
Local Governments	\$0	\$0	\$0

Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$55,197,300	\$57,211,300	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Benefits</b>	<b>\$333,619,900</b>	<b>\$335,633,900</b>	<b>\$0</b>
<b>Net Fiscal Benefits</b>	<b>\$55,197,300</b>	<b>\$57,211,300</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.

Hospitals will see revenues generated from the hospital provider assessment fund.

**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-3-7	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>	12/15/2023
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<b>9. This rule change MAY become effective on:</b>	12/22/2023
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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>	10/30/2023
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**R414. Health and Human Services, Integrated Healthcare. R414-526. Quality Standards for Inpatient and Outpatient Hospitals.**

**R414-526-1. Introduction and Authority.**

The purpose of this rule is to incorporate certain factors into the payment rate structure for accountable care organizations and to establish quality measures and penalties for hospitals that perform inpatient and outpatient services as directed in Title 26B, Chapter 3, Part 7, Hospital Provider Assessment.

**R414-526-2. Definitions.**

For purposes of this rule, the following definitions apply.

(1) "Improvement margin" means a percentage determined by the department after consulting with hospitals and in accordance with evidence-based guidelines and national benchmarks.

(2) "Rural hospital" means a general acute hospital in a rural setting with the exception of a specialty hospital.

(3) "Specialty hospital" means a specialty hospital in an urban or rural setting as defined by Section 26B-3-701.

(4) "Urban hospital" means a diagnosis-related group (DRG)-reimbursed hospital in an urban setting with the exception of a specialty hospital.

**R414-526-3. Quality Metrics and Standards.**

(1) The department adopts different quality standards for rural and specialty hospitals to address unique needs. The department uses the following categories for hospital quality measures and standards:

(a) urban hospitals;

(b) rural hospitals; and

(c) specialty hospitals.

(2) For each measure, a hospital is required:

(a) to score at or above the national average as identified by the Centers for Medicare and Medicaid Services; or

(b) improve on quality measure performance from the preceding state fiscal year (SFY).

(3) Urban hospitals shall submit quality measures for the Medicaid population that include:

(a) a hospital-wide all-cause unplanned readmission rate within 30 days of discharge, which measures the provision of appropriate transitional care and discharge procedures to reduce the risk of unplanned hospital readmissions;

(b) the proportion of patients who sign in to be evaluated for emergency services, but left without being evaluated by a credentialed provider; and

(c) the ability to provide patients electronic access to timely, accurate, and comprehensive health information through an electronic portal.

(4) Rural hospitals shall submit quality measures for the Medicaid population that include:

(a) a hospital-wide all-cause unplanned readmission rate within 30 days of discharge, which measures the provision of appropriate transitional care and discharge procedures to reduce the risk of unplanned hospital readmissions;

(b) a median time for emergency department (ED) arrival to ED departure for discharged ED patients, which measures the average time patients spend in the ED before being sent home; and

(c) the ability to provide patients electronic access to timely, accurate, and comprehensive health information through an electronic portal.

(5) The department shall work with specialty hospitals to identify their quality measures before July 1, 2024.

(6)(a) The department requires Medicaid-certified hospitals that receive directed payments to submit calculated measures.

(b) These hospitals shall meet targeted standards and improvement goals to receive full direct payments.

**R414-526-4. Data Submission.**

(1) During SFY 2024, each hospital shall engage in necessary activities to prepare for reporting on the quality measures to the department. In addition, each hospital shall submit a quarterly



## NOTICES OF PROPOSED RULES

report to the department describing the activities and progress toward reporting capability on the quality measures within ten business days of the end of each quarter for the preceding quarter.

(2) Each hospital shall submit their calculated quality measure data to the department within ten business days of the end of each subsequent SFY.

### **R414-526-5. Penalties.**

(1) For each quality measure, the hospital shall meet a performance standard or be subject to penalties.

(2) Penalty levels for urban and rural hospitals are as follows:

(a) an urban or rural hospital that performs at or above a national benchmark for quality measures, or improves over its preceding SFY quality measure scores by an improvement margin defined for each measure, receives no penalty;

(b) an urban or rural hospital that does not perform at or above a national benchmark or does not improve over its preceding SFY quality measure score by an improvement margin defined for the measure, on only one of three measures, is subject to a Level 1 penalty;

(c) an urban or rural hospital that does not perform at or above a national benchmark or does not improve over its preceding SFY quality measure score by an improvement margin defined for each measure, on two of three measures, is subject to a Level 2 penalty; or

(d) an urban or rural hospital that does not perform at or above a national benchmark or does not improve over its preceding SFY quality measure score by an improvement margin defined for each measure, on all three measures, is subject to a Level 3 penalty.

(3) For SFY 2024 payments, the department does not apply penalties to urban and rural hospitals.

(4) For SFY 2025 payments and beyond, the department assesses penalties to urban and rural hospitals by percentage as follows:

(a) Level 1 penalty equals 1% of the SFY directed payment amounts;

(b) Level 2 penalty equals 2% of the SFY directed payment amounts; and

(c) Level 3 penalty equals 4% of the SFY directed payment amounts.

(5) A hospital that does not timely submit its data to the department within ten business days of the end of the SFY shall receive a Level 3 penalty.

(6)(a) After calculating the interim-final directed payment for the SFY, the appropriate penalty reduces the interim-final directed payment and constitutes the final directed payment for the SFY.

(i) If the resulting final directed payment is a positive value, the accountable care organization (ACO) shall pay the hospital within 30 calendar days of notification from the department.

(ii) If the resulting final directed payment is a negative value, that amount is payable by the hospital to the applicable ACO within 30 calendar days of notification from the department.

(c) If the hospital fails to pay the ACO within 30 days, the department may suspend future directed payments to the hospital until the ACO receives the full payment amount.

(7) In accordance with Subsection (6), the ACO shall pay the department the penalty amount it receives from the hospital within 30 calendar days of receipt.

(8) If the ACO fails to pay the department within 30 days, the department may suspend payments to the ACO until the department receives the full payment amount.

(9) For SFY 2024 and SFY 2025, specialty hospitals are penalty-exempt.

### **KEY: Medicaid**

**Date of Last Change: 2023**

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

### **NOTICE OF PROPOSED RULE**

**TYPE OF FILING:** Amendment

**Rule or Section Number:**

**R432-107**

**Filing ID:**  
**55959**

### **Agency Information**

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

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

### **General Information**

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

R432-107. Specialty Hospital-Cancer Treatment

#### **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 to coincide with the Department of Health and Human Services (Department) code recodification from S.B. 38 from the 2023 General Session; 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.

Additionally, this amendment updates titles and citations due to the recodification of the Department's statute and recent rule filings.

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

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.

There is no fiscal impact to state government resulting from the changes in this rule content.

**B) Local governments:**

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.

These facilities are regulated by the Department and not local governments. There will be no change in local business licensing or any other items with which local government is involved.

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

Any changes to the provisions of this rule are technical in nature and are to align the rule with the Rulewriting Manual for Utah and Department standards; these updates will not result in a fiscal impact to small businesses.

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

Any changes to the provisions of this rule are technical in nature and are to align the rule with the Rulewriting Manual for Utah and Department standards; these updates will not result in a fiscal impact to non-small businesses.

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

There will be no fiscal impact on any other persons as a result of this proposed amendment. This rule amendment does not introduce any new processes that will incur a cost for affected persons.

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

This rule amendment does not introduce any new processes that will incur a cost 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**

<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-2-202

**Public Notice Information**

**8. The public may submit written or oral comments to the agency identified in box 1.** (The public may also request a hearing by submitting a written request to the agency. See Section 63G-3-302 and Rule R15-1 for more information.)



<b>A) Comments will be accepted until:</b>	12/15/2023
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<b>9. This rule change MAY become effective on:</b>	12/22/2023
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>	10/22/2023
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**R432. Health, ~~Family Health and Preparedness,~~ and Human Services, Health Care Facility Licensing.****R432-107. Specialty Hospital -- Cancer Treatment.****R432-107-1. Legal Authority.**

This rule is authorized by Section 26B-2-202, [adopted pursuant to Title 26, Chapter 21 Health Care Facility Licensing and Inspection Act.]

**R432-107-2. Purpose.**

The purpose of this rule is to promote ~~the~~ public health and welfare through the establishment and enforcement of licensure standards. This rule sets standards for the operation and maintenance of a Cancer Specialty Hospital.

**R432-107-3. Time for Compliance.**

~~[A] Each~~ Cancer Specialty Hospital[s] shall comply with this ~~[section] rule.~~

**R432-107-4. Definitions.**

(1) ~~[Refer to Common D]~~ The definitions in ~~[Rule] Section R432-1-3,~~ General Health Care Facility Rules additionally apply.

~~[(2) Special definitions:]~~

~~[(a)]~~ "Cancer Specialty Hospital" means a specialty hospital that provides evaluation, diagnosis, and treatment of individuals with a primary diagnosis of neoplasm.

~~[(b)]~~ "Neoplasm" means a new and abnormal growth of tissue in some part of the body.

~~[(3)]~~ ~~[See definition of "s"]~~ Specialty ~~[h] Hospital~~ ~~[-]~~ is defined in Section R432-101-4~~(2)~~.

**R432-107-5. Licensure.**

A ~~[C] cancer~~ ~~[S] specialty~~ ~~[H] hospital~~ provider shall obtain a license as outlined in Rule R432-2, General Licensing Provisions.

**R432-107-6. General Construction Rules.**

~~[Refer to]~~ Rule R432-15 Cancer Specialty Hospital Construction additionally applies.

**R432-107-7. Organization and Staff.**

The ~~[following services and policies]~~ licensee shall ensure services and policies comply with Rule R432-100 General Hospital Standards:

- (1) Governing Body, R432-100-~~[5]~~6~~[-]~~;
- (2) Administrator, R432-100-~~[6]~~7~~[-]~~;
- (3) Medical and Professional Staff, R432-100-~~[7]~~8~~[-]~~;
- (4) Personnel Management Service, R432-100-~~[8]~~9~~[-]~~;

- (5) Quality Improvement Plan, R432-100-~~[9]~~10~~[-]~~;
- (6) Infection Control, R432-100-1~~[0]~~1~~[-]~~;
- (7) Patient Rights, R432-100-1~~[4]~~2~~[-]~~;
- (8) Patient Designated Caregiver, R432-100-1~~[2]~~3~~[-]~~; and
- (9) Nursing Care Services, R432-100-1~~[3]~~4.

**R432-107-8. Admission Policy.**

A Cancer Specialty Hospital is limited to serving patients that meet the following criteria:

- (1) The licensee shall ensure ~~[E] each patient [shall have] has~~ a primary admitting diagnosis that requires evaluation, diagnosis, and treatment of a neoplasm, as defined in this rule, ~~[- and;]~~
- (2) The licensee may serve a patient if ~~t~~ ~~[F]~~ there is a reasonable expectation that the patient's needs can be met by the services provided by the ~~[C] cancer~~ ~~[S] specialty~~ ~~[H] hospital~~.

**R432-107-9. Clinical Services.**

~~(1) The licensee shall comply with [following services shall comply with Rule R432-100 General Hospital Standards:]~~

~~[(4)-] Surgical Services, Subsections:~~

~~(a) R432-100-1[5]6(1)(a) through [R432-100-15(1)(d)](c); and~~

~~(b) R432-100-1[5]6(1)(f)g through R432-100-1[5]6(4).~~

~~(2) The licensee shall comply with the following sections of Rule R432-100: [Rehabilitation Therapy Services, R432-100-21.]~~

~~(a) Rehabilitation Therapy Services, R432-100-22;~~

~~[(3)b] Outpatient Services, R432-100-~~[29]~~30; and[-]~~

~~[(4)c] Pediatric Services if provided, R432-100-~~[49]~~20.~~

**R432-107-10. Emergency Services.**

(1) Each ~~[C] cancer~~ ~~[S] specialty~~ ~~[H] hospital~~ licensee shall ~~[have the ability] be able~~ to provide emergency first aid treatment to patients, staff, visitors, and to a person[s] who may be unaware of or unable to immediately reach services in other facilities.

~~(2) The licensee shall provide the following for emergency services: [Provisions shall include a treatment room, storage for supplies and equipment, provisions for reception and control of patients, convenient patient toilet room, and communication access to a poison control center.]~~

~~(a) a treatment room;~~

~~(b) storage for supplies and equipment;~~

~~(c) an area for reception and control of patients;~~

~~(d) a convenient patient toilet room; and~~

~~(e) communication access to a poison control center.~~

~~(3) [Additional Emergency Services.]~~

~~A] The licensee shall ensure that any additional or expanded emergency services offered [shall] comply with the [provisions of the appropriate] applicable subsections of R432-100-1[7]8.~~

**R432-107-11. Complementary Services.**

The licensee shall ensure services comply with the following sections of Rule R432-100 General Hospital Standards: ~~[following services shall comply with Rule R432-100 General Hospital Standards:]~~

- (1) Anesthesia Services, R432-100-1~~[6-]~~7;
- (2) Respiratory Care Services, R432-100-2~~[0-]~~1;
- (3) Radiology Services, R432-100-2~~[2-]~~3;
- (4) Laboratory and Pathology Services, R432-100-2~~[3-]~~4;
- (5) Blood Services, R432-100-2~~[4-]~~5;
- (6) Pharmacy Services, R432-100-2~~[5-]~~6; and
- (7) Social Services, R432-100-2~~[6-]~~7.

**R432-107-12. Ancillary Services.**

The licensee shall ensure services comply with the following sections of Rule R432-100, General Hospital Standards: ~~The following services shall comply with Rule R432-100 General Hospital Standards:~~

- (1) Dietary Service, R432-100-3[2-]3;
- (2) Tele~~medicine~~health Services if provided, R432-100-3[3-]4;
- (3) Medical Records, R432-100-3[4-]5;
- (4) Central Supply Services, R432-100-3[5-]6;
- (5) Laundry Service, R432-100-3[6-]7;
- (6) Housekeeping Services, R432-100-3[7-]8;
- (7) Maintenance Services, R432-100-3[8-]9; and
- (8) Emergency Operations Plan, R432-100-[39]40.

**R432-107-13. Penalties.**

Any person who violates any provision of this rule may be subject to the penalties enumerated in ~~[26-21-11]Sections 26B-2-208, 26B-2-215, and Rule R380-600.~~ ~~and R432-3-6-]~~

**KEY: health care facilities**

**Date of Last Change:** 2023~~January 24, 2020~~

**Authorizing, and Implemented or Interpreted Law:** ~~[26-21-2-1; 26-21-5; 26-21-6; 26-21-20]~~26B-2-202

**NOTICE OF PROPOSED RULE**

**TYPE OF FILING:** Amendment

<b>Rule or Section Number:</b>	<b>R432-200</b>	<b>Filing ID:</b> <b>56018</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	
<b>Contact persons:</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Janice Weinman	385-321-5586	jweinman@utah.gov
Kristi Grimes	385-214-9187	kristigrimes@utah.gov
<b>Please address questions regarding information on this notice to the persons listed above.</b>		

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

R432-200. Small Health Care Facility - Four to Sixteen Beds

**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.

Additionally, this amendment updates citations to statute following the recodification of the Department of Health and Human Services' (Department) statute.

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

This amendment updates citations and includes specific language consistent with the Rulewriting Manual for Utah and removes incorporations that will be better represented in agency policies as recommended best practices.

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

This amendment updates citations and includes specific language consistent with the Rulewriting Manual for Utah and removes incorporations that will be better represented in agency policies as recommended best practices.

These changes are to better reflect current practices, are technical in nature, and will not result in any fiscal cost or savings.

**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 Small Health Care Facility Standards are regulated by the Department and not local governments. There will be no change in local business licensing or any other items with which local 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):**

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.

## NOTICES OF PROPOSED RULES

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):

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.

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**):

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

There are no substantive changes being made regarding the fiscal impacts 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?):

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.

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>
<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>	12/15/2023
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<b>9. This rule change MAY become effective on:</b>	12/22/2023
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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>	10/22/2023
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**R432. Health and Human Services, ~~[Family Health and Preparedness]~~ Health Care Facility Licensing.**

**R432-200. Small Health Care Facility - Four to Sixteen Beds.**

**R432-200-1. ~~[Legal]~~ Authority.**

~~[This rule is adopted pursuant to Title 26, Chapter 21.]~~ This rule is authorized by Section 26B-2-202.

**R432-200-2. Purpose.**

This rule allows services at varying levels of health care intensity to be provided in structures that depart from the traditional institutional setting. Health care may be delivered in a less restrictive, residential, or home-like setting. Small health care facilities are categorized as Level I, Level II, Level III, or Level IV as defined in this rule according to the resident's ability or capability for self-preservation~~[.]~~ including the ability to exit a building unassisted in an emergency.

**R432-200-3. Compliance.**

~~[A]~~ Each small health care facility~~[ies]~~ provider shall ~~[be in full compliance]~~ fully comply with this rule at the time of licensure. ~~[A]~~ Each Medicare and Medicaid certified ~~[facilities must]~~ provider shall additionally comply with the regulations of the Social Security Act, Title XVIII, Health Insurance for the Aged and Disabled, and Title XIX, Grants to States for Medical Assistance Programs~~[.]~~ regulations~~[.]~~

**R432-200-4. Definitions.**

(1) ~~[See e]~~ Common definitions in Section R432-1-3 additionally apply to a small health care facility.

(2) "Levels of Care" means the range of programs and the physical facilities where they may be offered~~[.]~~ ~~[-according to these rules.]~~

(3) "Level I" ~~[refers to]~~ means a skilled nursing care facility that provides at least 24-hour care and licensed nursing services to ~~[persons-]~~ individuals who are non-ambulatory. ~~[Level I facilities shall conform to the requirements in Rule R432-150. Level I facilities may include:~~

~~(a) a Skilled Nursing Facility shall maintain and operate 24-hour skilled nursing services for the care and treatment of chronically ill or convalescent residents whose primary need is skilled nursing care or related services on an extended basis; and~~

~~(b) an Intermediate Care Facility shall provide 24-hour care to residents who need licensed nursing supervision and supportive care, but who do not require continuous nursing care.]~~

(4) "Level II" ~~[refers to]~~ means a facility that provides 24-hour care and licensed therapy or nursing care to 4-16 ~~[persons]~~ individuals who are non-ambulatory~~[.]~~ ~~[-Level II facilities may include:~~

~~(a) a Health Care Nursery shall provide 24-hour care to children under six years of age who do not require continuous nursing care. The facility shall provide the following:~~

~~(i) 24-hour care;~~

~~(ii) medical coverage;~~

~~(iii) dietary services; and~~

~~(iv) licensed therapies, as required;~~

~~(b) an Intermediate Care Facility for Individuals with Intellectual Disabilities shall provide 24-hour supervisory care to individuals with intellectual or developmental disabilities, who need supervision in a coordinated and integrated program of health, habilitative and supportive services, but who do not require continuous nursing care. A facility may be categorized as a Level IV facility if no resident receives therapy that utilizes chemical or~~

physical restraints that render the resident incapable of self-preservation in an emergency. The facility shall provide the following:

~~(i) 24-hour care;~~

~~(ii) medical coverage;~~

~~(iii) dietary services; and~~

~~(iv) licensed therapies, as required;~~

~~(c) a Home for the Aging shall provide group housing, supervision, social support, personal care, therapy and some nursing care to elderly persons who do not need intermediate or skilled nursing care. The facility shall provide at least the following:~~

~~(i) 24-hour care;~~

~~(ii) medical coverage;~~

~~(iii) dietary services for at least three meals a day; and~~

~~(iv) licensed therapies, as required; and~~

~~(d) a Social Rehabilitation Facility shall provide group housing, personal care, social rehabilitation and treatment for alcoholism, drug abuse or mental problems to persons who do not require intermediate or skilled nursing care. If each resident in the program is certified by a physician or Qualified Intellectual Disabilities Professional, as ambulatory and in an alcohol or drug abuse rehabilitation program designed to lead to independent living, then the facility may be categorized as a Level IV facility. The facility shall provide the following:~~

~~(i) 24-hour care;~~

~~(ii) medical coverage;~~

~~(iii) dietary services for three meals a day; and~~

~~(iv) licensed therapies, as required.]~~

(5) "Level III" ~~[refers to]~~ means a facility that provides 24-hour staff coverage and licensed therapy to 4-16 ~~[persons-]~~ individuals who are ambulatory and are under chemical or physical restraints~~[.]~~ Level III facilities may include:

~~(a) a Mental Health Facility shall provide 24-hour care to persons with mental illness who require medical and psychiatric supervision, including diagnosis and treatment. The facility shall provide at least the following:~~

~~(i) 24-hour care;~~

~~(ii) medical and psychiatric supervision;~~

~~(iii) dietary services; and~~

~~(iv) licensed therapies, as required; and~~

~~(b) a Youth Correction Center shall provide 24-hour supervision, care, training, treatment and therapy to persons who by court order may be restricted in their daily activities, and under security control that includes lock-up. The facility shall provide at least the following:~~

~~(i) 24-hour care;~~

~~(ii) medical and psychiatric supervision;~~

~~(iii) dietary services; and~~

~~(iv) licensed therapies, as required.]~~

(6) "Level IV" ~~[refers to]~~ means a facility that provides specialized program and support care to 4-16 ~~[persons-]~~ individuals who are ambulatory and require programs of care and more supervision than provided in a residential care facility~~[.]~~ ~~[-Level IV facilities may include:~~

~~(a) an Intermediate Care Facility for Individuals with Intellectual Disabilities. Individuals with intellectual disabilities in a Level IV facility must be ambulatory to qualify for Medicaid or Medicare reimbursement and comply with;~~

~~(b) Mental Health Facility, Subsection R432-200-4(5)(a);~~

~~(c) Home for the Aging, Subsection R432-200-4(4)(c); and~~

~~(d) Social Rehabilitation Facility, Subsection R432-200-4(4)(d).]~~

(7) "Qualified Intellectual Disabilities Professional or QIDP" means an individual that has a bachelor's degree in human services or a related field of study, plus at least one year of experience working with people diagnosed as developmentally disabled. A registered nurse or physician also qualifies to serve as a QIDP.

#### **R432-200-5. License Required.**

~~[See]~~In accordance with Section 26B-2-206~~[-R432-2-]~~, each Small Health Care Facility provider with 4-16 beds shall obtain a license.

#### **R432-200-6. Construction and Physical Environment.**

~~[(1) See]~~A small health care facility licensee shall comply with the construction and physical environment requirements in Rule R432-12, Small Health Care Facility Construction rules.

#### **R432-200-7. Levels of Care.**

(1) A Level I facility licensee:  
(a) shall comply with the requirements in Rule R432-150;  
and

(b) may include:

(i) a skilled nursing facility that maintains and operates 24-hour skilled nursing services for the care and treatment of chronically ill or convalescent residents whose primary need is skilled nursing care or related services on an extended basis; or

(ii) an intermediate care facility that provides 24-hour care to residents who need licensed nursing supervision and supportive care, but who do not require continuous nursing care.

(2) A Level II facility licensee may include:

(a) a health care nursery that provides 24-hour care to children under six years of age who do not require continuous nursing care and additionally provides the following:

(i) 24-hour care;

(ii) medical coverage;

(iii) dietary services; and

(iv) licensed therapies, as required;

(b) an intermediate care facility for individuals with intellectual disabilities that provides 24-hour supervisory care to individuals with intellectual or developmental disabilities, who need supervision in a coordinated and integrated program of health, habilitative, and supportive services, but who do not require continuous nursing care that shall additionally provide the following:

(i) 24-hour care;

(ii) medical coverage;

(iii) dietary services; and

(iv) licensed therapies, as required;

(c) an intermediate care facility may be categorized as a Level IV facility if no resident receives therapy that utilizes chemical or physical restraints that make the resident incapable of self-preservation in an emergency;

(d) a home for the aging that provides group housing, supervision, social support, personal care, therapy and nursing care to elderly individuals who do not need intermediate or skilled nursing care that shall additionally provide the following:

(i) 24-hour care;

(ii) medical coverage;

(iii) dietary services for at least three meals a day; and

(iv) licensed therapies, as required;

(e) a social rehabilitation facility that provides group housing, personal care, social rehabilitation and treatment for alcoholism, drug abuse, or mental health to individuals who do not

require intermediate or skilled nursing care that shall additionally provide the following:

(i) 24-hour care;

(ii) medical coverage;

(iii) dietary services for three meals a day; and

(iv) licensed therapies, as required; and

(f) if each resident in the program is certified by a physician or qualified intellectual disabilities professional, as ambulatory and in an alcohol or drug abuse rehabilitation program designed to lead to independent living, then the facility may be categorized as a Level IV facility.

(3) A Level III facility may include:

(a) a mental health facility that provides 24-hour care to individuals with mental illness who require medical and psychiatric supervision, including diagnosis and treatment that shall additionally provide at least the following:

(i) 24-hour care;

(ii) medical and psychiatric supervision;

(iii) dietary services; and

(iv) licensed therapies, as required; and

(b) a youth correction center shall provide 24-hour supervision, care, training, treatment and therapy to individuals who by court order may be restricted in their daily activities, and under security control that includes lock-up that shall additionally provide the following:

(i) 24-hour care;

(ii) medical and psychiatric supervision;

(iii) dietary services; and

(iv) licensed therapies, as required.

(4)(a) A Level IV facility may include an intermediate care facility for individuals with intellectual disabilities.

(b) Individuals with intellectual disabilities in a Level IV facility shall be ambulatory to qualify for Medicaid or Medicare reimbursement and shall comply with the following:

(i) Mental Health Facility, Subsection R432-200-7(3)(a);

(ii) Home for the Aging, Subsection R432-200-7(2)(d);

and

(iii) Social Rehabilitation Facility, Subsection R432-200-7(2)(e).

#### **R432-200-[7]8. Administration and Organization.**

~~[(1) Each facility shall be licensed to operate.]~~

~~[(2)]~~(1) The licensee shall ~~[be responsible for compliance]~~comply with laws and licensure requirements and for the organization, management, operation and control of the facility~~[- Responsibilities shall]~~ to include the following:

(a) ~~[comply with]~~compliance with any federal, state and local laws, rules and regulations;

(b) ~~[adopt]~~develop and implement by-laws, policies and procedures relative to the general operation of the facility, including the health care of the residents and the protection of their rights;

(c) ~~[adopt]~~develop a policy that states the facility will not discriminate on the basis of race, color, sex, religion, ancestry or national origin in accordance with Section 13-7-1;

(d) appoint, in writing, a qualified administrator to be responsible for the implementation of facility by-laws and policies and procedures, and for the overall management and daily operation of the facility;

(e) secure and update contracts for professional and other services;

(f) receive and respond to inspection reports issued by the ~~[D]~~department; and

(g) provide the department with written notification of a change in administrator at least 30 days before the administrator change and no more than 5 days after the administrator change. ~~notify the Department, in writing, at least 30 days prior to, but not later than five days after, a change of administrator.~~

~~[(3) The administrator shall oversee the daily operation of the facility.]~~

~~[(a)2](a)~~ The administrator shall ~~[be professionally licensed by]~~ maintain a current professional license in good standing issued by the Utah Department of Commerce in a health care field.

~~[(b)b] [A]~~ The administrator shall post a copy of the administrator's license or credentials ~~[shall be posted]~~ with the facility license in a place readily visible to the public.

~~[(e)c]~~ The administrator shall act as the administrator of no more than four small health care facilities at any one time. The maximum number of beds is limited to 60.

~~[(d)d]~~ The administrator shall have ~~[sufficient]~~ enough freedom from other responsibilities ~~[and shall]~~ to be on the premises of the facility ~~[a sufficient number of]~~ enough hours in the business day and as necessary to properly manage the facility and respond to requests by the ~~[D]~~ department.

~~[(e)e]~~ The administrator shall designate, in writing, the name and title of the person who shall act as administrator in their absence. ~~[This person shall have sufficient power, authority and freedom to act in the best interests of resident 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.]~~

~~[(f)]~~ The administrator's designee shall have enough power, authority and freedom to act in the best interests of resident safety and well-being.

~~[(g)]~~ The licensee may not permit an unlicensed de facto administrator to supplant the designated, licensed administrator.

~~[(4)3]~~ The administrator shall: ~~[have the following responsibilities:]~~

(a) complete, submit and file records and reports required by the ~~[D]~~ department;

(b) act as a liaison between the licensee and other staff of the facility, and respond to recommendations of the quality assurance committee;

(c) ~~[assure]~~ ensure that employees are oriented to their job functions and receive appropriate in-service training;

(d) implement policies and procedures for the operation of the facility;

(e) hire and maintain the required number of staff as specified in ~~[these rules]~~ this rule to meet the needs of residents;

(f) maintain facility staffing records for 12 months;

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

(h) verify required licenses and permits of staff and consultants at the time of hire and effective date of contract; and

(i) review incident and accident reports and take appropriate action.

~~[(5)4]~~ The administrator of each facility shall retain a licensed physician to serve as medical director or advisory physician on a consulting basis according to resident and facility needs.

~~[(6)5]~~ The medical director or advisory physician shall: ~~[have responsibility for the following:]~~

(a) develop written resident[-] care policies and procedures including the delineation of responsibilities of attending physicians;

(b) review resident[-] care policies and procedures annually with the administrator;

(c) serve as liaison between the resident's physician and the administrator;

(d) serve as a member of the quality assurance committee;

(e) review incident and accident reports at the request of the administrator to identify health hazards to residents and employees; and

(f) act as consultant to the health services supervisor in matters relating to resident[-] care policies.

~~[(7)6](a) [~~  
~~-----]~~ The administrator shall employ qualified personnel who are able and competent to perform their respective duties, services and functions.

~~[(a)b]~~ The administrator shall develop job descriptions including: ~~[job title, job summary, responsibilities, qualifications, required skills and licenses, and physical requirements for each position or employee:]~~

~~\_\_\_\_\_ (i) job title;~~

~~\_\_\_\_\_ (ii) job summary;~~

~~\_\_\_\_\_ (iii) responsibilities;~~

~~\_\_\_\_\_ (iv) qualifications, required skills and licenses; and~~

~~\_\_\_\_\_ (v) physical requirements for each position or employee.~~

~~[(b)c]~~ The administrator shall conduct and document periodic employee performance evaluations.

~~[(e)d]~~ The administrator shall ensure that personnel have access to the facility's policies and procedures manuals, resident[-] care policies, therapeutic manuals and other information necessary to effectively perform their duties and carry out their responsibilities.

~~[(8)7]~~ The ~~[facility]~~ administrator shall establish a policy and procedure for the health screening of facility personnel. ~~[to comply with Subsection R432-150-10(4).]~~

~~[(9)8]~~ The administrator shall ensure that ~~d[D]~~ dietary staff and ~~[other]~~ staff who handle food ~~[shall]~~ obtain and maintain a ~~[F]~~ food ~~[H]~~ handler's ~~[P]~~ permit from the local health department.

~~[(10)9]~~ The ~~[facility]~~ licensee shall provide documented in-service training for employees. Annual training shall address [F]he following topics ~~[shall be addressed annually]:~~

(a) fire prevention;

(b) accident prevention and safety procedures including instruction in the following:

(i) body mechanics for employees required to lift, turn, position or transfer residents;

(ii) proper safety precautions when floors are wet or are being cleaned; and

(iii) safety precautions and procedures for heat lamps, hot water bottles, bathing and showering temperatures;

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

(d) prevention and control of infections as outlined in ~~[Section] Rule R432-150[-25];~~

(e) confidentiality of resident information;

(f) resident rights;

(g) behavior management and proper use and documentation of restraints;

(h) oral hygiene and first aid;

(i) training in the principles of ~~[C]~~ cardiopulmonary ~~[R]~~ resuscitation for licensed nursing ~~[personnel]~~ staff and others as appropriate;

(j) training in habilitative care; and

(k) reporting abuse, neglect and exploitation.

~~[(14)0]~~ Intermediate Care Facilities for Individuals with Intellectual Disabilities shall ensure that employees receive specialized training regarding the care of children and youth with

intellectual disabilities~~[-]~~ when there are individuals under 22 years of age in the facility.

#### **R432-200-~~[8]~~9. Smoking Policies.**

The licensee shall ensure that s~~[S]~~ smoking policies ~~[shall]~~ comply with ~~[Title 26, Chapter 38]~~Section 26B-7-503 the, ~~["Utah Indoor Clean Air Act",]~~ and ~~[Section 31-4.4 of the 1991 Life Safety Code.]~~Section R432-4-8.

#### **R432-200-~~[9]~~10. Contracts and Agreements.**

~~[(1) Contracts.]~~

~~[(a)]~~(a) The licensee shall secure and update contracts for required professional and other services not provided directly by the facility.

(b) The licensee shall ensure that a c[C]ontract[s shall] includes:

- (i) ~~[F]~~the effective and expiration dates of the contract;
- (ii) ~~[A]~~a description of goods or services provided by the contractor to the facility; and
- (iii) ~~[A]~~a statement that the contractor will conform to the standards required by Utah law or rules.

~~[(e)]~~c The licensee shall make the contract ~~[shall be]~~ available for review by the ~~[D]~~department.

~~[(2) Transfer Agreements.]~~

~~[(a)]~~2(a) The licensee shall maintain~~[-]~~ a written transfer agreement with one or more hospitals, ~~[f]or~~ nearby health facilities~~[-]~~ to facilitate the transfer of residents and essential resident information.

(b) The licensee shall ensure that a transfer agreement [shall] includes:~~[-provisions for:]~~

- (i) ~~[C]~~criteria for transfer;
- (ii) ~~[A]~~appropriate methods of transfer;
- (iii) ~~[F]~~transfer of information needed for proper care and treatment of the individual;~~[-being transferred:]~~
- (iv) ~~[S]~~security and accountability of the personal property of the individual being transferred; and
- (v) ~~[P]~~proper notification of the hospital and next of kin or responsible person before transfer.

#### **R432-200-1~~[0]~~1. Quality Assurance.**

(1) The licensee shall ensure that:~~[-administrator shall monitor the quality of services offered by the facility through the formation of a committee that addresses infection control, pharmacy, therapy, resident care, and safety, as applicable.]~~

~~[(2) The committee shall include the administrator, consulting physician or medical director, health services supervisor, and consulting pharmacist. Special program directors and maintenance and housekeeping personnel shall serve as necessary.]~~

~~[(3) The committee shall meet quarterly and keep minutes of the proceedings.]~~

~~[(4) Infection Control Requirements.]~~

~~See R432-150-11.]~~

(a) the administrator monitors the quality of services offered through the formation of a committee to address infection control, pharmacy, therapy, resident care, and safety as applicable;

(b) the committee includes the administrator, consulting physician or medical director, health services supervisor and consulting pharmacist with special program directors, maintenance and housekeeping staff serving as needed;

(c) the committee meets quarterly and keeps minutes of the meeting; and

(d) the infection control services are compliant with Section R432-150-11.

~~[(5) Pharmacy Requirements.]~~

(2) Based on the pharmacy services offered by the licensee, the committee shall:

- (a) ~~[M]~~monitor the pharmaceutical services in the facility;
- (b) ~~[R]~~recommend changes to improve pharmaceutical services;

(c) ~~[E]~~evaluate medication usage; and

(d) ~~[D]~~develop and review pharmacy policies and procedures annually, and recommend changes to the administrator and licensee.

~~[(6) Resident Care Requirements.]~~

(3) Based on the resident care services offered by the licensee, the committee shall address the following:

(a) ~~[R]~~review, at least annually, the facility's resident care policies including rehabilitative and habilitative programs, as appropriate~~[-]~~;

(b) ~~[M]~~make recommendations to the medical director and advisory physician as appropriate; and

(c) ~~[R]~~review recommendations from other facility committees to improve resident care.

~~[(7) Safety Requirements.]~~

(4) Based on the services offered by the licensee, the licensee shall ensure the committee:~~[-shall address the following:]~~

(a) ~~[R]~~reviews ~~[all]~~each incident and accident reports and recommends changes to the administrator to prevent or reduce their reoccurrence;

(b) ~~[R]~~reviews facility safety policies and procedures, at least annually, and makes recommendations; and

(c) ~~[E]~~establishes a procedure to inspect the facility periodically for hazards~~[-]~~, and requires that each~~[-A]~~ inspection report ~~[shall be]~~is filed with the ~~[C]~~committee.

#### **R432-200-1~~[4]~~2. Emergency and Disaster.**

(1) ~~[Facilities have-]~~The licensee shall ~~[the responsibility to assure]~~ensure the safety and well-being of ~~[their-]~~residents in the event of an emergency or disaster. An emergency or disaster may include utility interruption, explosion, fire, earthquake, bomb threat, flood, windstorm, or epidemic.

~~[(2) Policies and Procedures.]~~

~~[(a)]~~2 The licensee and the administrator shall be responsible for the development of a plan, coordinated with state and local emergency or disaster authorities, to respond to emergencies and disasters and shall~~[-]~~:

~~[(b)]~~a ~~[The-]~~distribute the written plan ~~[shall be distributed]~~ to ~~[all]~~each facility staff to ~~[assure]~~ensure prompt and efficient implementation~~[-]~~;

~~[(e)]~~b ~~[The-]~~review and update the plan ~~[shall be reviewed and updated]~~ at least annually to conform with local emergency plans; and~~[-]~~, at least annually, by the administrator and the licensee~~[-]~~.

~~[(d)]~~c ~~[The-]~~make the plan ~~[shall be]~~available for review by the ~~[D]~~department.

(3)(a) The licensee shall ensure that s[S]taff and residents [shall-]receive education, training, and drills to respond in an emergency.

~~[(a)]~~b The licensee shall document d[D]rills and training, [shall be documented-]and comply with applicable laws and regulations.

~~[(b)]~~c The licensee shall post the name of the person in charge and names and telephone numbers of emergency medical



personnel, agencies, and emergency transport systems.~~[-shall be posted.]~~

~~[(4) Emergency Procedures.]~~

~~(4) The licensee shall ensure that [facility's-]emergency response procedures [shall]address[ the following]:~~

~~(a) [E]vacuation of occupants to a safe place within the facility or to another location;~~

~~(b) [D]elivery of essential care and services to facility occupants by alternate means;~~

~~(c) [D]when housing additional individuals in the facility during and emergency, delivery of essential care and services[when additional persons are housed in the facility during an emergency];~~

~~(d) [D]elivery of essential care and services to facility occupants when staff is reduced by an emergency;~~

~~(e) [M]aintenance of safe ambient air temperatures within the facility;~~

~~[(i)f] [E]mergency heating plans [must]shall have the approval of the local fire department[-]; and~~

~~[(ii)g] actions for the person in charge to immediately take when the[A]n ambient air temperature [of]reaches 58 degrees Fahrenheit or [f]14 degrees Celsius[)] or less, as these temperatures constitute[s] an imminent danger to the health and safety of the residents in the facility.~~[-The person in charge shall take immediate and appropriate action in the best interests of the resident.]~~~~

~~[(5) Emergency Plan.]~~

~~[(a)5] The [facility's-]licensee shall ensure that the emergency plan [shall]delineates:~~

~~[(i)a] [F]the person [or persons-]with decision-making authority for fiscal, medical, and personnel management;~~

~~[(ii)b] [O]n-hand personnel, equipment, and supplies and how to acquire additional help, supplies, and equipment after an emergency or disaster;~~

~~[(iii)c] [A]ssignment of personnel to specific tasks during an emergency;~~

~~[(iv)d] [M]ethods of communicating with local emergency agencies, authorities, and other appropriate individuals;~~

~~[(v)e] [F]names and phone numbers of the individuals [who shall]to be notified in an emergency in the order of priority.~~[-Telephone numbers shall be] that are~~ accessible to staff at each nurse's station;~~

~~[(vi)f] [M]ethods of transporting and evacuating residents and staff to other locations; and~~

~~[(vii)g] [C]onversion of facility for emergency use.~~

~~[(b)6] The licensee shall maintain d[D]ocumentation of:[emergency events and responses and a record of residents and staff evacuated from the facility to another location shall be kept. Any resident emergency shall be documented in the resident's record.]~~

~~(a) emergency events and responses;~~

~~(b) a record of residents and staff evacuated from the facility to another location; and~~

~~(c) any resident emergencies in the individual resident record.~~

~~[(e)7] [D]rills shall be held semi-annually for all residents and staff.~~[-The licensee shall hold semi-annual drills for any residents and staff.]~~~~

~~[(d)8] The[re shall be] licensee shall provide regular in-service training on disaster preparedness.~~

~~[(6) Fire Emergencies.]~~

~~[(a)9(a)] The licensee and administrator shall develop a written fire-emergency and evacuation plan in consultation with qualified fire safety personnel.~~

~~[(b)b] The licensee shall post [A]n evacuation plan delineating evacuation routes, location of fire alarm boxes, fire extinguishers, and emergency telephone numbers of the local fire department [shall be posted-]throughout the facility.~~

~~[(e)c] The licensee shall include fire containment procedures and how to use alarms and signals in the written fire-emergency plan.~~[-shall include fire containment procedures and how to use alarm systems and signals-]~~~~

~~[(d)d] The licensee shall hold [F]ire and internal disaster drills [shall be held-], at least quarterly, and under varied conditions for each shift.~~

~~[(i)e] The [actual-]evacuation of residents during a drill is optional except in a facility caring for residents who are capable of self-preservation.~~

~~[(ii)f] The [actual-]evacuation of residents during a drill on the night shift is optional.~~

### **R432-200-1[2]3. Resident Rights.**

~~(1) The licensee shall develop [R]resident rights policies and procedures.~~[-shall include-]~~~~

~~[(a)2] The licensee shall appoint a committee [that shall be appointed-]to update policy[-] and evaluate and act on resident rights complaints[;].~~

~~[(b)3] The licensee shall post written rights [that shall be posted-]in areas accessible to residents and made available to the resident, guardian or next of kin[;] and the department on request.~~

~~[(c) they shall be available to the public and the Department upon request.]~~

~~[(2)4] The licensee shall ensure that [E]each resident admitted to the facility [shall have]has the [following-]right[s] to:~~

~~(a) [to-]be fully informed, as evidenced by written acknowledgment [prior to]before or at the time of admission and during stay, of resident rights and of rules governing resident conduct;~~

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

~~(c) [to-]be fully informed of the resident's medical condition by the attending physician;~~

~~(d) [to-]be [afforded]given the opportunity to participate in the planning of medical treatment and to refuse to participate in experimental research;~~

~~(e) [to-]refuse treatment to the extent [permitted]allowed by law and to be informed of the medical consequences of such refusal;~~

~~(f) [to-]be given reasonable advance notice to ensure orderly transfer or discharge;~~

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

~~(h) [to-]manage personal financial affairs, or to be given at least quarterly or upon request, an accounting of financial transactions made on the resident behalf should the facility accept written delegation of this responsibility;~~

~~(i) [to-]be free from mental and physical abuse and to be free from chemical and physical restraints except as authorized in writing by a physician for a specified period[-of time], or when~~

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necessary to protect the resident from injury to themselves or to others;

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

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

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

(m) ~~to~~ associate and communicate privately with others, and to send and receive personal mail unopened;

(n) ~~to~~ meet with and participate in activities of social, religious and community groups;

(o) ~~to retain~~ keep and use personal clothing and possessions as space permits, unless it would infringe upon the rights of other residents;

(p) if married, ~~to~~ be assured privacy for visits by a spouse~~[-I]~~, and if both are residents in the facility, to be ~~permitted~~ allowed to share a room;

(q) ~~to~~ have daily visiting hours established;

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

(s) ~~to~~ allow relatives or responsible persons to visit at any time;

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

(u) ~~to~~ have reasonable access to telephones to make and receive confidential calls; and

(v) ~~to~~ wear appropriate personal clothing and religious or other symbolic items as long as they do not interfere with diagnostic procedures or treatment.

(3)5 Each ~~facility~~ licensee that manages resident money shall comply with the following:

(a) the ~~facility~~ licensee ~~shall~~ may not mingle or use resident funds for facility purposes;

(i)b resident ~~monies~~ funds and valuables ~~shall be~~ are separated and free from any liability that the licensee incurs in the use of the institution's funds and valuables;~~and~~

(ii)c each licensee ~~shall~~ maintains ~~adequate~~ safeguards and accurate records of resident ~~monies~~ funds and valuables entrusted to the licensee;

(b)d records of resident ~~monies~~ funds that are maintained as a drawing account ~~shall~~ include a control account for receipts and expenditures, an account for each resident and supporting vouchers filed in chronological order. Each account ~~shall be~~ is kept current with columns for debits, credits and balance;

(e)e records of resident ~~monies~~ funds and other valuables entrusted to the licensee for safekeeping ~~shall~~ include a copy of the receipt furnished to the resident or to the person responsible for the resident;

(f)f resident ~~monies~~ funds not kept in the facility ~~shall be~~ are deposited by the licensee within five days of receipt of ~~such~~ the funds in an interest-bearing account in a local bank authorized to do business in Utah~~[-]~~; ~~The~~ and each deposit~~s~~ ~~shall be~~ is insured;

(g) ~~a person, firm, partnership, association or corporation that is licensed to~~ licensee that operates more than one health facility ~~shall~~ maintains a separate account for each ~~such~~ facility and ~~shall~~ may not commingle resident funds from one facility with another;

(f)h when the amount of resident ~~money~~ funds entrusted to a licensee exceeds \$150, excess funds ~~shall be~~ are deposited in an interest-bearing account;

(g)i upon discharge of a resident, ~~money~~ funds and valuables of ~~that~~ the resident that have been entrusted to the licensee ~~shall be~~ are surrendered to the resident in exchange for a signed receipt~~[-]~~; ~~Money and valuables kept within the facility shall be surrendered upon demand and those kept in an interest-bearing account shall be made available within three normal banking days; and~~

(j) money and valuables kept within the facility are surrendered upon demand and those kept in an interest-bearing account are made available within three normal banking days;

(h)k the licensee shall surrender any funds and valuables entrusted to the license to the person responsible for the resident, including an executor or administrator of estate in exchange for a signed receipt within 30 days following the death of a resident, except in a coroner or medical examiner case; and ~~money and valuables of that resident that have been entrusted to the licensee shall be surrendered to the person responsible for the resident or to the executor or the administrator of the estate in exchange for a signed receipt. When a resident dies without a representative or known heirs, immediate written notice thereof shall be given by the facility to the medical examiner and the registrar of the local probate court, and a copy of the notice shall be filed with the Department.~~

(l) when a resident dies without a representative or known heirs, immediate written notice is given by the facility to the medical examiner and the registrar of the local probate court, and a copy of the notice filed with the department.

(4)6 The licensee of an ~~For residents of~~ Intermediate Care Facility~~ies~~ for Individuals with Intellectual Disabilities~~s~~ may not permit an ~~no~~ individual~~s~~ under the age of 22 years old ~~shall~~ to live in the same room with:

(a) more than one individual; or

(b) with individuals over the age of 22 years, unless they are members of the individual's immediate family.

(5)7 The administrator ~~is responsible to~~ shall develop written policies and procedures to implement these requirements and shall obtain written approval from the ~~D~~ department for any exceptions to ~~these rules~~ this rule.

### R432-200-134. Admission and Discharge.

(1) ~~Each facility~~ The licensee shall have written policies and procedures for admission of a resident~~s~~ to include~~[-]~~:

(a) a ~~R~~ resident~~s~~ ~~shall be accepted~~ is admitted for treatment and care only if the facility is properly licensed for the treatment required and has the staff and resources to meet the medical, physical and emotional needs of the resident~~[-]~~;

(b) a ~~R~~ resident~~s~~ ~~shall be~~ is admitted by, and remains under the care of, a physician or individual licensed to prescribe care for the resident~~[-]~~;

(c) ~~T~~ there ~~is~~ ~~shall be a~~ written order for admission and care at the time of admission~~[-]~~;

(d) ~~A~~ a resident ~~shall be~~ is assessed within seven days of admission unless otherwise indicated by a program requirement~~[-]~~;

~~A~~ (e) admission policy~~ies~~ shall define the assessment process, including an identification of the resident's medical, nursing, social, physical and emotional needs~~[-]~~;

(f) ~~A~~ the attending physician or authorized, licensed individual perform a physical examination; ~~shall be performed by the attending physician or by an individual licensed and authorized to do so.~~

(f)g) ~~[U]~~upon admission, the ~~[facility]~~licensee ~~[shall]~~ documents a brief narrative of the resident's condition, including temperature, pulse, respiration, blood pressure and weight[-];

(g)h) ~~[F]~~the ~~[facility]~~licensee ~~[shall]~~ informs each resident of their rights upon admission[-];

(i)j) ~~[A]~~a written copy of the facility's resident rights ~~[shall be]~~is explained and given to the resident[-];

(i)j) ~~[F]~~if the resident ~~[is unable to]~~cannot comprehend the resident rights, the licensee shall provide a written copy ~~[shall be given]~~to the next of kin or other responsible party[-]; and

(i)k) ~~[F]~~the licensee shall document any inability of the resident to provide consent ~~[shall be documented]~~in the resident record.

(2) The licensee may discharge or transfer a ~~[A]~~ resident ~~[may be discharged or transferred]~~for ~~[one or more]~~any of the following reasons:

(a) the ~~[facility]~~licensee is no longer able to meet the resident's identified needs;

(b) the resident poses a threat to themself~~[ves]~~ or others; or

(c) the resident or responsible person wishes to transfer.

(3) Upon discharge of a resident, ~~[money]~~the licensee shall surrender funds and valuables of the~~[at]~~ resident that have been entrusted to the licensee ~~[shall be surrendered]~~to the resident in exchange for a signed receipt.

(4) The ~~[facility]~~licensee shall issue a discharge notice to the resident and responsible person 30 days ~~[prior to]~~before discharge, unless an immediate discharge is necessary to protect the resident.

(5) ~~[There shall be a]~~A physician shall issue an order for the resident discharge, along with a summary of the resident's condition, treatment and final disposition in the medical record.

#### **R432-200-1[4]5. Physician Services.**

~~[----- (1) General Requirements.]~~

(a)1) A licensed physician shall provide the care for ~~[E]~~each resident in need of nursing services, habilitative, or rehabilitative care. ~~[shall be under the care of a licensed physician.]~~

(b)2) The licensee shall permit ~~[E]~~each resident ~~[shall be permitted]~~to choose ~~[his]~~their physician.

~~[----- (c) Upon admission, each resident shall have orders for treatment and care.]~~

(2)3) ~~[Physician Responsibilities.]~~The licensee shall ensure that the following physician responsibilities are met:

(a) ~~[E]~~each resident ~~[shall have]~~has a medical history and pertinent physical examination at least annually[-];

(b) ~~[E]~~each intermediate care resident ~~[shall be]~~is seen at least once during the first 60 days of residency[-];

(c) ~~[F]~~the attending physician or medical practitioner ~~[shall]~~sees the resident when~~[ever]~~ necessary but at least every 60 days, unless the attending physician or practitioner documents in the resident's record why the resident does not need to be seen this frequently[-];

(d) ~~[F]~~the physician or practitioner ~~[shall]~~establishes and follows a schedule alternating visits[-]; and

(e) ~~[E]~~each visit and evaluation ~~[shall be]~~is documented in the resident's record.

~~[----- (3) Policies and Procedures.]~~

(4) The~~[re shall be]~~ licensee shall develop policies and procedures that ~~[provide for]~~outline:

(a) ~~[A]~~access to physician services in case of medical emergency or when the attending physician is not available;

(b) ~~[N]~~names and telephone numbers of on-call physicians in the health services supervisor's office; and

(c) ~~[R]~~requirement for reevaluation of the resident and review of care and treatment orders when there is a change of attending physician ~~[which shall be]~~that is completed within 15 days of ~~[such]~~the change.

~~[----- (4) Non-Physician Practitioners.]~~

(5) The following practitioners may ~~[render]~~provide medical services according to state law:

(a) a ~~n]~~nurse practitioner[s] licensed to practice in~~[the state of]~~ Utah; and

(b) a ~~p]~~p[physician's] assistant[s] working under the supervision of a licensed physician and performing only those selected diagnostic and therapeutic tasks identified in Title 58, Chapter 70a, The Utah Physician's Assistant Act.~~[Rules and Regulations and Standards for Utilization of Physician Assistants.]~~

~~[----- (5) Physician Orders and Notes.]~~

(a)6) The licensee shall ensure that any of the following physician orders and notes are signed and dated by a physician and maintained as part of each treatment record:~~[The following items shall be part of the treatment record and shall be signed and dated by a physician:]~~

(i)a) ~~[A]~~admission orders;

(i)b) ~~[M]~~medication, treatment, therapy, laboratory, and diet orders;

(i)c) ~~[H]~~history and physical examinations;

(i)d) ~~[P]~~physician's progress notes;

(i)e) ~~[F]~~the discharge summary;

(i)f) ~~[A]~~discharge orders;

(i)g) ~~[A]~~telephone orders ~~[shall be]~~are immediately recorded in the treatment record by the recipient~~[immediately]~~ and include:

(i) date and time of order;

(ii) the ~~[receiver's]~~recipient's signature and title; and

(iii) the order ~~[shall be]~~is countersigned and dated within 15 days by the physician who prescribed the order[-]; and

(e)h) ~~[F]~~the attending physician shall complete the resident's medical record within 60 days of the resident's discharge, transfer, or death.

~~[----- (6) Notification of Physician.]~~

(a)7) The licensee shall promptly notify the attending physician and document the following:~~[shall be notified promptly upon:]~~

(i)a) ~~[A]~~admission of the resident;

(i)b) ~~[A]~~a sudden ~~[and]~~or marked adverse change in the resident's signs, symptoms, or behavior;

(i)c) ~~[A]~~any significant weight change in a 30-day period unless the resident's physician stipulates another parameter in writing;

(i)d) ~~[A]~~any adverse response or reaction by a resident to a medication or treatment;

(i)e) ~~[A]~~any error in medication administration or treatment;

(i)f) ~~[F]~~the discovery of a decubitus ulcer, the beginning of treatment, and if treatment is not effective; and~~[Notification shall be documented.]~~

(i)g) ~~[The physician shall be notified if the facility]any inability of the licensee [is unable]~~to obtain or administer drugs, equipment, supplies, or services promptly as prescribed.~~[If the attending physician or his designee is not readily available, emergency medical care shall be provided. The telephone numbers~~

~~of the emergency care physician shall be posted at the control station.]~~

(8) If the attending physician or designee is not readily available, the emergency care physician shall provide any emergency medical care. The licensee shall post the telephone numbers of the emergency care physician at the control station.

([e]2) ~~[A]Any attempt[s] by a staff member to notify a physician[s] shall be noted by the staff member in the resident's record, to include[including] the time and method of communication and the name of [the]any person acknowledging contact[, if any].~~

# **R432-200-1[5]6. Nursing Care.**

~~[(1) Organization.]~~

([a]1) Each ~~[facility]~~licensee shall provide nursing care services commensurate with the needs of the residents served.

([b]2) The licensee shall ensure that ~~[A]each~~ licensed nursing ~~[personnel]staff member [shall]maintains a~~ current Utah license[s] to practice nursing.

~~[(2) Responsibilities of the Health Services Supervisor.]~~

(3) The health services supervisor as defined in Rule R432-1 shall:~~have the following responsibilities and comply with R432-1-3(55):~~

(a) ~~[D]direct~~ the implementation of physician's orders;

(b) ~~[P]plan~~ and direct the delivery of nursing care, treatments, procedures, and other services to assure that each resident's needs are met;

(c) ~~[R]review~~ the health care needs of each resident admitted to the facility and formulate with other professional staff a resident care plan according to the attending physician's orders;

(d) ~~[R]review~~ the medication system for completeness of information, accuracy in the transcription of physician's orders, and adherence to stop-order policies;

(e) ~~[E]ensure~~ that nursing notes describe the care ~~[rendered]provided~~, including the resident's response~~[Instruct staff on the legal requirements of charting];~~

(f) ~~instruct the staff on the legal requirements of charting;~~

([f]g) ~~[S]supervise~~ clinical staff to assure they perform restorative measures in their daily care of residents;

([g]h) ~~[T]teach~~ and coordinate habilitative and rehabilitative care to promote and maintain optimal physical and mental functioning of the resident;

([h]i) ~~[K]keep~~ the administrator and attending physician informed of significant changes in the resident's health status;

([i]j) ~~[P]plan~~ with the physician, family, and health-related agencies the care of the resident upon discharge;

([j]k) ~~[C]coordinate~~ resident services through the quality assurance committees~~[(see R432-200-10)];~~

([k]l) ~~[A]assign~~ qualified supervisory and supportive staff throughout the day and night to assure that the health needs of residents are met;

([l]m) ~~[D]develop~~ written job descriptions for ~~[a]any~~ health service personnel and orient ~~[a]each~~ new personnel to the facility and their duties and responsibilities;

([m]n) ~~[E]evaluate~~ and document the performance of each member of the staff at least annually ~~and ensure that the[This evaluation shall be]evaluation is~~ available for ~~[D]departmental~~ review; ~~and~~

([n]o) ~~[P]plan,~~ ~~[and]conduct,~~ and document~~[ed]~~ orientation and in-service training programs for staff.

([3]4) ~~[Required Staffing Hours.]The licensee shall ensure that required staffing hours are compliant with the following:~~

(a) ~~[Any facility]each licensee~~ that provides nursing care shall provide at least two hours ~~[(120 minutes)]of nursing[-]staff coverage [(RN + LPN + Aides)]for each registered nurse, licensed practical nurse and aide per resident per 24 hours, of which 20%[percent] or 24 minutes per resident shall be provided only by licensed staff; and[-(RN + LPN)-]~~

(b) ~~[Facilities]a licensee~~ providing rehabilitative or habilitative care shall:

(i) ~~[P]provide~~ adequate staff care and supervision to meet the resident's needs based on the resident~~[-]care plan[-, or];~~

(ii) ~~[C]conform~~ to the specific program requirements in the appropriate supplement~~[-]; and~~

([e]iii) ~~[The above requirements are minimum only. Additional staff may be necessary to]ensure~~ adequate coverage with additional staff in the event of staff illness, turnover, sudden increase in resident population, or similar event.

~~[(d) Facilities that participate in the Medicare/Medicaid programs shall, as a condition of such participation, meet the staffing standards approved through administrative rule.]~~

([4]5)(a) The licensee shall ensure that ~~n[N]ursing [or]and [H]health [C]care [S]services~~ are compliant with this subsection.

([a]b) The health services supervisor shall review and annually update the nursing and health services procedure manual,~~[shall be reviewed and updated annually by the health services supervisor.]~~

([b]c) The licensee shall make the manual ~~[shall be]accessible to [a]any~~ clinical staff and available for review by the ~~[D]department.~~

([e]d) The nursing and health services procedures shall address the following:

(i) ~~[B]bathing;~~

(ii) ~~[P]positioning;~~

(iii) ~~[E]enema~~ administration;

(iv) ~~[D]decubitus~~ prevention and care;

(v) ~~[B]bed~~ making;

(vi) ~~[I]isolation~~ procedures;

(vii) ~~[C]clinical~~ test procedures;

(viii) ~~[L]laboratory~~ requisitions;

(ix) ~~[T]telephone~~ orders;

(x) ~~[C]charting;~~

(xi) ~~[R]rehabilitative~~ nursing;

(xii) ~~[D]diets~~ and feeding residents;

(xiii) ~~[O]oral~~ hygiene and denture care; ~~and~~

(xiv) ~~[N]naso-gastric~~ tube insertion and care is done only ~~[C]by a registered nurse[s], [LPNs]a licensed practical nurse,~~ with appropriate training, or a physician[s only].

([5]6)(a) ~~[Measures to Reduce Incontinence.~~

~~Measures shall be implemented to prevent and reduce incontinence for each resident.]The licensee shall implement measures to prevent and reduce incontinence for each resident in compliance with this subsection.~~

([a]b) A licensed nurse shall provide a ~~[There shall be a]written assessment [by a licensed nurse]to~~ determine the resident's ability to participate in a bowel and bladder management program.

([b]c) An individualized plan for each incontinent resident shall begin within two weeks of the initial nurse's assessment.

([e]d) A licensed nurse shall record a weekly evaluation of the resident's performance in the bowel~~[f]~~ or bladder management program.~~[shall be recorded in the resident's record by a licensed nurse.]~~

(~~(d)~~e) A licensed nurse shall record ~~(F)~~fluid intake and output ~~[shall be recorded]~~ for each resident as ordered by the physician or charge nurse.

(~~(i)~~f) A licensed nurse shall evaluate ~~i~~(~~F~~)intake and output records ~~[shall be evaluated]~~ at least weekly and record each evaluation ~~[shall be included]~~ in the resident's record~~[;]~~.

(~~(ii)~~g) A physician or nurse shall periodically reevaluate any ~~(P)~~physician's or nurse's orders~~[shall be reevaluated periodically;]~~.

~~(6)7(a) [Rehabilitative Nursing.~~  
~~Nursing personnel shall be trained in rehabilitative nursing.]The licensee shall ensure nursing personnel receive rehabilitative nursing training and that any rehabilitative nursing services comply with this subsection.~~

(~~(a)~~b) Nursing personnel shall perform and document ~~r~~(~~R~~)rehabilitative nursing services ~~[shall be performed]~~ daily for residents who require such services~~[and shall be documented in the resident's record when provided;]~~

(~~(b)~~c) Nursing personnel shall provide ~~(R)~~rehabilitative services ~~[shall be provided]~~ to maintain the resident's level of functioning or to improve the resident's ability to carry out the activities of daily living.

(~~(e)~~d) Rehabilitative nursing services shall include the following:

- (i) ~~(F)~~turning and positioning of residents;
- (ii) ~~(A)~~assisting residents to ambulate;
- (iii) ~~(F)~~improving resident's range of motion;
- (iv) ~~(R)~~restorative feeding;
- (v) ~~(B)~~bowel and bladder retraining;
- (vi) ~~(F)~~teaching residents' self-care skills;
- (vii) ~~(F)~~teaching residents transferring skills;
- (viii) ~~(F)~~teaching residents self-administration of medications, as appropriate; and
- (ix) ~~(F)~~taking measures to prevent secondary disabilities such as contractions and decubitus ulcers.

#### **R432-200-16]7. General Resident Care Policies.**

(1) The licensee shall ensure ~~e~~(~~E~~)ach resident ~~[shall be]~~is treated as an individual with dignity and respect in accordance with ~~(R)~~resident~~(s)~~ ~~(R)~~rights~~[-(R432-200-12)]~~.

(2) Each ~~facility~~ ~~licensee~~ shall develop and implement resident care policies to be reviewed annually by the health services supervisor.

(3) The licensee shall ensure that resident care ~~[These]~~ policies ~~[shall]~~ address the following:

(a) ~~(E)~~each resident ~~[upon admission shall be]~~is oriented to the facility, services, and staff~~[at the time of admission;]~~

~~[(b) Each admission shall comply with R432-200-13(1).]~~

(~~(e)~~b) ~~(E)~~each resident ~~[shall]~~receives care to ensure good personal hygiene that includes~~[- This care shall include bathing, oral hygiene, shampoo and hair care, shaving or beard trimming, fingernail and toenail care;]~~

- ~~(i) bathing;~~
- ~~(ii) oral hygiene;~~
- ~~(iii) shampoo and hair care;~~
- ~~(iv) shaving or beard trimming; and~~
- ~~(v) fingernail and toenail care;~~

(~~(d)~~c) ~~(L)~~linens and other items in contact with the resident ~~[shall be]~~are changed weekly or as the item is soiled~~[;]~~

(~~(e)~~d) ~~(E)~~each resident ~~[shall be]~~is encouraged and assisted to achieve and maintain the highest level of functioning and independence including:

- (i) teaching the resident self-care~~[;]~~;
  - (ii) assisting residents to adjust to their disabilities and prosthetic devices~~[;]~~;
  - (iii) directing residents in prescribed therapy exercises~~[;]~~;
- and

(iv) redirecting residents interests as necessary~~[;]~~;

(~~(f)~~e) each ~~(R)~~resident~~(s must be)~~ is reevaluated annually by the licensee to determine if a less restrictive setting might be more appropriate to help them achieve independence~~[;]~~;

(~~(g)~~f) ~~(E)~~each resident ~~[shall]~~receives care and treatment to ensure the prevention of decubiti, contractions, and deformities~~[;]~~;

(~~(h)~~g) ~~(E)~~each resident ~~[shall be]~~is provided with good nutrition and adequate fluids for hydration including~~[;]~~;

(i) ~~(A)~~each resident~~(s)~~ ~~[shall have]~~has ready access to water and drinking glasses;

(ii) a ~~(R)~~resident~~(s)~~ that cannot ~~[unable to]~~feed themselves~~[ves]~~ ~~[shall be]~~is assisted to eat in a prompt, orderly manner; and

(iii) each ~~(R)~~resident~~(s)~~ ~~[shall be]~~is provided with adapted equipment to assist in eating and drinking~~[;]~~;

(~~(i)~~h) ~~(V)~~visual privacy ~~[shall be]~~is provided for each resident during treatments and personal care~~[;]~~;

(~~(j)~~i) any ~~(C)~~call lights or signals ~~(where required)~~ ~~[shall be]~~are answered promptly~~[;]~~ and

(~~(k)~~j) ~~(H)~~humidifier bottles on oxygen equipment ~~[shall be]~~are sterile and changed every 24 hours or at the manufacturer's direction.

(4) ~~[Notification of Family.]The person in charge shall immediately notify the resident's family or guardian of any accident, injury, or adverse change in the resident's condition after the first attempt to notify the physician. The person in charge shall document the [This] notification [shall be documented] in the resident's record. [The person in charge shall immediately notify the resident's family or guardian of any accident, injury, or adverse change in the resident's condition after the first attempt to notify the physician. This notification shall be documented in the resident's record.]~~

#### **R432-200-17]8. Resident[-] Care Plans.**

(1) ~~[General Provisions.]The licensee shall ensure the following regarding resident care plans:~~

(a) ~~(A)~~a written resident~~(-)~~ care plan, coordinated with nursing and other services, ~~[shall be]~~is initiated for each resident upon admission~~[;]~~;

(b) ~~(F)~~the resident~~(-)~~ care plan ~~[shall be]~~is personalized and indicates~~[- measurable and time limited objectives, the actual plan of care, and the professional discipline responsible for each element of care.]~~

~~(i) measurable and time-limited objectives;~~

~~(ii) the plan of care; and~~

~~(iii) the professional discipline responsible for each element of care;~~

(c) ~~(F)~~the resident care plan ~~[shall be]~~is developed, reviewed, revised, and updated at least annually through documented conferences with ~~[all]~~any professionals involved in the resident's care~~[- Such conferences shall be documented;]~~

(d) ~~(E)~~each resident's care ~~[shall be]~~is based on ~~[this]~~their individualized plan~~[;]~~;

(e) ~~(F)~~the resident~~(-)~~ care plan ~~[shall be]~~is available to ~~[all]~~any personnel who care for the resident~~[;]~~;

(f) ~~(F)~~the resident and family shall participate in the development and review of the resident's plan~~[;]~~;

(g) ~~[U]~~ Upon transfer or discharge of the resident, relevant information from the resident[-] care plan ~~[shall be] is made~~ available to the responsible institution or agency[-]; and

(h) ~~[A]~~ a licensed nurse or other clinical specialist, where appropriate, ~~[shall summarize, each month,]~~ completes a monthly summary of the resident's status and problems identified in the resident[-] care plan.

(2) ~~[Resident Care Plans Contents.]~~ The licensee shall ensure that each resident care plan shall include the following:

~~[The resident care plan shall include at least the following:]~~

(a) ~~[N]~~ a name, age, and ~~[sex]~~ gender of resident;

(b) ~~[D]~~ a diagnosis, symptoms, and resident complaints;

(c) ~~[A]~~ a description of the functional level of the individual;

(d) ~~[C]~~ a care objectives and time frames for accomplishment, reevaluation, and completion;

(e) ~~[D]~~ a discipline or person responsible for each objective;

(f) ~~[D]~~ a discharge plan;

(g) ~~[D]~~ a date of admission; and

(h) ~~[N]~~ a name of attending physician or medical practitioner.

#### **R432-200-1[8]2. Medication Administration.**

(1) ~~[Standing Orders.]~~ A licensee may not use standing orders for medications, treatments or laboratory services. The licensee shall write individual orders per resident for these items.

~~[Standing orders for medications, treatments, and laboratory procedures shall not be used. All orders shall be written for the individual resident.]~~

(2)(a) ~~[Administration of Medication and Treatments.]~~

~~Medication and treatment shall be administered as follows:]~~ The licensee shall ensure that medication and treatment practices comply with this section.

(1)(a) ~~[b]~~ a ~~[No m]~~ a Medication or treatment ~~[shall be]~~ may not be administered except on the order of a person lawfully authorized to give such order.

(1)(b) ~~[c]~~ a Medication[s] and treatment[s] ~~shall be~~ are administered as prescribed and according to facility policy.

(1)(e) ~~[d]~~ a ~~[H]~~ a ~~[ny]~~ a medication[s] and treatment[s] ~~shall be~~ is administered by a licensed ~~[medical]~~ physician or licensed nurse ~~[ing personnel].~~

(1)(c) ~~[e]~~ a ~~[S]~~ a student doctor[s] ~~and~~ or nurse[s] may administer medication and treatment only in the course of study and when supervised by a licensed instructor or designated staff.

(1)(f) ~~[f]~~ a Monitoring of vital signs and other observations done in conjunction with the administration of medication ~~[shall be]~~ are carried out as ordered by the physician or practitioner and as indicated by accepted professional practice.

(1)(g) ~~[g]~~ a ~~[Doses are not prepared for more than one scheduled time of administration.]~~ Preparation of doses for more than one scheduled time of administration shall not be permitted.]

(1)(h) ~~[h]~~ a Medication ~~[shall be]~~ is administered when ordered or as soon thereafter as possible but no more than two hours after the dose has been prepared.

(1)(i) ~~[i]~~ a Medication ~~[shall be]~~ is administered by the same person who prepared the dose for administration.

(1)(j) ~~[j]~~ a Residents ~~[shall be]~~ are identified ~~[prior to]~~ before the administration of any drug or treatment.

(1)(k) ~~[k]~~ a ~~[No m]~~ a Medication ~~[shall be]~~ is not used for any resident other than the resident for whom it was prescribed.

(1)(l) ~~[l]~~ a If the person ~~[who]~~ that prescribed a medication does not limit the duration of the drug order or the number of doses, the ~~[facility's]~~ licensee's automatic stop-order policy ~~[shall]~~ indicates how

long a drug may be administered. The licensee shall ensure the prescriber ~~[shall be]~~ is notified before ~~[the]~~ any medication is discontinued.

(1)(m) ~~[m]~~ a ~~[Each]~~ Each order[s] for treatment or therapy ~~[shall]~~ contains:

(i) the name of the treatment or therapy[-];

(ii) the frequency and time to be administered[-];

(iii) the length of time the treatment or therapy is to continue[-];

(iv) the name and professional title of the practitioner who gave the order[-];

(v) the date of order[-]; and

(vi) signature of the person prescribing the treatment or therapy.

(1)(n) ~~[n]~~ a ~~[Each]~~ Each nursing ~~[personnel]~~ staff member ~~[shall comply]~~ complies with the provisions for administration of medication according to standards and ethics of the profession.

(1)(o) ~~[o]~~ a Injectable medications ~~[shall be]~~ are administered only by authorized ~~[persons.]~~ personnel or:

(i) ~~[i]~~ a If a physician certifies that a resident is capable of administering ~~[his]~~ their own insulin or oral medications, the resident may self-inject the prescribed insulin or self-administer the prescribed medications; ~~[-]~~ and

(ii) ~~[f]~~ a the physician's order, authorizing the resident's self-administration of medications, ~~[shall be]~~ is documented and available for ~~[D]~~ a departmental review.

#### **R432-200-[49]20. Behavior Management and Restraint Policy.**

~~[See R432-150-14.]~~ The licensee shall comply with the Behavior Management Section of Rule R432-150.

#### **R432-200-2[0]1. Resident Care Equipment.**

(1) The ~~[facility]~~ licensee shall provide equipment, in good working order, to meet the needs of residents.

(2) ~~[The licensee shall ensure that [D] disposable and single-use items [shall be] are properly disposed of after use.]~~

(3) ~~[The licensee shall ensure that resident care equipment includes the following:]~~ Resident care equipment shall include at least the following:

(a) ~~[S]~~ a self-help ambulation devices such as wheelchairs, walkers, and other devices deemed necessary in the resident plan of care[-], and ~~[Facility]~~ a policy may require that residents obtain their own equipment for long-term use;

(b) ~~[B]~~ a blood pressure ~~[apparatus]~~ equipment and stethoscopes, appropriate to the needs and number of residents;

(c) ~~[F]~~ a thermometers appropriate to the needs of residents;

(d) ~~[W]~~ a weight scales to weigh ~~[all]~~ any resident[s];

(e) ~~[B]~~ a bedpans, urinals, and equipment to clean them;

(f) ~~[W]~~ a water pitchers, drinking glasses, and resident gowns;

(g) ~~[D]~~ a drug service trays;

(h) ~~[A]~~ a access to emergency oxygen including equipment for its administration;

(i) ~~[E]~~ a emesis basins;

(j) ~~[L]~~ a linens including sheets, blankets, bath towels, and wash cloths for not less than three complete changes for the facility's licensed bed capacity[-]. ~~[There shall be]~~ with a bedspread for each resident bed;

(k) ~~[P]~~ a personal items including toothbrush, comb, hair brush, soap for bathing and showering, denture cups, shaving apparatus, and shampoo;

(l) ~~[A]~~ a an individual chart for each resident;

- (m) sterile and unsterile [G]gloves~~[(sterile and unsterile)]~~; and
- (n) [H]ice bags.

#### **R432-200-2[4]2. Pharmacy Service.**

- (1) The [facility]licensee shall [make provision for]provide a pharmacy service.
- ([1]2) The [is] license shall ensure that the pharmacy service [shall be]is under the direction of a qualified pharmacist currently licensed in [the state of]Utah.
- ([2]3) The licensee may retain the pharmacist [may be retained]by contract.
- ([3]4) The licensee shall ensure that the pharmacist [shall] develops policies, directs, supervises and assumes responsibility for any pharmacy services offered in the facility.
- ([4]5) The licensee shall ensure that p[P]harmacy services [shall meet]are compliant with Section R432-150-1[9]8.

#### **R432-200-2[2]3. Dietary Services.**

- ~~[(a)]~~(1) Organization.
- ~~[(a)]~~(1) The [re-shall-be] licensee shall provide an organized dietary service that provides safe, appetizing, and nutritional food service to residents.
- ([b]2) [The service shall be under the supervision of a]A qualified dietetic supervisor or consultant[-] shall supervise the dietary service.
- ([e]3) If a facility contracts with an outside food management company, the [company shall comply]licensee shall ensure that the company complies with [all]any applicable requirements of [these rules]this Rule R432-200.
- ([2]4) [See-]The licensee shall ensure that dietary services are compliant with the Food Services Section of Rule R432-150.[-24.]

#### **R432-200-2[3]4. Social Services.**

- (1) The [facility]licensee shall provide social services [which]that assist staff, residents, and residents' families to understand and cope with residents' personal, emotional, and related health and environmental problems.
- (2) [This service may be provided by a-]A consultant may provide the social services.
- (3) [See]The licensee shall ensure that social services are compliant with Subsection R432-150-22(5).[-47.]
- (4) Responsibilities.
- ~~[(a)]~~Whether provided directly by the facility or by agreement with other agencies, social service personnel shall:
- (a) [P]provide services to maximize each resident's ability to adjust to the social and emotional aspects of their condition, treatments, and continued stay in the facility;
- (b) [P]participate in ongoing discharge planning to guarantee continuity of care;
- (c) [H]initiate referrals to official agencies when the resident needs financial assistance;
- (d) [M]maintain appropriate liaison with the family or other responsible person concerning the resident's placement and rights;
- (e) [P]preserve the dignity and rights of each resident;
- (f) [M]maintain and annually update records, including a social history and social-services-needs evaluation[-(updated annually)]; and
- (g) [H]integrate social services with other elements of the resident[-]care plan.

#### **R432-200-2[4]5. Recreation Services.**

- (1) The [re-shall-be] licensee shall provide an organized resident activity program for the group and for each resident in the facility.
- (2) [See]The licensee shall ensure that recreation services are compliant with Section R432-150-19[-20].

#### **R432-200-2[5]6. Laboratory and Radiology Services.**

- (1) The [facility]licensee shall [make provision for]provide laboratory and radiology services.
- (2) [See-]The licensee shall ensure that laboratory and radiology services are compliant with the Laboratory Service and Ancillary Health Services Sections of Rule R432-150[-18, Laboratory Services, and R432-150-23, Ancillary Health Services].

#### **R432-200-2[6]7. Dental Services.**

- (1) The [facility shall make provision for]licensee shall provide annual and emergency dental care for residents.~~[-Such provisions shall include:]~~
- (2) The licensee shall:
- ([1]a) [D]develop[ing] oral hygiene policies and procedures with input from dentists;
- ([2]b) [P]present[ing] oral hygiene in-service training programs to staff and residents by knowledgeable [persons]individuals;[-to both staff and residents;]
- ([3]c) [A]allow[ing] resident[s] freedom of choice in selecting their own private dentist[s];
- ([4]d) [D]develop[ing] an agreement with a dental service for [these]any resident[s who do] that does not have a personal dentist; and
- ([5]e) [A]arrange[ing] transportation to and from the dentist's office.

#### **R432-200-2[7]8. Specialized Rehabilitative Services.**

- (1)(a) [Organization-]A licensee that provides specialized rehabilitative services may offer these services directly or through agreements with outside agencies or qualified therapists.
- ~~[(a)] A facility that provides specialized rehabilitative services may offer these services directly or through agreements with outside agencies or qualified therapists.]~~
- (b) The licensee may offer rehabilitative s[S]ervices [may be offered-]either on-site or off-site.
- (c) If the facility does not provide specialized rehabilitative services, the facility shall neither admit nor retain residents in need of such services.
- (2) [Personnel-]Qualified licensed therapists shall provide specialized rehabilitative services in accordance with Utah law and accepted practices.
- ~~[(a)] Specialized rehabilitative services shall be provided by qualified licensed therapists in accordance with Utah law and accepted practices.]~~
- ([b]3) Therapists shall offer the full scope of services to the resident.
- ([e]4) [AH]Each therapy assistant[s shall be qualified and] shall work under the direct supervision of a licensed therapist at [all]any time[s].
- ([d]5) The licensee shall ensure [S]speech pathologists [shall be]are licensed under Title 58, Chapter 41, Speech-Language Pathology and Audiology Licensing Act.
- ([3]6) The licensee shall ensure that rehabilitative services [P]policies and [P]procedures reflect the following:[-]



(a) ~~[S]~~services ~~[shall be]~~are provided only on the written order of an attending physician[-];

(b) ~~[S]~~safe and adequate space and equipment ~~[shall be]~~is available commensurate with the needs of residents[-];

(c) ~~[An appropriate]~~a plan of treatment ~~[shall be]~~is initiated by an attending physician and developed by the therapist in consultation with the nursing staff[-];

(d) ~~[A]~~an initial progress report ~~[shall be]~~is submitted to the attending physician two weeks after treatment has begun or when specified by the physician[-];

(e) ~~[T]~~the physician and therapist ~~[shall]~~reviews and evaluates the plan of treatment monthly, unless, the physician recommends an alternate schedule in writing[-]; and

(f) ~~[T]~~there ~~[shall be]~~is documentation in the resident's record of the specialized plan of treatment.

#### **R432-200-2[8]2. Medical Records.**

(1) ~~[Organization-]~~The licensee shall ensure the organization of medical records complies with the following:

(a) ~~[Medical-]~~records ~~[shall be]~~are complete, accurately documented, and systematically organized to facilitate retrieval and compilation[-];

(b) ~~[T]~~there ~~[shall be]~~are written policies and procedures to accomplish these purposes[-];

(c) ~~[T]~~the medical record service ~~[shall be]~~is under the direction of a registered record administrator (RRA) or an accredited record technician (ART)[-];

(d) ~~[I]~~if an RRA or an ART is not employed at least part-time by the licensee, the ~~[facility]~~licensee ~~[shall]~~consults at least annually with an RRA or ART according to the needs of the facility[-]; and

(e) ~~[A]~~a designated individual ~~[in the facility shall be responsible for]~~oversees day-to-day record keeping.

(2)(a) ~~[Retention and Storage-]~~The licensee shall ensure that record retention and storage practices are compliant with this subsection.

([a])b) ~~[Provision shall be made]~~The licensee shall provide for the filing, safe storage, and easy accessibility of medical records.

([i])c) ~~[The-]~~The licensee shall ensure records and ~~[its]~~their contents ~~[shall be]~~are safeguarded from loss, defacement, tampering, fires, and floods.

([i])d) The licensee shall ensure ~~[R]~~records ~~[shall be]~~are protected against access by unauthorized individuals.

([b])e) ~~[Medical-]~~The licensee shall ensure records ~~[shall be]~~are retained for at least seven years after the last date of resident care. ~~[Records of minors shall be retained until the minor reaches age 18 or the age of majority plus an additional two years. In no case shall the record be retained less than seven years.]~~

(f) The licensee shall retain records of minors until the minor reaches age 18 or the age of majority plus an additional two years.

(g) A licensee may not retain a record for any less than seven years.

([e])h) ~~[All]~~The licensee shall ensure each resident record~~[s]~~ ~~[shall be]~~is retained within the facility upon change of ownership.

([d])i) When a facility ceases operation, ~~[provision shall be made for]~~the licensee provides appropriate, safe storage and prompt retrieval of ~~[all]~~any medical records.

(3)(a) ~~[Release of Information-]~~The licensee shall ensure that release of information practices are compliant with this subsection.

([a])b) The licensee shall ensure ~~[T]~~there ~~[shall be]~~are written procedures for the use and removal of medical records and the release of information.

([b])c) The licensee shall ensure ~~[M]~~medical records ~~[shall be]~~remain confidential.

([i])d) The licensee shall ensure ~~[I]~~information ~~[may be]~~is only disclosed ~~[only]~~to authorized ~~[persons]~~individuals in accordance with federal, state, and local laws.

([i])e) The licensee shall ensure ~~[R]~~requests for other information ~~[which]~~that may identify the resident, ~~[c]~~including photographs~~[y]~~ ~~[shall]~~ requires the written consent of the resident, or guardian if the resident is judged incompetent.

([e])4) Authorized representatives of the ~~[D]~~department may review records to determine compliance with licensure rules and standards.

~~[-----]~~ (4) ~~Physician or Licensed Practitioner Documentation]~~

(5) The licensee may allow ~~[R]~~rubber-stamp signatures ~~[may be used-]~~in lieu of the written signature of the physician or licensed practitioner, if the facility retains the signatory's signed statement acknowledging ultimate responsibility for the use of the stamp and specifying the conditions for its use.

([5])6) ~~[Medical Record-]~~The licensee shall ensure that medical records:

(a) ~~[Records shall be]~~are permanently ~~[c]~~typewritten or hand written legibly in ink~~[y]~~, and capable of being photocopied[-];

(b) ~~[Records shall be]~~are ~~[kept]~~maintained for ~~[all]~~each resident~~[s]~~ admitted or accepted for treatment and care[-];

(c) ~~[Records shall be]~~are ~~[kept]~~current and ~~[shall]~~conform to ~~[good-]~~medical and professional practices based on the service provided to each resident[-];

(d) ~~[All records of discharged residents shall be]~~are completed and filed within 60 days of each client's discharge[-]; and

(e) ~~[All entries shall be-]~~are authenticated including date, name or identified initials, and title of each person~~[s]~~ making each entry~~[ies]~~.

~~[-----]~~ (6) ~~Contents of the Medical Record]~~

(7) ~~[A facility]~~The licensee shall maintain an individual medical record for each resident ~~[which shall]~~that includes:

(a) ~~[A]~~an admission record ~~[c]~~face sheet~~[y]~~ ~~[including]~~ that identifies the following resident information: ~~[resident's name; social security number; age at admission; birth date; date of admission; name, address, telephone number of spouse, guardian, authorized representative, person or agency responsible for the resident; and name, address, and telephone number of the attending physician;]~~

(i) name;

(ii) social security number;

(iii) age at admission;

(iv) birth date;

(v) date of admission;

(vi) name, address, telephone number of spouse, guardian, authorized representative, person or agency responsible for the resident; and

(vii) name, address, and telephone number of the attending physician;

(b) ~~[A]~~admission and subsequent diagnoses and any allergies;

(c) ~~[R]~~reports of physical examinations signed and dated by the physician;

(d) ~~[S]~~signed and dated physician orders for drugs, treatments, and diet; and

(e) ~~[S]~~signed and dated progress notes ~~[including but not limited to]~~that include:

(i) ~~[Records made by]~~staff records regarding the daily care of the resident;

(ii) ~~[F]~~informative progress notes that describe the resident's needs and responses to care and treatment in accordance with the plan of care that are written by ~~[appropriate]~~any staff recording changes in the resident's condition;~~[-Progress notes shall describe the resident's needs and response to care and treatment, and shall be in accord with the plan of care;]~~

(iii) ~~[D]~~documentation of administration of ~~[a]~~any as-needed medications and the reason for withholding any scheduled medications;

(iv) ~~[D]~~documentation of use of restraints in accordance with facility policy including type of restraint, reason for use, time of application, and removal;

(v) ~~[D]~~documentation of oxygen administration;

(vi) ~~[F]~~temperature, pulse, respiration, blood pressure, height, and weight notations, when required;

(vii) ~~[L]~~laboratory reports of ~~[a]~~any tests prescribed and completed;

(viii) ~~[R]~~reports of ~~[a]~~any x-rays prescribed and completed;

(ix) ~~[R]~~records of the course of ~~[a]~~any therapeutic treatments;

(x) ~~[D]~~discharge summary that includes ~~[including]~~a brief narrative of conditions and diagnoses of the resident and final disposition;

(xi) ~~[A]~~a copy of the transfer form when the resident is transferred to another health care facility; and

(xii) ~~[R]~~resident~~[-]~~care plan.

#### **R432-200-~~[29]~~30. Housekeeping Services.**

~~[Organization:]~~

(1) The~~[re shall be adequate]~~ licensee shall provide enough housekeeping services to maintain a clean sanitary and healthful environment in the facility.

(2) The licensee shall ensure that housekeeping services are compliant with the Housekeeping Services Section of ~~[See]~~Rule R432-150~~[-26]~~.

#### **R432-200-3~~[0]~~1. Laundry Services.**

(1) The~~[re shall be]~~ licensee shall maintain enough ~~[adequate]~~laundry service to provide clean linens and clothing for residents and staff.

(2) ~~[See]~~The licensee shall ensure that laundry services are compliant with the Laundry Services Section of Rule R432-150~~[-27]~~.

#### **R432-200-3~~[4]~~2. General Maintenance.**

(1) ~~[Each facility]~~The licensee shall ensure that maintenance policies and procedures are developed, ~~[and]~~implemented, and annually reviewed.~~[-maintenance policies and procedures that shall be reviewed and updated annually.]~~

(2) ~~[See]~~The licensee shall ensure that the general maintenance of the facility is compliant with the Maintenance Services Section of Rule R432-150~~[-28]~~.

#### **R432-200-3~~[2]~~3. Penalties.**

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

subject to the penalties enumerated in Sections 26B-2-208, 26B-2-215 and Rule R380-600.

**KEY: health care facilities**

**Date of Last Change:** 2023~~[January 31, 2022]~~

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

**Authorizing, and Implemented or Interpreted Law:** ~~[26-21-5; 26-21-6]~~26B-2-202

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

**TYPE OF FILING:** Amendment

<b>Rule or Section Number:</b>	<b>R433-200</b>	<b>Filing ID:</b> <b>55924</b>
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#### **Agency Information**

<b>1. Department:</b>	Health and Human Services
<b>Agency:</b>	Family Health, Maternal and Child Health
<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:**

<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Nickee Andjelic	801-273-2869	npalacios@utah.gov
Alexis Weight	801-273-2956	abweight@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:**

R433-200. Pharmacist Hormonal Contraception Dispensing Authority

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

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 (Department) consolidation and the recodification of the Department's statute in the 2023 General Session.

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

This amendment updates names, terms, and entities in the text. It also makes other technical and structural changes.

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

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

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

**B) Local governments:**

There is no impact on local governments as there are only minor changes and technical updates.

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

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

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

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

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

There is no impact to other persons or entities as there are only minor changes and technical updates.

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

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

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

Fiscal Cost	FY2024	FY2025	FY2026
State Government	\$0	\$0	\$0

Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Cost</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Fiscal Benefits</b>	<b>FY2024</b>	<b>FY2025</b>	<b>FY2026</b>
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Net Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

**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-4-505		
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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:** 12/15/2023

**9. This rule change MAY become effective on:** 12/22/2023

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>	10/23/2023
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**R433. Health and Human Services, Family Health and Preparedness, Maternal and Child Health.****R433-200. ~~Family Planning Access Act~~ Pharmacist Hormonal Contraception Dispensing Authority.****R433-200-1. Authority and Purpose.**

(1) Section 26B-4-505 authorizes this rule

(2) This rule establishes the protocol required by the standing prescription drug orders for a self-administered hormonal contraceptive ~~[the Family Planning Access Act (Title 26, Chapter 64)]~~ for issuance of a valid standing prescription drug order that authorizes pharmacists and pharmacist interns licensed under Title 58, Chapter 17b, the Pharmacy Practice Act ~~[(Title 58, Chapter 17b)]~~ to dispense self-administered hormonal contraception according to the requirements of the standing order. The rule also describes information created and collected under ~~[the Family Planning Access Act and]~~ this rule.

(3) The requirements of this rule apply to each standing order issued under Section 26B-4-505 ~~[the Family Planning Access Act]~~.

**R433-200-2. Definitions.**

The terms used in this rule are defined in Section 26B-4-501 ~~[26-64-102]~~. In addition, the following definitions apply to this rule:

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

(2) "Initiate dispensing" means to fill or partially fill a self-administered hormonal contraceptive prescription:

~~(a) [M]~~ means to fill or partially fill a self-administered hormonal contraceptive prescription:

~~(i) [a]~~ ~~[at the time]~~ when a pharmacist or pharmacist intern evaluates a patient's self-assessment form and determines that it is safe to dispense contraceptives to the patient; or

~~(ii) [b]~~ at any subsequent date requiring review or evaluation by a pharmacist or pharmacist intern.

~~(b) [c]~~ ~~It [D]~~ does not mean any prescription refill, ~~[f]~~ as defined by Subsection R156-17b-102(51) ~~[g]~~ that may be provided under the applicable standing order without an evaluation or review by a pharmacist or pharmacist intern.

(3) "NDC" means the National Drug Code assigned by the U.S. Food and Drug Administration.

(4) "The Pharmacy Dispensing Authority" ~~[The Act]~~ means the standing prescription drug orders for a self-administered hormonal contraceptive ~~[Family Planning Access Act]~~.

**R433-200-3. Protocol For Issuance of a Standing Prescription Drug Order.**

Each standing prescription drug order for self-administered hormonal contraceptives issued under the Pharmacy Dispensing Authority ~~[the Act]~~ shall adhere to the requirements of Section 26B-4-505 ~~[26-64-105]~~. In addition, each order shall also require ~~[the following]~~:

~~(1) [P]~~ persons authorized to initiate dispensing a self-administered hormonal contraceptive shall make and keep ~~[retain]~~ a record that includes the following information:

(a) ~~[T]~~ the age and zip code of each patient receiving a self-administered hormonal contraceptive;

(b) ~~[T]~~ the NDC of each self-administered hormonal contraceptive dispensed;

(c) ~~[A]~~ an annual count of the number of patients who provide their self-screening risk assessment for evaluation by the pharmacist or pharmacist intern; and

(d) ~~[A]~~ any other relevant information required by the physician's standing order.

**R433-200-4. Confidentiality.**

Information produced or collected by a pharmacist or pharmacist intern under the Pharmacy Dispensing Authority ~~[Act]~~, this rule, or a standing order is "health data" subject to Title 26B, Chapter 8, Part 4, Health Statistics ~~[Title 26, Chapter 3]~~ and is confidential and privileged information subject to requirements of Section 26B-1-229 ~~[Title 26, Chapter 25]~~.

**R433-200-5. Compliance.**

Upon Department request, pharmacists, pharmacist interns, and their employing pharmacies shall provide copies of records required by the Act, this rule, and standing orders to the Department. The Department may also obtain and review records and information.

**KEY:** family planning, contraception, hormonal contraception, birth control

**Date of Last Change:** 2023 ~~[March 6, 2019]~~

**Authorizing, and Implemented or Interpreted Law:** 26B-8-4; 26B-1-224; 26B-1-229; 26B-4-505; 58-17b ~~[26-3; 26-23-6; 26-25; 26-64; 58-17b]~~

**NOTICE OF PROPOSED RULE**

**TYPE OF FILING:** Amendment

<b>Rule or Section Number:</b>	<b>R434-40</b>	<b>Filing ID:</b> <b>55910</b>
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**Agency Information**

<b>1. Department:</b>	Health and Human Services	
<b>Agency:</b>	Clinical Services, Primary Care and Rural 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>
Ashley Moretz	801-350-1546	amoretz@utah.gov
Anna West	801-231-3044	awest@utah.gov
<b>Please address questions regarding information on this notice to the persons listed above.</b>		

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

R434-40. Utah Health Care Workforce Financial Assistance Program

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

The rule is being amended to expand eligibility for the program by including dental hygienists and forensic pathologists.

The proposed amendment will shorten the service time required prior to the initial award payment.

The proposed amendment also makes changes for clarity. Old statute references are being updated with new statute references due to the passage of S.B. 137 in the 2023 General Session.

These outdated references are updated to reflect these organizational changes. The Office of Primary Care and Rural Health was restructured when the Department of Health merged with Department of Human Services UDHS in July 2022, forming the new Department of Health and Human Services (Department) and new Division of Clinical Services, Primary Care and Rural Health.

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

This proposed rule change addresses the lack of dental hygiene and forensic pathology professions by offering student loan repayment as an incentive to serve in an area of high need.

By shortening the service time required until participants become eligible for the initial disbursement, it will improve financial stewardship by ensuring more funds are disbursed in the year of the legislative appropriation.

The definition of dental hygiene is added, utilizing the same term from the American Dental Hygiene Association, as no definition could be found in statute or rule.

The definition of forensic pathology is added, utilizing the same term from the College of American Pathologists, as no definition could be found in statute or rule.

References to the Utah Department of Health are changed to the Department of Health and Human Services.

References to Family Health and Preparedness are changed to Clinical Services.

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

There is no anticipated cost or saving for state government due to this rule amendment. The expansion of eligibility

for the program by including dental hygienists and forensic pathologists will not result in a fiscal impact.

**B) Local governments:**

Local governments will not receive or expend any additional funding because of the amendment.

They are not eligible to participate in the program.

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

There is no anticipated cost or savings for small businesses.

Small businesses will not receive or be required to expend any funds as a result of the amendment because participation in the program is voluntary.

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

There is no anticipated cost or savings for non-small businesses.

Non-small businesses will not receive or be required to expend any funds as a result of the amendment because participation in the program is voluntary.

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

There is no anticipated cost or savings for persons other than small businesses, non-small businesses, state, or local government entities.

This is because participation in the program is voluntary.

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

There are no anticipated compliance costs for affected persons.

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

Fiscal Cost	FY2024	FY2025	FY2026
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0



Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Cost</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Fiscal Benefits</b>	<b>FY2024</b>	<b>FY2025</b>	<b>FY2026</b>
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Net Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>H) Department head comments on fiscal impact and approval of regulatory impact analysis:</b>			
The Executive Director of the Department of Health and Human Services, Tracy 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 26B-4-702	Section 26B-1-419	

**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>	12/15/2023
<b>9. This rule change MAY become effective on:</b>	
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>	10/22/2023
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**R434. Health and Human Services, ~~[Family Health and Preparedness]~~ Clinical Services, Primary Care and Rural Health.**  
**R434-40. Utah Health Care Workforce Financial Assistance Program.**

**R434-40-1. Purpose.**

This rule implements the Utah Health Care Workforce Financial Assistance Program, as created in Section 26B-4-702, ~~[Act, Chapter 46,]~~ which governs the award of grant funds to geriatric, health care, and mental health professionals to repay loans taken for educational expenses, and the award of scholarship funds to individuals seeking to become nurse educators, in exchange for serving for a specified period in an underserved area of the state.

**R434-40-2. Authority.**

This rule is required by Subsections ~~[26-46-102]~~ 26B-4-702(3), 26B-4-702(1)(c)(ii), and ~~[26-46-103]~~ 26B-1-419(6)(a), and is promulgated under the authority of Section 26B-1-~~[5]~~ 202.

**R434-40-3. Definitions.**

The definitions as they appear in Section ~~[26-46-101]~~ 26B-4-702 apply. In addition:

(1) "Applicant" means an individual who submits a completed application and meets the application requirements established by the Department for a loan repayment or scholarship grant under ~~[the act]~~ Section 26B-4-702.

(2) "Approved site" means a site approved by the Department ~~which [that]~~ meets the eligibility criteria established in this rule and ~~[that]~~ is:

(a) within an underserved area where health care is provided and the majority of patients served are medically underserved due to lack of health care insurance, unwillingness of existing geriatric professional and health care professionals to accept patients covered by government health programs, or other economic, cultural, or language barriers to health care access; or

(b) ~~[that is]~~ a Utah nursing school or training institution that provides a nursing education course of study to prepare persons for the practice of nursing under ~~[Title 58, Chapter 31b]~~, Title 58, Chapter 31b, Nurse Practice Act, or under ~~[Title 58, Chapter 44a]~~, Title 58, Chapter 44a, Nurse Midwife Practice Act; has a shortage of nurse educator faculty; and meets the criteria established by the Department.

(3) ~~(a)~~ "Clinical-related administrative, management or other activities" means:

(i) charting~~[s]~~;

(ii) administrative care coordination activities~~[s]~~;

(iii) training, laboratory follow-up, patient correspondence, attending staff meetings, activities related to maintaining professional licensure and other non-treatment related activities pertaining to the participant's approved practice.

(b) Any time spent in a management role is also considered to be an administrative activity.

(c) Clinical service provided by award recipients while a student or resident observes should be counted as patient care, not teaching, as the award recipient is treating the patient.

## NOTICES OF PROPOSED RULES

(4) "Committee" means the Utah Health Care Workforce Advisory Committee created by Section ~~26-1-7~~26B-1-419.

(5) "Dental Hygiene" means the science and practice of recognition, prevention, and treatment of oral diseases and conditions as an integral component of total health.~~["Dentist" means an individual licensed under Title 58, Chapter 69, Dentist and Dental Hygienist Practice Act, to practice dentistry.]~~

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

(7) "Educational expenses" means the cost of education in a health care profession, including books, education equipment, fees, materials, reasonable living expenses, supplies, and tuition.

(8) "Educational loan" means a commercial, government, or government-guaranteed loan taken to pay educational expenses.

(9) "Forensic pathology" means a subspecialty of pathology which investigates non-natural or suspicious deaths, often referred to as reportable deaths.

(~~9~~)10 "Geriatric" means individuals 65 years old and older.

~~["(10) "Geriatric professional" is further defined to mean an individual who has successfully completed one or more of the following:~~

~~a. graduate level certification in gerontology from a nationally accredited certifying organization or transcribed program of an accredited academic institution;~~

~~b. graduate degree in gerontology; or~~

~~c. additional training focused on the geriatric or gerontological aspects of the professional's discipline. Additional training may include internship, practicum, preceptorship, residency, or fellowship.]~~

(11) "Grant" means an ~~grant~~award of funds under a grant agreement.

(12) "Loan repayment" means a grant ~~[of funds under a grant]~~ to defray educational loans in exchange for service for a specified period at an approved site.

(13) "Mental health professional" means:

~~(a) a mental health therapist, as defined in Subsection 58-60-102(5); or~~

~~(b) an individual practicing within the scope of practice described in Title 58, Chapter 60, Part 5, Substance Use Disorder Counselor Act.~~

~~(14) "Nurse" means an individual licensed to practice nursing in the state under Title 58, Chapter 31b, Nurse Practice Act, or under Title 58, Chapter 44a, Nurse Midwife Practice Act.]~~

(~~14~~)14 "Nurse educator" means a nurse employed by a Utah school of nursing providing nursing education to individuals leading to licensure or certification as a nurse.

~~["(16) "Occupational Therapist" means an individual licensed to practice in the state under Title 58, Chapter 42a, Occupational Therapy Practice Act.~~

~~(17) "Pharmacist" means an individual licensed to practice in the state under Title 58, Chapter 17b, Pharmacy Practice Act.~~

~~(18) "Physical Therapist" means an individual licensed to practice in the state under Title 58, Chapter 24b, Physical Therapy Practice Act.~~

~~(19) "Physician" means an individual licensed to practice in the state under Title 58, Chapter 67, Utah Medical Practice Act, or Title 58, Chapter 68, Utah Osteopathic Medical Practice Act.~~

~~(20) "Physician assistant" means an individual licensed to practice in the state under Title 58, Chapter 70a, Physician Assistant Practice Act.]~~

(~~24~~)15 "Postgraduate training" means internship, practicum, preceptorship, or residency training required for licensure of a geriatric, health care, or a mental health professional, and as required by this rule.

(~~22~~)16 "Publicly funded" means any ~~[behavioral health]~~ facility ~~which~~[that] is either administered or run by a state, local, or municipal government agency, contracted with a government agency to provide services on behalf of the government agency, or receives a substantial amount of state or federal funding, either state or federal.

(~~23~~)17 "Recipient" means an applicant selected to receive a loan repayment or scholarship grant under Section 26B-4-702~~[the act]~~.

(~~24~~)18 "Scholarship" means a grant ~~[of funds]~~ for educational expenses ~~[given]~~awarded to an individual ~~[under a grant agreement where the individual]~~who agrees to become a nurse educator in exchange for service for a specified period at an approved site ~~which~~[that] is a Utah nursing school or training institution.

(~~25~~)19 "Service obligation" means professional service ~~[rendered]~~provided at an approved site for a minimum of three years in exchange for a scholarship or loan repayment grant.

### **R434-40-4. Loan Repayment Grants -- Terms and Service.**

(1) The Department may provide loan repayment grants to geriatric, health care, and mental health professionals to repay loans taken for educational expenses in exchange for their agreement to serve for a specified period at an approved site in the state.

(2) The Department may only give ~~[L]~~ loan repayment grants ~~[may be given only]~~ to repay bona fide loans taken by eligible individuals for educational expenses incurred while pursuing an educational degree~~[at an institution that awards a degree that]~~ qualification~~[ies the applicant]~~ to practice in the applicant's professional field.

(3) Loan repayment grants under this section may not be:

(a) ~~[be]~~ used to satisfy other obligations owed by the recipient under any similar program; ~~[and may not be]~~

(b) used to repay a loan that is in default at the time of application; or

~~[(b)]~~(c) ~~[be]~~ in an amount greater than the total outstanding balance on the loans taken for educational expenses, including accrued interest.

(4) The Department may not disburse any grant moneys under ~~[the act]~~Section 26B-4-702 until the recipient has performed at least ~~[six months]~~90 days of service at the approved site.

### **R434-40-5. Scholarship Grants -- Terms and Service.**

(1) To increase the number of nurse educators in underserved areas in the state, the Department may provide scholarship grants to individuals seeking to become nurse educators in exchange for their agreement to serve for a specified period at an approved site in the state.

(2) The Department may grant a ~~[S]~~ scholarship ~~[grants may be given]~~ to pay educational expenses while pursuing an education at an institution accredited by the National League of Nursing that provides training leading to the award of a final degree that qualifies the applicant to become a nurse educator in the state.

(3) Scholarship grants awarded~~[given]~~ under this section may not be used to satisfy other obligations owed under any similar program and may not be in an amount more than is reasonably necessary to meet educational expenses.

(4) Scholarship grant recipients shall seek a course of education following a schedule of at least a minimum number of course hours per year as set by the Department which leads to receipt



of a degree or completion of specified additional course work in a number of years as established by the Department.

#### **R434-40-6. Loan Repayment Grant Administration.**

(1)(a) The Department may award loan repayment grants to repay loans taken for eligible individuals' educational expenses.

(b) The Department may consider committee recommendations in awarding loan repayment grants.

(2) ~~Per the [As requested by the]~~Department, a loan repayment grant recipient shall provide information reasonably necessary for administration of the program.

(3) The Department shall determine the total amount of the loan repayment grant.

(4) The loan repayment grant recipient may not enter into any other similar contract until the recipient satisfies the service obligation described in the grant agreement.

(5) The Department may approve payment to a loan repayment grant recipient for increased federal, state, and local taxes caused by receipt of the loan repayment grant.

(6) The Department ~~[shall not]~~may not pay for an educational loan of a loan repayment grant applicant who is in default at the time of an application.

(7) Before receiving a loan repayment grant, the applicant ~~shall[must]~~ enter into a grant agreement with the Department that binds the individual to the terms of the program.

(8) A loan repayment grant recipient ~~shall[must]~~ have a permanent, unrestricted license to practice in the recipient's health care specialty in Utah before the recipient's first day of service under the grant agreement.

(9) Before beginning to fulfill the service obligation, a loan repayment grant recipient ~~shall[must]~~ obtain approval from the Department of the site where the recipient may complete the service obligation.

(10) A loan repayment grant recipient ~~shall[must]~~ obtain approval from the Department before changing the approved site where the recipient fulfills the service obligation.

#### **R434-40-7. Scholarship Grant Administration.**

(1)(a) The Department may award scholarship grant funds to an applicant for a maximum of four years or until earning the nursing postgraduate degree.

(b) The Department may consider committee recommendations in awarding scholarship grants.

(2) The Department may pay tuition and fees directly to the school and determine the amount and frequency of direct payments to the student.

(3) The scholarship grant recipient may not enter into a scholarship agreement other than with the program established in Section ~~[26-46-4]~~26B-4-702 until the service obligation agreed upon in the grant agreement with the Department is satisfied.

(4) A scholarship grant recipient ~~shall[must]~~ work full-time, as defined by the scholarship grant recipient's employer and as specified in the grant agreement with the Department.

(5) A scholarship grant recipient ~~shall[must]~~ serve one year of service obligation for each year the recipient received a scholarship grant under this program, with a minimum of three years required.

(6) The Department may cancel a scholarship grant at any time if it finds that the scholarship grant recipient has voluntarily or involuntarily terminated the recipient's schooling, postgraduate training, or if it appears to be a reasonable certainty that the

scholarship grant recipient does not intend to practice as required by statute, rules, and grant agreement in an underserved area in the state.

(7) Upon completion of schooling and required postgraduate training, the scholarship grant recipient is responsible for finding employment at an approved site.

(8) A scholarship grant recipient ~~shall[must]~~ obtain approval from the Department before beginning service obligation at an approved site.

(9) A scholarship grant recipient ~~shall[must]~~ obtain approval from the Department before changing the approved site where the recipient fulfills the service obligation.

(10) A scholarship grant recipient ~~shall[must]~~ obtain an unrestricted license to practice in the state and begin practicing for the agreed upon period at an approved site within three months of completion of postgraduate training.

(11) If there is no available approved site upon a scholarship grant recipient's graduation, the recipient shall repay the scholarship grant amount as negotiated in the scholarship grant agreement.

#### **R434-40-8. Eligible Bona Fide Loans.**

(1) An eligible bona fide loan is a loan used to pay for educational expenses leading to a qualifying recipient's professional degree approved by the Department.

(2) A bona fide loan includes the following:

(a) a commercial loan made by a bank, credit union, savings and loan association, insurance company, school, or credit institution;

(b) a governmental loan made by a federal, state, county, or city agency;

(c) a loan made by another person that is documented by a contract notarized at the time of the making of the loan, indicative of an arm's length transaction, and with competitive term and rate as other loans available to students; or

(d) a loan that the applicant conclusively demonstrates to the Department is a bona fide loan.

#### **R434-40-9. Full-Time Equivalency Provisions for Recipients.**

(1) The loan repayment grant amount is based on the level of full-time equivalency that the loan repayment grant recipient agrees to work.

(2)(a) For full-time providers of primary medical care services, clinicians ~~shall[must]~~ work a minimum of 40 hours~~[7]~~ per week, for a minimum of 45 weeks~~[7]~~ per service year.

(b) At least 32 hours~~[4]~~ per week are spent providing patient care at the approved service sites during normally scheduled office hours.

(c) Of the minimum 32 hours spent providing patient care, no more than eight~~[8]~~ hours per week ~~are~~~~[may be]~~ spent in a teaching capacity.

(d) The remaining eight~~[8]~~ hours~~[7]~~ per week ~~are~~~~[may be]~~ spent providing patient care for patients at the approved sites, providing patient care in an approved alternative site, including:

(i) in a hospital~~[s];~~

(ii) in a nursing home~~[s];~~ ~~or shelter, or performing clinical-related administrative activities;~~

(iii) in a shelter; or

(iv) performing clinical-related administrative activities.

(3)(a) For part-time providers of primary medical care services, clinicians ~~shall[must]~~ work a minimum of 20 hours~~[4]~~ per week, for a minimum of 45 weeks~~[7]~~ per service year.

## NOTICES OF PROPOSED RULES

(b) At least 16 hours~~[7]~~ per week are spent providing patient care at the approved service sites during normally scheduled office hours.

(c) Of the minimum 16 hours spent providing patient care, no more than four~~[4]~~ hours per week are~~[may be]~~ spent in a teaching capacity.

(d) The remaining four~~[4]~~ hours~~[7]~~ per week are spent providing patient care at the approved sites, providing patient care in an approved alternative site, including:

(i) in a hospital~~[s];~~

(ii) in a nursing home~~[s];~~ ~~or shelters, or performing clinical-related administrative activities;~~

(iii) in a shelter; or

(iv) performing clinical-related administrative activities.

(4)(a) For full-time providers of mental health services, clinicians shall~~[must]~~ work a minimum of 40 hours~~[7]~~ per week, for a minimum of 45 weeks~~[7]~~ per service year.

(b) Full-time providers shall spend ~~[A]~~ at least 20 hours~~[7]~~ per week ~~[must be spent]~~ providing patient care at the approved service sites during normally scheduled office hours.

(c) Of the minimum 20 hours spent providing patient care, no more than eight~~[8]~~ hours~~[7]~~ per week are~~[may be]~~ spent in a teaching capacity, performing clinical-related administrative activities, or in an alternative site, including:

(i) in a hospital~~[s];~~

(ii) in a nursing home~~[s];~~ or

(iii) in a shelter~~[s];~~ as directed by the approved site~~[s]~~.

(iv) performing clinical-related administrative activities.

(d) Full-time providers shall spend ~~[T]~~ the remaining 20 hours~~[7]~~ per week ~~[must be spent]~~ providing patient care at an~~[the]~~ approved service site~~[s]~~ or performing service as a behavioral or mental health professional in a school~~[s]~~ or other community-based setting~~[s when directed by the approved sites]~~.

(5)(a) For part-time providers of mental health services, clinicians shall~~[must]~~ work a minimum of 20 hours~~[7]~~ per week, for a minimum of 45 weeks~~[7]~~ a ~~[service]~~-year.

(b) At least 10 hours~~[7]~~ per week are spent providing patient care at the approved service sites during normally scheduled office hours.

(c) Of the minimum 10 hours spent providing patient care, no more than four~~[4]~~ hours per week are~~[may be]~~ spent in a teaching capacity, performing clinical-related administrative activities, or in an alternative site, including:

(i) in a hospital~~[s];~~

(ii) in a nursing home~~[s];~~ and or

(iii) in a shelter~~[s];~~ as directed by the approved site~~[s]~~.

(d) The remaining 10 hours~~[7]~~ per week are~~[may be]~~ spent providing patient care at the approved service site~~[s]~~ or performing service as a behavioral or mental health professional in a school~~[s]~~ or other community-based setting~~[s]~~ when directed by the approved sites.

(6) A full-time loan repayment grant recipient whose professional responsibilities change such that the recipient no longer meets the criteria for a full-time award may receive part-time award funding for the remainder of the service obligation, provided that the recipient meets the criteria for a part-time award and the recipient's site approves the new funding amount.

(7) A scholarship grant recipient shall~~[must]~~ work full-time, as defined by the scholarship grant recipient's employer and as specified in the scholarship grant with the Department.

(8) A scholarship grant recipient shall~~[must]~~ serve one year of service obligation for each year the recipient received a

scholarship grant under this program, with a minimum of three years required.

(9) The Department may approve a full-time equivalency of less than 40 hours per week if the applicant's employer can demonstrate that performing less than 40 hours per week at the work site combined with other activities, such as on-call service, is equivalent to a 40-hour work week.

### R434-40-10. Approved Site Determination.

(1) The Department shall approve sites based on comprehensive applications submitted by sites.

(2) The criteria the Department may use to determine an approved site for sites that are not nursing schools include:

(a) the percentage of the population with an income~~[s]~~ under 200% of the federal poverty level;

(b) the percentage of the population 65 years of age and over;

(c) the percentage of the population under 18 years of age;

(d) the distance to the nearest geriatric, health care, or mental health professional, and barriers to accessing their services;

(e) the ability of the site to provide support facilities and services for the requested health care professional;

(f) the financial stability of the site;

(g) the percent of patients served who are without insurance or whose care is paid for by government programs, such as Medicaid, Medicare, and CHIP; and

(h) the applicant's policy and practice to provide care regardless of a patient's ability to pay.

(3) The criteria the Department may use to determine an approved ~~[site for sites that are]~~ nursing school~~[s]~~ site include:

(a) a demonstrated shortage of nursing educator faculty;

(b) the number of ~~[and]~~ degrees sought by students;

(c) the number of students denied for each degree sought;

(d) the residency of students;

(e) the ability of the nursing school to provide support facilities and services for the requested position to be trained;

(f) the faculty to student ratio, including the ratio~~[s]~~ of clinical and classroom instructors;

(g) the average class sizes for each of the degrees offered by the school;

(h) the school's plans to expand enrollment;

(i) the diversity of students;

(j) the current and projected staffing for the type of instructor requested;

(k) the sources and stability of funding to hire and support the prospective instructor; and

(l) distance to the next closest nursing school.

(4) The Department may give preference to sites that provide letters of support from the area served by the prospective employer, such as from:

(a) a majority of practicing health care professionals;

(b) county and civic leaders;

(c) hospital administrators;

(d) business leaders, local chamber of commerce, citizens; and

(e) local health departments.

(5) The Department may give preference to sites located in a service area designated by the Secretary of Health and Human Services as having a health care professional shortage and which~~[that]~~ are requesting one of the following medical specialties:

(a) family practice;

(b) internal medicine;

- (c) obstetrics and gynecology;
- (d) pediatrics;~~[-or]~~
- (e) mental health~~[-];~~
- (f) dental hygiene; or
- (g) forensic pathology.

(6) To become approved, a site ~~shall~~~~[must]~~ offer a salary and benefit package competitive with salaries and benefits of other geriatric professionals and health care professionals in the service area.

(7) The health care facility employing the eligible professional shall provide education loan repayment assistance to the eligible professional in an amount equal to 20% of the total award amount provided to the eligible professional.

(8) Other criteria that the site applicant can demonstrate as furthering the purposes of ~~[the act]~~ Section 26B-4-702.

#### **R434-40-11. Loan Repayment Grant Eligibility and Selection.**

(1) In selecting a ~~[loan repayment grant]~~ recipient for a loan repayment grant award, the Department ~~shall~~~~[may]~~ evaluate the applicant based on the following selection criteria:

(a) the extent to which an applicant's training in a health care specialty is needed at an approved site;

(b) the applicant's commitment to serve in an underserved area, which can be demonstrated in any of the following ways:

(i) has worked or volunteered at a:

- (A) ~~[a]~~ community or migrant health center~~[-];~~
- (B) homeless shelter~~[-];~~
- (C) public health department clinic~~[-];~~
- (D) ~~[worked with]~~ geriatric clinic~~[populations];~~ or
- (E) other service commitment to the medically underserved;

(ii) has work or educational experience with the medically underserved or geriatric populations through the Peace Corps, AmeriCorps VISTA, ~~[has worked with geriatric populations;]~~ or a similar volunteer agency;

(iii) has cultural or language skills that ~~are~~~~[may be]~~ essential for provision of health care services to the medically underserved;

(iv) other facts or experience that the applicant can demonstrate to the Department that establishes the applicant's commitment to serve in an underserved area; and

(v) the availability of the applicant to begin service, with greater consideration being given to applicants available for service at earlier dates;

(c) the applicant's:

(i) academic standing;

(ii) prior professional or personal experience serving in an underserved area;

(iii) board certification or eligibility;

(iv) postgraduate training achievements;

(v) peer recommendations;

(vi) other facts that the applicant can demonstrate to the Department that establishes the applicant's professional competence or conduct;

(d) the applicant's financial need;

(e) the applicant's willingness to serve patients who are without insurance or whose care is paid for by government programs, such as Medicaid, Medicare, and CHIP;

(f) the applicant's willingness to provide care regardless of a patient's ability to pay;

(g) the applicant's ability and willingness to provide care; and

(h) the applicant's achieving an early match with an approved site.

(2) Only United States citizens or permanent residents are ~~[To be]~~ eligible ~~[for]~~ to receive a ~~[loan repayment]~~ scholarship grant~~[-]~~ ~~[an applicant must be a United States citizen or permanent resident].~~

(3) The applicant shall submit a written commitment from the health care facility employing the eligible professional that the health care facility will provide education loan repayment assistance ~~[to the eligible professional]~~ in an amount equal to 20% of the total award amount~~[- provided to the eligible professional]~~.

(4) The Department may consider only grant applicants who apply within 18 months of the applicant's beginning employment at an approved eligible site.

(5) The Department may give priority to health care professionals working in publicly funded sites.

#### **R434-40-12. Scholarship Grant Eligibility and Selection.**

(1) In selecting a recipient for a nurse scholarship grant, the Department may evaluate the applicant based on the following selection criteria:

(a) the applicant's commitment to serve in an underserved area, ~~as~~~~[which may be]~~ demonstrated in any of the following ways:

(i) has worked or volunteered to serve in an underserved area or service commitment to the medically underserved;

(ii) has work or educational experience with the medically underserved through the Peace Corps, VISTA, or a similar volunteer agency;

(iii) has cultural or language skills that ~~are~~~~[may be]~~ essential for services in an underserved area; and

(iv) other facts or experience that the applicant can demonstrate to the Department that establishes the applicant's commitment to the medically underserved~~[-];~~

(b) evidence that the applicant has a license in good standing to practice in the state under Title 58, Chapter 31, Nurse Practice Act, or under Title 58, Chapter 44a, Nurse Midwife Practice Act;

(c) the applicant's academic ability as demonstrated by official transcripts and official school admission test scores;

(d) the applicant's evidence that they have been accepted by or currently attends an accredited school;

(e) the applicant's projected educational expenses;

(f) the applicant's educational, personal, and professional references that demonstrate the applicant's good character and potential to successfully complete school; and

(g) the applicant's essay which is required as part of the scholarship application.

(2) In selecting a scholarship grant recipient, the Department may give preference to applicants who agree to serve for a greater length of time in return for scholarship assistance.

(3) Only United States citizens or permanent residents are ~~[To be]~~ eligible to receive a scholarship grant~~[-]~~ ~~[an applicant must be a United States citizen or permanent resident].~~

#### **R434-40-13. Loan Repayment and Scholarship Grant Service Obligation.**

(1) Before receiving an award under ~~[the act]~~ Section 26B-4-702, the recipient shall enter into a grant agreement with the Department~~[state]~~ agreeing to the conditions upon which the award is to be made.

(2) The grant agreement shall include necessary conditions to carry out the purposes of ~~[the act]~~ Section 26B-4-702 and this rule.

## NOTICES OF PROPOSED RULES

(3) In exchange for financial assistance under ~~[the act]~~Section 26B-4-702, the recipient shall serve for a period established at the time of the award, but which may not be for less than 24 months, in an underserved area at a site approved by the Department.

(4) The recipient's service in an underserved area at a site approved by the Department retires the amount owed for the award according to the schedule established by the Department at the time of the award.

(5) Periods of internship, preceptorship, or other clinical training do not satisfy the service obligation under ~~[the act]~~Section 26B-4-702.

(6) A scholarship grant recipient ~~[must]~~shall meet the following requirements:

(a) be a full-time matriculated student and meet the school's requirements to continue in the program and receive an advanced degree within the time specified in the scholarship grant agreement, unless extended pursuant to Section R434-40-16;

(b) ~~[within three months before and not exceeding one month following graduation or completion of postgraduate training,]~~ a scholarship grant recipient shall provide to the Department documented evidence of an approved site's intent to hire the recipient within three months before and not exceeding one month following graduation or completion of postgraduate training;

(c) upon completion of schooling or postgraduate training, the scholarship grant recipient ~~shall~~must find employment at an approved site;

(d) obtain an unrestricted license to practice in Utah before beginning to fulfill the service obligation at the approved site;

(e) obtain approval from the Department before beginning to fulfill the recipient's service obligation at an approved site;

(f) begin employment at the approved site within three months of graduation or completion of postgraduate training; and

(g) obtain Department approval before changing the approved site where the recipient fulfills the service obligation.

### **R434-40-14. Loan Repayment Grant Breach, Repayment, and Penalties.**

~~The grant agreement shall explain the [P]penalties for a recipient who fails to complete the service obligation. [shall be made in accordance with the grant agreement.]~~

### **R434-40-15. Scholarship Grant Breach, Repayment, and Penalties.**

~~The grant agreement shall explain the [P]penalties for a recipient who fails to complete the service obligation. [shall be made in accordance with the grant agreement.]~~

### **R434-40-16. Extension of Loan Repayment and Scholarship Grants.**

(1) The Department may extend the period within which the loan repayment grant recipient ~~shall~~must complete the service obligation:

(a) if the loan repayment grant recipient has signed a grant agreement for three years the loan repayment grant recipient may apply on or after the recipient's first day of service under a loan repayment grant to extend the grant agreement by one year;

(b) ~~[a loan repayment grant may be extended]~~only at an approved site; and

(c) a loan repayment grant recipient who desires to extend the loan repayment grant ~~shall~~must inform the Department in

writing of the recipient's interest in extending the grant agreement at least six months before the end of the current service obligation.

(2) The Department may extend the period within which the scholarship grant recipient ~~shall~~must complete the recipient's education, only at an approved site:

(a) if the scholarship grant recipient has a serious illness;

(b) if the scholarship grant recipient is activated by the military; or

(c) for other good cause shown, as determined by the Department.

~~[(3) The service obligation may be extended only at an approved site.]~~

### **R434-40-17. Release of Recipient from Service Obligation.**

(1) The Department may cancel or release, in full or in part, a recipient from the service obligation under the grant agreement without penalty:

(a) if the service obligation has been fulfilled;

(b) if the recipient fails to meet the conditions of the award or if it reasonably appears the recipient will not meet the loan repayment or scholarship grant conditions;

(c) if the recipient cannot fulfill the service obligation due to permanent disability that prevents the recipient from performing any work for remuneration or profit;

(d) if the recipient dies; or

(e) for other good cause shown, as determined by the Department.

(2) Extreme hardship sufficient to release the recipient without penalty includes:

(a) inability to complete the required schooling or fulfill service obligation due to permanent disability that prevents the recipient from completing school or performing any work for remuneration or profit; or

(b) a family member, for which the recipient is the principal care giver, has a life-threatening chronic illness.

(3) The Department may develop alternative service obligation criteria that a loan repayment or scholarship grant recipient may use to fulfill the service obligation if the loan repayment or scholarship grant recipient cannot fulfill the service obligation at an approved site due to reasons beyond the recipient's control.

### **R434-40-18. Reporting Requirements of Award Recipients.**

(1) The Department may require an award recipient to provide information regarding:

(a) ~~[1-]~~the academic performance;

(b) ~~[2-]~~commitment to underserved areas;

(c) ~~[3-]~~continuing financial need;

(d) ~~[4-]~~service obligation fulfillment; and

(e) ~~[5-]~~other information reasonably necessary for the administration of the program during the period the recipient is in school; postgraduate training; and during the period the award recipient is completing the service obligation.

### **R434-40-19. Reporting Requirements of Approved Sites.**

(1) The Department may require the approved site to provide information regarding:

(a) ~~[1-]~~the award recipients' performance;

(b) ~~[2-]~~commitment to underserved areas;

(c) ~~[3-]~~service obligation fulfillment; and

(d) ~~[4-]~~other information reasonably necessary for the administration of the program during the ~~[period the]~~award recipient's ~~[is completing the]~~service obligation.

**KEY:** medically underserved, grants, scholarships  
**Date of Last Change:** ~~June 7, 2022~~ 2023  
**Notice of Continuation:** May 8, 2019  
**Authorizing, and Implemented or Interpreted Law:** ~~26-46-102~~ 26B-4-702

#### NOTICE OF PROPOSED RULE

**TYPE OF FILING:** Amendment

<b>Rule or Section Number:</b>	<b>R436-7</b>	<b>Filing ID:</b> <b>55961</b>
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#### Agency Information

<b>1. Department:</b>	Health and Human Services	
<b>Agency:</b>	Data, Systems and Evaluation, Vital Records and Statistics	
<b>Room number:</b>	140	
<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 141012	
<b>City, state and zip:</b>	Salt Lake City, UT 84114-1012	
<b>Contact persons:</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Linda S. Wininger	801-538-6262	Lindaw@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>
R436-7. Death Registration
<b>3. Purpose of the new rule or reason for the change:</b>
Recodification requires changes to citations and to add penalties for the violation of this rule.
<b>4. Summary of the new rule or change:</b>
This filing changes the citation to match the new numbering of the law.
The filing also adds a penalty for disposition of the deceased prior to death registration, death filing by funeral director more than 120 hours after death, and medical certification more than 120 hours after death.

#### Fiscal Information

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

#### A) State budget:

There is no anticipated cost or savings to the state budget, as the penalty added to this rule is expected to be a deterrent to fraudulent disposition of the deceased prior to death registration, death filing by funeral director more than 120 hours after death, and medical certification more than 120 hours after death.

The change in citations is clerical.

#### B) Local governments:

This rule is not expected to have a fiscal impact on local governments' revenues or expenditures.

This rule change defines a penalty for rule violation that was previously in Rule R436-16, Penalties.

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

This rule change will not have a fiscal impact on small businesses if they abide by the law.

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

This rule change will not have a fiscal impact on non-small businesses if they abide by the 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 amendment only affects those people who do not abide by the law and disposition the deceased prior to death registration, funeral directors who file a death more than 120 hours after the death, and medical certifiers who certify the death more than 120 hours after the death.

#### 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. The change adds a penalty for dispositioning a deceased person prior to death registration, and filing or certifying a death more than 120 hours after the death.

#### 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

## NOTICES OF PROPOSED RULES

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

**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-8-114 | Section 26B-1-224 |

## 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:** 12/15/2023

**9. This rule change MAY become effective on:** 12/22/2023

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>	10/22/2023
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**R436. Health and Human Services, ~~[Center for Health Data]~~ Data, Systems, and Evaluation, Vital Records and Statistics.**

**R436-7. Death Registration.**

**R436-7-1. Purpose and Authority.**

(1) This rule sets forth procedures for the registration of death.

(2) Authority for this rule is found in Section ~~[26-2-43]~~ 26B-8-114.

**R436-7-2. Death Registration.**

(1) Deaths will be registered within five days measured as 120 hours from the time of death.

(2) If the information necessary to complete a death certificate is not available within the time prescribed for filing of the certificate, the funeral director shall file the certificate completed with the information that is available.

(3) In each case, the medical certification must be signed by the person responsible for such certification.

(4) If the cause of death is unknown, undetermined or pending investigation, the cause of death shall be shown as such on the certificate.

(5) Final disposition of the deceased ~~[shall]~~ may not be made until the death certificate is registered or is authorized by the medical examiner.

(6) An amendment providing the information missing from the original certificate shall be filed with the State Registrar.

**R436-7-3. Penalty for Disposition of Deceased Before Death Registration and Failure to File or Certify the Death Within 120 Hours of the Death.**

(1) A funeral director violates this rule and is subject to the penalties provided in Section 26B-1-224, including both administrative and civil penalties if the funeral director:

(a) Dispositions the deceased before the death registration, or;

(b) Fails to register the death within 120 hours of the death without good cause.

(2) A medical certifier violates this rule and is subject to the penalties provided in Section 26B-1-224, including both administrative and civil penalties if the medical certifier fails to certify the death within 120 hours of the death without good cause.

(3) Good cause includes receiving the assignment close to or after the 120 hours timeframe.

**KEY: vital statistics, death, funeral industries**

**Date of Last Change: 2023[April 11, 2022]**

**Notice of Continuation: March 21, 2023**

**Authorizing, and Implemented or Interpreted Law: ~~[26-2-43]~~ 26B-8-114; 26B-1-224**

NOTICE OF PROPOSED RULE		
TYPE OF FILING: Amendment		
Rule or Section Number:	R436-8	Filing ID: 55963

**Agency Information**

<b>1. Department:</b>	Health and Human Services	
<b>Agency:</b>	Data, Systems and Evaluation, Vital Records and Statistics	
<b>Room number:</b>	140	
<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 141012	
<b>City, state and zip:</b>	Salt Lake City, UT 84114-1012	
<b>Contact persons:</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Linda S. Wininger	801-538-6262	Lindaw@utah.gov
<b>Please address questions regarding information on this notice to the persons listed above.</b>		

**General Information**

2. Rule or section catchline:
R436-8. Authorization for Final Disposition of Deceased Persons
3. Purpose of the new rule or reason for the change:
Following the recodification of the Department of Health and Human Services (Department) statute in the 2023 General Session, the Department is proceeding to update this rule and to add penalties for the violation of this rule.
4. Summary of the new rule or change:
This filing changes the citation to match the new numbering of the law, following the recodification of the Department's statute.
Additionally, this amendment states the penalty for issuing copies of all or part of a record where there is not a direct, tangible, legitimate interest.

**Fiscal Information**

5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:
A) State budget:
There is no anticipated cost or savings to the state budget, as the penalty added to this rule is expected to be a deterrent to fraudulent in the disposition of dead bodies.

The change in citations is clerical.

**B) Local governments:**

This rule is not expected to have a fiscal impact on local governments' revenues or expenditures.

This rule change defines a penalty for rule violation that was previously in Rule R436-16, Penalties.

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

This rule change will not have a fiscal impact on small businesses.

Small businesses would not be affected unless they are in violation of the law.

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

This rule change will not have a fiscal impact on non-small businesses.

Non-small businesses would not be affected unless they are in violation of the 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 amendment only affects those people who are in violation of the law.

**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.

The change adds a penalty for transporting a dead body or fetus without a permit, noncompliance with body preservation requirements, or disinterment or reinterment without authorization.

**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



## NOTICES OF PROPOSED RULES

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

**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-8-120 | Section 26B-8-121 | Section 26B-1-224

## 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:** 12/15/2023

**9. This rule change MAY become effective on:** 12/22/2023

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>	10/22/2023
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**R436. Health and Human Services, [Center for Health Data, Vital Records and Statistics]Data, Systems and Evaluation, Vital Records and Statistics.**

**R436-8. Authorization for Final Disposition of Deceased Persons. R436-8-1. Purpose and Authority.**

(1) This rule sets forth the requirements for the removal, transportation, and preservation of bodies of deceased persons. It also provides for the authorization for disinterment and reinterment of dead bodies.

(2) Authority for this rule is found in Sections ~~[26-2-13]~~26B-8-114 and ~~[26-2-16]~~26B-8-120.

**R436-8-2. Removal of Body.**

Before removing a dead body or fetus from the place of death, the funeral director or person acting as such shall:

(1) Obtain permission from the next of kin or the custodian of the remains to remove the body or fetus from the place of death, and obtain assurance from the attending physician that death is from natural causes, and that the physician will assume responsibility for certifying to the cause of death or fetal death.

(2) Determine whether ~~[or not]~~ the medical examiner has been notified~~[,]~~ if the death comes within their jurisdiction.

(3) If the medical examiner has not been notified or if that fact is unknown, make the notification and obtain authorization to remove the body.

(4) When the dead body or fetus is being removed from the hospital or other place of death by the next of kin or other person acting as the funeral director, the hospital or other custodian of the body ~~[shall]~~ may not release the body until they are presented with a burial-transit permit issued by the appropriate local registrar or the State Registrar.

**R436-8-3. Transportation of Dead Bodies.**

(1) Any body shipped by common carrier must be embalmed by a licensed embalmer in a manner approved by the State Board of Embalming.

(2) The body must be placed in either:  
(a) a sound casket enclosed in a strong outside shipping case~~[,]~~ or

(b) a metal container specifically designed for this purpose.  
(3) If the body cannot be embalmed or is in a state of decomposition, it may be shipped only after enclosure in an air-tight metal casket encased in a strong outside shipping case, or in a sound casket encased in an air-tight metal, or metal-lined shipping case.

(4) When a body is to be transported by common carrier, the burial-transit permit shall be attached to the shipping case.

(5) A body transported by means other than a common carrier must be encased in a container, such as a plastic bag, that ensures against seepage of fluid and the escape of odors.

(6) Bodies transported by a licensed funeral director in a vehicle used for such purpose do not need to be encased.

(7) If a dead body is to be transported by means other than a common carrier and for a purpose other than preparation or storage, the burial-transit permit shall be attached to the container in which the body is enclosed or in the possession of the person transporting the body.

**R436-8-4. Preservation of Bodies.**

No human body may be held in any place or be in transit more than 24 hours after death and pending final disposition, unless either maintained at a temperature of not more than 40 degrees Fahrenheit. or embalmed by a licensed embalmer in a manner

approved by the State Board of Embalming, or by an embalmer licensed to practice in the state where the death occurred.

#### **R436-8-5. Authorization for Disinterment and Reinterment.**

(1) An authorization for disinterment and reinterment of a dead body or cremated remains shall be issued by the local registrar of the district where the body or cremated remains are interred or by the State Registrar, upon receipt of a written application signed by the next of kin and the person who is in charge of the disinterment, or upon receipt of an order of a court of competent jurisdiction directing such disinterment.

(2) If the next of kin ~~[are in disagreement]~~ disagree regarding the disinterment, the State Registrar may require a court order before issuing the disinterment permit.

(3) Upon the relocation of a cemetery, the State Registrar or local registrar may issue a single disinterment permit to allow for mass disinterment of the bodies and cremated remains located in the cemetery. Before the issuance of this permit, the registrar must receive written agreement that as far as possible, the remains of each body will be identified and the place of disinterment and reinterment will be specified and provided to the sexton of the cemetery where reinterment occurs.

(4) A dead body properly prepared by an embalmer or a dead body properly cremated by a licensed crematorium and deposited in a receiving vault shall not be considered a disinterment when removed from the vault for final disposition.

#### **R436-8-6. Penalty for Transporting Dead Body or Fetus Without a Burial Transit Permit, Noncompliance with Preservation of Body Requirements, or Disinterment or Reinterment Without Authorization.**

An individual violates this rule and is subject to the penalties provided in Section 26B-1-224, including both administrative and civil penalties if they:

(1) transport a dead body or fetus without a Burial-Transit Permit, or licensure as a funeral director;

(2) do not comply with body preservation requirements; or

(3) disinter or reinter a dead body or fetus without authorization.

**KEY:** vital statistics, permits, funeral industries

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

**Notice of Continuation:** March 20, 2023

**Authorizing, and Implemented or Interpreted Law:** ~~[26-2-16]~~~~26B-8-120; [26-2-17]~~~~26B-8-121; 26B-1-224~~

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

**TYPE OF FILING:** Amendment

<b>Rule or Section Number:</b>	<b>R436-19</b>	<b>Filing ID:</b> <b>55915</b>
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#### **Agency Information**

<b>1. Department:</b>	Health and Human Services
<b>Agency:</b>	Data, Systems and Evaluation, Vital Records and Statistics
<b>Room number:</b>	140
<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 141012	
<b>City, state and zip:</b>	Salt Lake City, UT 84114-1012	
<b>Contact persons:</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Linda S. Wininger	801-538-6262	Lindaw@utah.gov
<b>Please address questions regarding information on this notice to the persons listed above.</b>		

#### **General Information**

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

R436-19. Abortion Reporting

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

The changes to this rule are to add penalties for the violation of this rule.

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

The filing changes the citation to match the new numbering of the law, following the recodification of the Department of Health and Human Services (Department) statute in the 2023 General Session.

Additionally, this amendment adds a penalty for failing to report an abortion performed in the state.

#### **Fiscal Information**

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

###### **A) State budget:**

There is no anticipated cost or savings to the state budget, as the penalty added to this rule is expected to be a deterrent to failing to file a report of an abortion performed in the state.

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

This rule is not expected to have a fiscal impact on local governments' revenues or expenditures.

This rule change defines a penalty for rule violation that was previously in Rule R436-16, Penalties.

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

This rule change will not have a fiscal impact on small businesses unless they do not report abortions they perform in the state to the Department, which is a violation of the law.

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

This rule change will not have a fiscal impact on non-small businesses unless they do not report abortions they perform in the state to the Department, which is a violation of the 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 amendment only affects those people who perform an abortion in the state and do not report it to the Department, which is a violation of the law.

**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. The change adds a penalty for performing an abortion in the state and not reporting it to the Department, which is a violation of the law.

**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 76-7-313	Section 26B-1-224	
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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:** 12/15/2023

**9. This rule change MAY become effective on:** 12/22/2023

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>	10/22/2023
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**R436. Health and Human Services, [Center for Health Data] Data, Systems and Evaluation, Vital Records and Statistics.**

**R436-19. Abortion Reporting.**

**R436-19-1. Purpose and Authority.**

(1) This rule sets forth the requirements for reporting of abortions performed in the state.

(2) Authority for this rule is found in Section 76-7-313.

**R436-19-2. Abortion Reporting.**

To ensure compliance with Subsections 76-7-313(1) and (2), each physician who performs an abortion shall submit or authorize the facility to submit on their behalf, a completed "Report of Induced Termination of Pregnancy" form signed by the physician performing the abortion to the department within 30 days after the day on which the abortion is performed.

**R436-19-3. Penalty for Failure to Comply with Abortion Reporting Requirements.**

A physician or facility violates this rule and is subject to the penalties provided in Section 26B-1-224, including both administrative and civil penalties if the physician or facility performs an abortion in the state and does not report it to the Department of Health and Human Services.

**KEY:** abortions, vital records

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

**Authorizing, and Implemented or Interpreted Law:** 76-7-313(+); 26B-1-224

**NOTICE OF PROPOSED RULE**

**TYPE OF FILING:** Repeal

<b>Rule or Section Number:</b>	<b>R438-13</b>	<b>Filing ID:</b> <b>55952</b>
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**Agency Information**

<b>1. Department:</b>	Health and Human Services	
<b>Agency:</b>	Disease Control and Prevention, Laboratory Services	
<b>Building:</b>	Unified State Lab	
<b>Street address:</b>	4431 S 2700 W	
<b>City, state and zip:</b>	Taylorsville, UT 84129	
<b>Contact persons:</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Kristin Brown	801-538-4152	kristinbrown@utah.gov
Andreas Rohrwasser	801-631-7658	arohrwasser@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>
R438-13. Rules for the Certification of Institutions to Obtain Impounded Animals in the State of Utah
<b>3. Purpose of the new rule or reason for the change:</b>
Following a review of this rule due to the recodification of the Department of Health and Human Service's statute, it was determined that this rule is no longer necessary as it has not been in use or authorized for some time.
<b>4. Summary of the new rule or change:</b>
This filing repeals Rule R438-13 in its entirety.

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

There is no anticipated impact to the state budget due to the repeal of this rule.

This rule has remained in place, despite processes and program changes.

**B) Local governments:**

There is no anticipated impact to local governments due to the repeal of this rule.

This rule has remained in place, despite processes and program changes.

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

There is no anticipated impact to small businesses due to the repeal of this rule.

This rule has remained in place, despite processes and program changes.

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

There is no anticipated impact to non-small businesses due to the repeal of this rule.

This rule has remained in place, despite processes and program changes.

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

There is no anticipated impact to persons other than small businesses, non-small businesses, state, or local government entities due to the repeal of this rule.

This rule has remained in place, despite processes and program changes.

**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 any person as a result 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>
<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 26-26-1		

**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>	12/15/2023

<b>9. This rule change MAY become effective on:</b>	12/22/2023
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>	10/22/2023
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**R438. Health, Disease Control and Prevention, Laboratory Services.****[R438-13. Rules for the Certification of Institutions to Obtain Impounded Animals in the State of Utah.****R438-13-1. Introduction.**

The purpose of this rule is to enable the proper execution of Section 26-26-1 et seq., for controlling the humane use of animals obtained from impound establishments for the diagnosis and treatment of human and animal diseases; the advancement of veterinary, dental, medical, and biological sciences; and the testing, improvement, and standardization of laboratory specimens, biologic products, pharmaceuticals and drugs.

**R438-13-2. Definitions.**

(1) "ADMINISTRATOR" means a Department of Health staff member appointed by the Director to administer this rule.

(2) "ANIMAL" means any unredeemed, abandoned or stray dog or cat impounded and requested by an institution for purposes specified in Section 26-26-1 et seq., as amended, and this rule. Animals obtained from any source other than an establishment are not covered by this rule. Owners of voluntarily released animals may elect, by signature, whether the animal may or may not be used in research.

(3) "ANIMAL FACILITY" means an area of the institution where animals are housed or kept.

(4) "COMMITTEE" means a body of seven individuals appointed by the Administrator with the Director's approval for carrying out the purpose of this rule.

(5) "DEPARTMENT" means the Utah Department of Health (DOH).

(6) "DIRECTOR" means the Executive Director of the Department of Health.

(7) "ESTABLISHMENT" means any place maintained for the impounding, care, and disposal of animals seized by lawful authority.

(8) "INSPECTION TEAM" means one animal control officer, recommended by the Utah Animal Control Officers' Association (UACO,) and one licensed veterinarian, both approved by the institution being inspected and appointed by the Administrator.

(9) "INSPECTOR" means a representative of the United States Department of Agriculture (USDA) or a qualified person acceptable to the Director or Administrator.

(10) "INSTITUTION" means any school or college of agriculture, veterinary medicine, medicine, pharmacy, dentistry, or other educational, hospital or scientific establishment, as determined by the committee and approved by the Director, which is properly concerned with the investigation of or instruction concerning the structure or functions of living organisms, or the cause, prevention, control, or cure of diseases or abnormal conditions of human beings or animals.

~~\_\_\_\_\_ (11) "PHYSICIAN" means any person who is licensed by the Utah Department of Commerce under either the Utah Medical Practice Act or the Utah Osteopathic Medicine Licensing Act to practice medicine and/or surgery in all its branches, or a physician in the employment of the government of the United States who is similarly qualified.~~

~~\_\_\_\_\_ (12) "VETERINARIAN" means any person who is licensed by the Department of Commerce under the Veterinary Practice Act to practice veterinary medicine, surgery, and dentistry or a veterinarian in the employment of the government of the United States who is similarly qualified.~~

### **R438-13-3. Department of Health—Power to Certify Institutions.**

~~\_\_\_\_\_ The Department, under the powers and duties conferred upon it by Section 26-26-2, may issue a certificate to obtain impounded animals to any institution requesting such certification upon being assured that the institution meets the requirements of Section 26-26-1 et seq., and has satisfied the requirements for certification, as determined after an inspection.~~

### **R438-13-4. Committee—Responsibilities and Membership.**

~~\_\_\_\_\_ (1) There is created an Impounded Animals Advisory Committee pursuant to Section 26-1-20.~~

~~\_\_\_\_\_ (2) The committee shall review and evaluate all applications of institutions requesting certification under this rule, or applications for renewal of certification. The committee shall investigate any complaints of violation of Section 26-26-1 et seq. and/or this rule by any individual, institution, or establishment, and shall inform the Director of its findings. The committee shall make recommendations for or against certification or enforcement of the law and this rule.~~

~~\_\_\_\_\_ (3) The committee shall include not less than one representative from the following: institutions directly involved with the use of laboratory animals, a physician, a representative of establishments, a veterinarian, a representative of animal welfare advocates, and two other members to be appointed by the Director, one of which must represent the public. The committee shall elect a chairman and a vice chairman from its membership. The committee shall be convened when an application or violation complaint is received by the Administrator or the Director.~~

### **R438-13-5. Administrator—Duties and Responsibilities.**

~~\_\_\_\_\_ The Director may appoint a member of the Department staff to be responsible for the administration of this rule. The Administrator shall be a nonvoting member of the committee and shall issue certificates, receive and review all applications and records, conduct investigations, and receive and review reports of an inspector, consistent with the requirements of Section 26-26-1 et seq. and shall advise the committee of all findings.~~

### **R438-13-6. Requirements for Certification.**

~~\_\_\_\_\_ (1) Any institution requesting certification under this rule shall be found to have the proper personnel and facilities for the care and humane treatment of any animal procured under this rule, and so shown by the application and by an inspection of the institution's animal facility by an inspector.~~

~~\_\_\_\_\_ (2) The care and management of animals shall be performed by qualified personnel.~~

~~\_\_\_\_\_ (3) The institution's animal facilities shall be under the direct supervision of a diplomate of the American College of Laboratory Animal Medicine, a physician, veterinarian, or dentist, or a person formally trained in the biological sciences and having no~~

~~less than three years of pertinent training and experience in animal care, or a person qualified by specialized education, training and experience essentially equivalent to the above categories.~~

~~\_\_\_\_\_ (4) Animal care personnel shall be qualified by training and experience in the care of animals as determined by the institution's animal facility supervisor.~~

~~\_\_\_\_\_ (5) Apprentice personnel shall be under the direct and immediate supervision of regular animal care personnel.~~

~~\_\_\_\_\_ (6) The size of the animal care staff shall be adequate to assure daily attention to the needs of the animals.~~

~~\_\_\_\_\_ (7) Provision shall be made for the emergency care of animals whenever needed.~~

~~\_\_\_\_\_ (8) Sanitary practices and humane care of animals shall conform to standards as described in the National Institutes of Health Publication, revised 2011, "Guide for the Care and Use of Laboratory Animals, 8th ed" and the Animal Welfare Act, which are incorporated by reference.~~

~~\_\_\_\_\_ (9) Institutions seeking initial certification must submit evidence of a successful on-site inspection of their impounded animal facilities by the United States Department of Agriculture (USDA). Institutions unable to be inspected by USDA are subject to inspection by a Department of Health inspection team. After initial certification, institutions wishing to maintain certified status shall be inspected at least annually by the USDA, an inspection team or both.~~

~~\_\_\_\_\_ (10) Each institution shall appoint an animal care and use committee. This committee should include a scientist from the institution, a doctor of veterinary medicine, and a person who is not affiliated with the institution in any way other than a member of the committee.~~

~~\_\_\_\_\_ (11) This committee should be responsible for evaluating the animal care and use program. Its duties should include those described in the National Institutes of Health Publication, revised 2011, "Guide for the Care and Use of Laboratory Animals, 8th ed."~~

### **R438-13-7. Application for Certification.**

~~\_\_\_\_\_ (1) Application for certification shall be initiated by the institution wishing to obtain unredeemed impounded animals. The application shall be made on a form furnished by the Department, and shall include:~~

~~\_\_\_\_\_ (a) the name and address of the institution;~~

~~\_\_\_\_\_ (b) the name of the person responsible for the supervision of procurement and handling of the animal(s);~~

~~\_\_\_\_\_ (c) an estimate of the maximum number and species of animals to be obtained by the institution during the calendar year;~~

~~\_\_\_\_\_ (d) the names of members of the institution's animal care and use committee.~~

~~\_\_\_\_\_ (2) Fees for certification will be set and administered by the Department, with approval of the State Legislature.~~

### **R438-13-8. Issuance of Certificate.**

~~\_\_\_\_\_ (1) Upon receipt of an application, an inspector shall review the animal facility of the institution and shall submit a report of the review to the committee, unless an inspection report is submitted at the same time as the application. The committee will review the application and the inspection report. The committee will review submit written recommendations to the Director. It shall be the prerogative of the Director to determine if the institution meets the requirements of Section 26-26-1 et seq. and this rule.~~

~~\_\_\_\_\_ (2) Any certificate is valid only for the time frame for which it is issued, not to exceed 12 months. Any institution wishing to renew a certificate shall do so on a form furnished by the~~



Department, and shall state any changes made or contemplated since the most recent application was submitted.

\_\_\_\_\_ (3) ~~The certificate of approval or duplicate thereof, as supplied by the Department, shall be displayed in a prominent place in the approved institution's animal facility.~~

\_\_\_\_\_ (4) ~~A certificate cannot be transferred.~~

**R438-13-9. Requirements for Certified Institutions.**

\_\_\_\_\_ (1) ~~Each institution shall appoint a person to be responsible for the procurement of and maintenance of records on all animals obtained from establishments.~~

\_\_\_\_\_ (2) ~~Records shall be kept by the institution of all animals procured under certification.~~

\_\_\_\_\_ (3) ~~Records shall include:~~

\_\_\_\_\_ (a) ~~a description of the animal, including breed, if known;~~

\_\_\_\_\_ (b) ~~the date and place where the animal was procured;~~

\_\_\_\_\_ (c) ~~the physical condition of the animal when received by the institution;~~

\_\_\_\_\_ (d) ~~the cage or pen number or other identification;~~

\_\_\_\_\_ (e) ~~the experimental or scientific use of the animal, including information as to whether anesthesia was or was not used;~~

\_\_\_\_\_ (f) ~~name and address of person who adopted animal, if adopted at the end of the study period;~~

\_\_\_\_\_ (g) ~~the method of euthanasia of the animal, if euthanasia is performed.~~

\_\_\_\_\_ (4) ~~The institution is to provide a copy of the information in 438-13-9(3) to an establishment for each animal received.~~

\_\_\_\_\_ (5) ~~After the final disposition of the animal, a copy of the completed record shall be mailed or delivered to the Administrator by the institution.~~

\_\_\_\_\_ (6) ~~The completed records shall be maintained by the institution for not less than two years and shall be made available for inspection at any time deemed necessary by the Director or his authorized representative.~~

\_\_\_\_\_ (7) ~~Written requisitions may be required by an establishment prior to the release of an animal to an institution. The institution shall furnish one copy of the requisition to the establishment and one copy shall be retained by the institution.~~

\_\_\_\_\_ (8) ~~The requisition shall include:~~

\_\_\_\_\_ (a) ~~name and address of the institution;~~

\_\_\_\_\_ (b) ~~name and address of the establishment;~~

\_\_\_\_\_ (c) ~~number, species, size and sex of the animals desired;~~

\_\_\_\_\_ (d) ~~number of certificate;~~

\_\_\_\_\_ (e) ~~date requisition was issued.~~

\_\_\_\_\_ (9) ~~The institution shall accept the available animals and provide for the their transportation to the institution.~~

\_\_\_\_\_ (10) ~~The institution shall compensate the establishment for the actual expense for holding animals beyond the time of the notice to the institution of their availability until they have been obtained by the institution.~~

\_\_\_\_\_ (11) ~~At any time after a requisition has been issued to an establishment and before notice of the availability of the animals requisitioned has been made to the institution, the institution may cancel all or any unfilled part of the requisition.~~

\_\_\_\_\_ (12) ~~Whenever unredeemed animals are received by an institution, the institution shall furnish the establishment a receipt. Receipts shall be issued in triplicate and shall be countersigned by a representative of the establishment. A copy shall be mailed or delivered to the Administrator by the institution and one copy shall be retained by the institution. A receipt shall be issued for each animal obtained. The receipt shall show the date that the animal was~~

~~delivered to the agent of the institution by the establishment and the signature of the person to who it was delivered.~~

\_\_\_\_\_ (13) ~~At the conclusion of an experiment which does not require euthanasia for the collection of samples, the institution's animal facility may, providing the establishment agrees and for the purposes of adoption, return to the establishment any healthy animal posing no contagious threat to humans. If the establishment does not agree to accept the animal, the institution's animal facility shall euthanize the animals.~~

\_\_\_\_\_ (14) ~~The Administrator must be notified within ten days of personnel changes.~~

**R438-13-10. Requirements of an Establishment.**

\_\_\_\_\_ (1) ~~Each establishment shall keep a public record of all animals received and disposed.~~

\_\_\_\_\_ (2) ~~Whenever a requisition for impounded animals is submitted to an establishment, it shall be its duty to make available to the institution the number of animals of the species, size, and sex specified in the requisition, from the unredeemed animals in their charge. The establishment shall then withhold from the destruction all unredeemed animals of the species, size, and sex specified by the requisition until the number of animals is sufficient to complete the requisition.~~

\_\_\_\_\_ (3) ~~If the number of animals specified by the requisition is not available, the establishment shall immediately make available all unredeemed animals in the establishment under his supervision.~~

\_\_\_\_\_ (4) ~~It shall be unlawful for any establishment to release any animal to an institution not holding a valid certificate issued under this rule.~~

**R438-13-11. Maintenance and Release of Animals by the Institution.**

\_\_\_\_\_ (1) ~~No animal obtained by an institution on requisition as herein provided shall be sold or given into the possession of any other person or organization unless released to its previous owner or adopted after the experiment to a private citizen for possession as a pet. All animals shall be transported immediately from the establishment to the institution in a humane manner and maintained by the institution for the remainder of the life of the animal unless adopted under the provision of this rule. Nothing shall prohibit the institution from releasing an animal to its previous owner if satisfactory proof of ownership is provided to the institution. The institution may require the owner to reimburse the institution for actual expenses for maintaining the animal from the time it was received by the institution until it was delivered to the previous owner.~~

\_\_\_\_\_ (2) ~~Any animal procured by an institution under this rule shall be handled, transported and disposed of in a humane manner.~~

**R438-13-12. Revocation of Certification.**

\_\_\_\_\_ (1) ~~Violation of Section 26-26-1 et seq. or this rule violates Section 26-23-6 and is cause to consider the cancellation of any certificate issued under this rule.~~

\_\_\_\_\_ (2) ~~Notification of Intent To Revoke~~

\_\_\_\_\_ Upon receipt of evidence of a violation, the Director shall issue written notice, pursuant to Section 63G-4-2, of intent to revoke the certificate of the institution 30 days following receipt of notice.

\_\_\_\_\_ (3) ~~Notice of Hearing~~

\_\_\_\_\_ The institution shall have 15 days from receipt of notice to file a written response to show why the certificate should not be revoked, and to request an informal hearing under Section 63G-4-2.



If requested by the institution, the Director shall grant an informal hearing upon 15 days written notice.

~~(4) Action On Hearing~~

~~If after the hearing the Director decides the certificate shall be revoked, copies of the revocation shall be sent to the institution and all establishments providing animals for the institution. Institutions may seek review of agency action as outlined in Section 63G-4-2.~~

**~~R438-13-13. Renewal of Revoked Certificate.~~**

~~An institution may submit an application for the renewal of a certificate canceled by reason of violation of the law or this rule not less than 30 days after final action was taken. The application shall be accompanied by documented evidence that the reason for cancellation has been removed. Upon being assured that the institution is acting in good faith and upon receipt of a favorable recommendation from the committee, the Director may issue a new certificate.~~

**~~R438-13-14. Complaint.~~**

~~Anyone who files a complaint with the Department against an individual, institution or establishment violating any part of R438-13 et seq., shall supply in writing specific information regarding the alleged violation or violations. The complaint shall include the time, date, place, individual or persons involved and the names of witnesses who may be called upon to testify. This statement must be in the form of a sworn affidavit and must be notarized. Preliminary investigations of complaints may be conducted at the discretion of the Director or a designated representative without the filing of a notarized sworn affidavit.~~

**~~KEY: animals, laboratories, laboratory animals~~**

**~~Date of Last Change: November 7, 2018~~**

**~~Notice of Continuation: November 7, 2018~~**

**~~Authorizing, and Implemented or Interpreted Law: 26-26-1 to 7]~~**

**NOTICE OF PROPOSED RULE**

**TYPE OF FILING:** Amendment

<b>Rule or Section Number:</b>	<b>R444-1</b>	<b>Filing ID:</b> <b>56119</b>
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**Agency Information**

<b>1. Department:</b>	Health and Human Services	
<b>Agency:</b>	Utah Public Health Laboratory, Lab Certification Program	
<b>Building:</b>	Unified State Lab	
<b>Street address:</b>	4431 S 2700 W	
<b>City, state and zip:</b>	Taylorsville, UT 84129	
<b>Contact persons:</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Kristin Brown	801-538-4152	kristinbrown@utah.gov

Andreas Rohrwasser	801-631-7658	arohrwasser@utah.gov
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**Please address questions regarding information on this notice to the persons listed above.**

**General Information**

**2. Rule or section catchline:**

R444-1. Approval of Clinical Laboratories

**3. Reason for the change:**

Following the recodification of the Department of Health and Human Services (Department) statute in the 2023 General Session, the Department is proceeding with an amendment to update this rule.

**4. Summary of the change:**

The amendment updates outdated citations and name changes following the consolidation of the Department of Health and Human Services.

It also restructures the purpose and authority section of this rule.

**Fiscal Information**

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

**A) State budget:**

This amendment filing is the result of the consolidation of the Department and the recodification of the Department's statute.

This amendment filing is technical in nature and will not result in any fiscal cost or savings to the state budget.

**B) Local government:**

This amendment filing is the result of the consolidation of the Department and the recodification of the Department's statute.

This amendment filing is technical in nature and will not result in any fiscal cost or savings to local governments.

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

This amendment filing is the result of the consolidation of the Department and the recodification of the Department's statute.

This amendment filing is technical in nature and will not result in any fiscal cost or savings to small businesses.

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

This amendment filing is the result of the consolidation of the Department and the recodification of the Department's statute.

This amendment filing is technical in nature and will not result in any fiscal cost or savings to non-small businesses.

**E) Persons other than small businesses, non-small businesses, or 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 filing is the result of the consolidation of the Department and the recodification of the Department's statute.

This amendment filing is technical in nature and will not result in any fiscal cost or savings to persons other than small businesses, non-small businesses, or state or local government entities.

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

This amendment filing is the result of the consolidation of the Department and does not carry any compliance costs.

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

**Regulatory Impact Table**

<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-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:** 12/15/2023

**9. This rule change MAY become effective on:** 12/22/2023

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>	10/30/2023
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**R444. Health and Human Services, ~~[Disease Control and Prevention]~~Utah Public Health Laboratory, Lab Certification Program~~[Laboratory Improvement]~~.**

**R444-1. Approval of Clinical Laboratories.**

**R444-1-1. Purpose and Authority.**

(1) Section 26B-1-202 authorizes this rule.

(2) A facility may not operate as a laboratory for a particular specialty or subspecialty within the state unless first approved by the department.

(3) An entity that does not test specimens and only collects or prepares specimens or only serves as a mailing service is exempt from this rule.

**R444-1-[1]2. Definitions.**

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

(2) "Facility" means a place physically equipped to be a laboratory, but not yet approved to operate as a laboratory for a particular specialty or subspecialty.

(3) "Laboratory" means an approved facility that conducts the biological, microbiological, serological, chemical, immunohematological, hematological, biophysical, cytological, pathological, or other examination of materials derived from the human body for ~~[the purpose of]~~ providing information for the diagnosis, prevention, or treatment of any disease or impairment of, or the assessment of the health of, human beings. These examinations also include procedures to determine, measure, or otherwise describe the presence or absence of various substances or organisms in the body.

(3) "Program" means the Clinical Lab Certification Program within the Utah Department of Health and Human Services;

(4) "Review" means an evaluation of a laboratory or a facility by an authorized department representative to determine compliance with Rule R444-1.

#### **R444-1-2. Authorization.**

~~\_\_\_\_\_ (1) Pursuant to Section 26-1-30(m), a facility may not operate as a laboratory for a particular specialty or subspecialty within the state unless first approved by the department.~~

~~\_\_\_\_\_ (2) An entity that does not test specimens and only collects or prepares specimens or only serves as a mailing service is exempt from this rule.]~~

#### **R444-1-3. Administration.**

(1) The department shall assist any facility or laboratory in the state which desires to become approved or maintain approval. Toward this end, the program~~[Division of Epidemiology and Laboratory Services within the department]~~ shall arrange for training, reviews, and the provision of reference materials to any facility or laboratory requesting the service.

(2) The department shall approve a facility to operate as a laboratory for particular specialties or subspecialties upon the facility's demonstrating that it has satisfied the requirements for approval, this includes~~[as detailed below]~~:

(a) ~~[F]~~[T]the facility must hold a valid federal Clinical Laboratory Improvement Act (CLIA) certificate under 42 C.F.R. part 493, 1990 edition, which is incorporated by reference, for the specialty or subspecialty associated with the testing covered by this rule~~[-]; and~~

(b) ~~[A]~~[a] facility must provide the program~~[Division of Epidemiology and Laboratory Services]~~:

(i) ~~[(1)]~~the location of the facility;

(ii) ~~[(2)]~~the director of the proposed laboratory and ~~[his]~~ their qualifications;

(iii) ~~[(3)]~~the CLIA certificate number; and

(iv) ~~[(4)]~~the specialties or subspecialties for which the facility has obtained CLIA certification.

(3) A facility that is not approved as a laboratory for the particular specialty or subspecialty that it wishes to perform must request a review in writing providing the information required in Subsection R444-1-3(2)(b).

#### **R444-1-4. Maintenance of Approval.**

(1) A laboratory wishing to maintain approval must:

(a) continue to hold a valid CLIA certificate for the specialty or subspecialty;

(b) notify the ~~[Division of Epidemiology and Laboratory Services]~~program within 30 calendar days of any changes in information provided pursuant to Subsection R444-1-3(2)(b); and

(c) demonstrate successful performance in a proficiency testing program administered or approved by the department.

(2) The department may revoke approval for any specialty or subspecialty for failure to meet the requirements of ~~[s]~~Subsection (1).

#### **R444-1-5. Publishing Lists of Approved Laboratories.**

The department shall publish, at least annually, a list of laboratories meeting the minimum standards established under this rule. Included on the list shall be the name and location of the laboratory, the name of the director, and the specialties or subspecialties approved. The department may publish semi-annual amendments to the list in a newsletter.

#### **KEY: medical laboratories**

Date of Last Change: 2023~~[1992]~~

Notice of Continuation: February 25, 2021

Authorizing, and Implemented or Interpreted Law: ~~[26-1-30(2)(m)]~~26B-1-202

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

TYPE OF FILING: Amendment

Rule or Section Number:

R448-10

Filing ID:  
56064

#### **Agency Information**

<b>1. Department:</b>	Health and Human Services		
<b>Agency:</b>	Disease Control and Prevention, Medical Examiner		
<b>Building:</b>	Utah Public Health Laboratory Phase 2		
<b>Street address:</b>	4451 S 2700 W		
<b>City, state and zip:</b>	Taylorsville, UT 84129		
<b>Contact persons:</b>			
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>	
Erik Christensen, MD	801-816-3850	edchristensen@utah.gov	
Michael Staley, PhD	801-816-3850	mstaley@utah.gov	

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

#### **General Information**

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

R448-10. Unattended Death and Reporting Requirements

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

Following the recodification of the Department of Health and Human Services (Department) statute in the 2023 General Session, the Department is proceeding to make technical and conforming changes in accordance with the recodification of the Department's statute.

Additionally, it also incorporates changes that have taken place in Title 26B, Chapter 8, Part 2, Utah Medical Examiner. It aligns the definitions with Section 26B-8-201.

This rule amendment also brings the definition of a "health care provider" into conformity with other Health and Human Services statute, Subsection 26B-8-206(4).

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

This amendment aligns the definition of a health care provider with Section 26B-8-205 and unattended death with Section 26B-8-201 as one that occurs 365 days or more after a deceased person was examined or treated by a health care provider.

This extends the period that a death is considered attended from 30 days to 365 days.

**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; this filing is to update this rule in accordance with the recodification of the Department's statute, and to incorporate changes that have taken place in Title 26B, Chapter 8, Part 2, Utah Medical Examiner.

**B) Local governments:**

This rule is not expected to have a fiscal impact on local governments' revenues or expenditures. This filing is to update this rule in accordance with the recodification of the Department's statute, and to incorporate changes that have taken place in Title 26B, Chapter 8, Part 2, Utah Medical Examiner.

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

There are no anticipated costs or savings to small businesses; this filing is to update this rule in accordance with the recodification of the Department's statute, and to incorporate changes that have taken place in Title 26B, Chapter 8, Part 2, Utah Medical Examiner.

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

There are no anticipated costs or savings to non-small businesses; this filing is to update this rule in accordance with the recodification of the Department's statute, and to

incorporate changes that have taken place in Title 26B, Chapter 8, Part 2, Utah Medical Examiner.

**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 does not affect any individual or persons as defined here. This filing is to update this rule in accordance with the recodification of the Department's statute, and to incorporate changes that have taken place in Title 26B, Chapter 8, Part 2, Utah Medical Examiner.

**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. This filing is to update this rule in accordance with the recodification of the Department's statute, and to incorporate changes that have taken place in Title 26B, Chapter 8, Part 2, Utah Medical Examiner.

**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>		
Section 26B-1-202	Section 26B-8-201	Section 26B-8-205
Section 26B-8-206		

**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>	12/15/2023

<b>9. This rule change MAY become effective on:</b>	12/22/2023
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>	10/30/2023
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**R448. Health and Human Services, Disease Control and Prevention, Medical Examiner.**

**R448-10. Unattended Death and Reporting Requirements.**

**R448-10-1. Authority and Purpose.**

[This rule is authorized by Utah Code] Section 26B-1-202 authorizes this rule. It clarifies the meaning of unattended death under the [provisions of Utah Code] Subsection [26-4-2(8)]26B-8-205(3) and the requirements of [Utah Code] Sections [26-4-8]26B-8-206 and 26B-8-207.

**R448-10-2. Definitions.** ~~Death Under Physician's Care and Supervision.~~

(1) "Unattended Death" is defined in Subsection 26B-8-201(11).

(2) "Health care professional" is defined in Subsection 26B-8-201(4). [For purposes of Utah Code Subsection 26-4-2(8), an individual whose care is directly supervised by a physician and who has been seen by a licensed nurse whose activity is directly

supervised by the physician is deemed to have been seen by the physician within the scope of the physician's professional capacity.]

**R448-10-3. Attended Deaths.**

The death of an individual who is determined to have been attended under this rule shall be certified by the decedent's physician in accordance with Subsection 26B-8-214(1)(a) and does not fall under the jurisdiction of the Medical Examiner.

**R448-10-3. Reporting Requirement.**

(1) If a death occurs and the [individual's] decedent's care within 3[0]65 days [prior to] before death was not directly supervised by a health care professional [physician or if the individual was not seen by a licensed nurse whose activity is directly supervised by the individual's treating physician], then the death must be reported as required under [Utah Code] Section [26-4-8]26B-8-206 as an unattended death.

(2) [All other d]Deaths that meet the criteria in [Utah Code] Section [26-4-7]26B-8-205, must be reported as required by [Utah Code] Section [26-4-8]26B-8-206.

(3) As required by Section R432-750-29, a hospice shall [is required to] report [all] each death[s] supervised by the hospice if the death was a result from injury, accident, or other possible unnatural cause.

**KEY: medical examiner, unattended death, reporting death**

**Date of Last Change:** 2023[June 19, 2000]

**Notice of Continuation:** April 5, 2019

**Authorizing, and Implemented or Interpreted Law:** [26-1-5; 26-4-2; 26-4-7; 26-4-8]26-1-202; 26B-8-201; 26B-8-205; 26B-8-206

**NOTICE OF PROPOSED RULE**

**TYPE OF FILING:** Amendment

<b>Rule or Section Number:</b>	<b>R448-20</b>	<b>Filing ID:</b> <b>56052</b>
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**Agency Information**

<b>1. Department:</b>	Health and Human Services	
<b>Agency:</b>	Disease Control and Prevention, Medical Examiner	
<b>Building:</b>	Utah Public Health Laboratory Phase 2	
<b>Street address:</b>	4451 S 2700 W	
<b>City, state and zip:</b>	Taylorsville, UT 84129	
<b>Contact persons:</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Erik Christensen, MD	801- 816- 3850	edchristensen@utah.gov
Michael Staley, PhD	801- 816- 3860	mstaley@utah.gov
<b>Please address questions regarding information on this notice to the persons listed above.</b>		



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

R448-20. Access to Medical Examiner Reports

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

The Office of the Medical Examiner is authorized by statute (Section 26B-8-217) to release medical examiner records to certain government agencies and health care providers, including attending physicians, public education authorities, and local health departments, for professional and/or public health purposes.

However, these and other agencies are often unaware that a patient, resident, or student within their care or jurisdiction has died. This lack of notification of death prevents these agencies from engaging in postvention, a key strategy in suicide prevention, as well as engaging in practices related to quality improvement and assurance.

This amendment implements a notification process that will eliminate this blind spot and allow for these agencies to respond in a timely, informed, and professional manner that serves the public health and professional purposes of the authorizing statute.

This amendment also clarifies the circumstances that constitute an "issue of public health or safety."

Further, this amendment ensures the safeguarding of sensitive information by stipulating the conditions by which the OME may notify and release protected information to health care providers, educational authorities, and local health departments.

The filing also amends Rule R448-20 to further define "immediate relatives" as it relates to the authority to request a medical examiner record.

Additionally, this filing brings Rule R448-20 into conformity with current Utah Code by making technical changes.

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

This filing:

- 1) defines an "issue of public health or safety";
- 2) implements a process for the OME to push information about a death to local education authorities, health care providers, and local health departments, as provided under written agreements, when the death is possibly an "issue of public health or safety";
- 3) clarifies the definition of "immediate family"; and
- 4) makes technical and conforming changes.

**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.

Despite updates to the process, existing processes will be able to handle these changes with no impact.

**B) Local governments:**

This rule change is not expected to have a fiscal impact on local governments' revenues or expenditures.

This rule only clarifies pre-existing requirements for certain government agencies, and further clarifies definitions.

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

This rule change does not impact small businesses.

This rule only impacts the Department and the named government agencies.

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

This rule change does not impact non-small businesses.

This rule only impacts the Department and the named government agencies.

**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 allows a grandparent of a natural or adopted grandchild, or a grandchild, either natural or adopted, to request a medical examiner record.

Such a request must be accompanied by the \$10 fee, which is assessed to all family requestors of medical examiner reports. It is inestimable to know exactly how many requests would stem from this change.

**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 expected with this rule change.

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

Fiscal Cost	FY2024	FY2025	FY2026
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0

Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Cost</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Fiscal Benefits</b>	<b>FY2024</b>	<b>FY2025</b>	<b>FY2026</b>
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Net Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>H) Department head comments on fiscal impact and approval of regulatory impact analysis:</b>			
The Executive Director of the Department of Health and Human Services, Tracy 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 26B-8-217	Section 26B-1-202	

**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>	12/15/2023

<b>9. This rule change MAY become effective on:</b>	12/22/2023
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>	10/30/2023
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**R448. Health and Human Services, Disease Control and Prevention, Medical Examiner.****R448-20. Access to Medical Examiner Reports.****R448-20-1. Authority and Purpose.**

~~[This rule is authorized by Utah Code.]~~Section ~~[26-1-5]~~26B-1-202 and Subsection 26B-8-217(7) authorize this rule.~~[-It establishes who may, under the provisions of Utah Code Subsection 26-4-17(3), access medical examiner reports generated in the investigation of a death.]~~ It establishes who may access medical examiner reports generated in the investigation of a death pursuant to Section 26B-8-217.

**R448-20-2. Definitions.**

"Issue of public health or safety" means matters that involve promoting and protecting public health, including:

(1) preventing disease and illness, and controlling the causes of epidemic, infectious, communicable and other diseases affecting public health;

(2) responding to acute, chronic or any other illness, disease or health hazard considered by the department to be dangerous, important or likely to affect the public health;

(3) the assessment, collection and reporting of information on causes of injury, sickness, death and disability within the state;

(4) disclosing and addressing hazards posing a threat to public health including physical injury, mental health, trauma, suicide or similar concerns to authorized individuals, agencies and institutions; or

(5) efforts to improve the provision of safe and effective health care, health monitoring and management, patient oversight and related matters.

**R448-20-[2]3. Access by Next-of-Kin.**

(1) ~~[Next of kin]~~Immediate relatives who may access medical examiner records ~~[under the provisions of Utah Code Subsection 26-4-17(3)]~~are as follows:

(a) surviving spouse;

(b) any natural or adoptive parent, regardless of whether the deceased was an adult;

(c) any full or half sibling;~~[-and]~~

(d) any child aged 18 or older~~[-];~~

(e) any grandparent of a natural or adopted grandchild; or

(f) any grandchild, whether natural or adopted.

(2) ~~[All next of kin]~~Immediate relatives have equal access to medical examiner records ~~[under 26-4-17]~~pursuant to Section 26B-8-217, without preference or priority.

**R448-20-[3]4. Access by a Legal Representative.**

(1) Legal representatives who may access medical examiner records under the provisions of ~~[Utah Code]~~Subsection ~~[26-4-17]~~26B-8-217~~[(3)]~~2 are as follows:

(a) any legal guardian of the person, regardless of whether the deceased was child or an adult; and

(b) a personal representative of the estate of the deceased appointed by a court of competent jurisdiction.



## NOTICES OF PROPOSED RULES

(2) All legal representatives have equal access to medical examiner records under [Utah Code] Subsection [26-4-17]26B-8-217([3]2), without preference or priority.

### **R448-20-4[5]. Request and Verification of Right to Record.**

A request made under [Utah Code] Subsection [26-4-17]26B-8-217([3]2) must be in a writing either[5]:

(1) bearing a notary seal attesting to the identity of the individual and establishing the individual's right to the record; or

(2) signed in the presence of medical examiner staff after producing documentation establishing the individual's right to the record.

### **R448-20-6. Death Notification to Health Care Systems.**

(1) A physician or physician assistant who attended the decedent the year before the decedent's death may receive a copy of the medical examiner's final report by written request pursuant to Subsection 26B-8-217(2)(a)(iii).

(2) The medical examiner may provide notification of a death to a physician or physician assistant who attended the decedent the year before the decedent's death, which may include the decedent's name, date of birth, date of death, as well as cause and manner of death.

(3) For purposes of public health and safety and as authorized pursuant to Subsections 26B-8-217(2)(b) and 26B-8-217(7), the medical examiner may provide notification of deaths, data, reports, excluding third party reports, and final reports to health care providers, as follows:

(a) there is an agreement in place between the medical examiner and health care provider to share such information in a secure protected manner; and

(b) the medical examiner determines the health care provider:

(i) will benefit from such records in addressing issues of care, health and safety; or

(ii) is involved in suicide prevention or behavioral health related mortality prevention programs.

### **R448-20-7. Notification of Education Authority.**

For public health and safety and as authorized pursuant to Subsection 26B-8-217(2)(b)(iv), the medical examiner may provide notification of deaths, with any necessary data, reports, excluding third party reports, and final reports to the Utah State Board of Education or Local Education Authority, as follows:

(1) there is an agreement in place between the medical examiner and education entity to share such information in a secure protected manner;

(2) it is necessary for the prevention and control of communicable, infectious, or any other disease, health hazard or dangerous situation likely to affect public health and safety; and

(3) the medical examiner determines the education entity:

(a) will promote a return to a normal learning environment in responding to a mental health crisis, trauma, repercussions of suicide or similar matters; or

(b) is involved in suicide prevention or other mental health death prevention programs.

### **R448-20-8. Notification of Local Health Department.**

(1) A local health department may receive a copy of the medical examiner's final report by written request pursuant to Subsection 26B-8-217(2)(b)(i).

(2) For purposes of public health and safety pursuant to Subsection 26B-8-217(2)(b)(i) the medical examiner may provide notification of deaths, data, reports, excluding third party reports, and final reports to local health departments as follows:

(a) there is an agreement in place between the medical examiner and local health department to share such information in a secure protected manner; and

(b) the medical examiner determines:

(i) the local health department will benefit from such records in addressing issues of public health and safety;

(ii) it is necessary to disclose hazards to public health to the appropriate local health department;

(iii) it is necessary for the local health department to be prepared to respond by setting up community crisis support involving matters of health and safety; or

(iv) the local health department is involved in suicide prevention or other mental health death prevention programs.

**KEY: medical examiner, records**

**Date of Last Change: 2023[June 19, 2000]**

**Notice of Continuation: April 5, 2019**

**Authorizing, and Implemented or Interpreted Law: 26B-1-5]202; [26-4-17]26B-8-217**

## **NOTICE OF PROPOSED RULE**

**TYPE OF FILING:** New

**Rule or Section Number:**

**R455-18**

**Filing ID:**  
**56025**

## **Agency Information**

**1. Department:** Cultural and Community Engagement  
**Agency:** History  
**Street address:** 3760 S Highland Drive  
**City, state and zip:** Millcreek, UT 84106

## **Contact persons:**

Name:	Phone:	Email:
Kristin Mead	218-393-2995	kristinmead@utah.gov
Alycia Rowley	801-245-7266	aaldrich@utah.gov

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

## **General Information**

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

R455-18. Policy for Deaccessioning of Artifacts and Documentary Materials for Education and Cultural Use

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

This rule is in response to a new statute: Subsection 9-8-203(2), H.B. 302 passed in the 2023 General Session.

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

This rule sets guidelines for the deaccessioning process for artifacts and documentary materials according to Section 9-8-203.

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

This rule will not create new budget costs as the disposition of items deaccessioned from the Historical Society will not need to go through Surplus Property.

There may be savings in that deaccessioned items will not need to be processed by Surplus Property and the cost inherent in this process.

The insurance coverage for the Utah Historical Society (UHS) collections from Risk Management may be affected by deaccessioning a high value object, but this has never been done before.

The savings from lower insurance coverage on the collection would be a case-by-case situation and not known at this time.

**B) Local governments:**

This rule will have no anticipated fiscal impact on local governments.

The deaccession of items from the UHS collections has not created any financial gain or loss in the past. Deaccessioned items have a stringent set of internal procedures and the items are usually destroyed or transferred.

Finding the best home to transfer objects that are deaccessioned is the preferred action and UHS has not realized any financial cost. Collection stewardship is the work done by the UHS employees, so the cost of taking care of collections is inherent to the work.

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

This rule will have no fiscal impact on small businesses.

This rule does not apply to small businesses as it only affects the UHS. Collection stewardship is the work done by the UHS employees, so the cost of taking care of collections is inherent to the work.

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

This rule will have no fiscal impact on non-small businesses.

This rule does not apply to non-small businesses as it only affects the UHS. Collection stewardship is the work done by the UHS employees, so the cost of taking care of collections is inherent to the work.

**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 does not apply to persons other than small businesses, non-small businesses, state, or local government entities so there will be no fiscal impact.

This rule only affects the UHS. Collection Stewardship is the work done by the UHS employees, so the cost of taking care of collections is inherent to the work.

**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 extra compliance costs for affected persons as the rule affects the UHS and Collection Stewardship is the work done by UHS employees.

The cost of taking care of collections is inherent to the work currently and historically performed.

**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

## NOTICES OF PROPOSED RULES

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 Cultural and Community Engagement, Jill Love, 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 9-8-203(2)		

### 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>	12/15/2023

<b>9. This rule change MAY become effective on:</b>	12/22/2023
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>	Jill Love, Executive Director	<b>Date:</b>	10/30/2023
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**R455. Cultural and Community Engagement, Utah Historical Society.**

**R455-18. Policy for Deaccessioning of Artifacts and Documentary Materials for Education and Cultural Use.**  
**R455-18-1. Scope and Applicability.**

Purpose: To establish rules for handling the deaccession and disposition of artifacts and documentary materials within the Utah Historical Society's collections.

#### **R455-18-2. Definitions.**

(1) "Society" means the Utah Historical Society.  
 (2) "Collections" means the items acquired by the Society and held as the property of the state and under the control of the Society.

#### **R455-18-3. Policy.**

To maintain the quality and integrity of the Society collection, the following policy has been adopted:

(1) Any item in the Society's collection that is to be deaccessioned is not state surplus property and is not subject to the surplus property program;

(2) All items deaccessioned from the Society's collection must be approved through the appropriate channels as designated by the Society's internal policies; and

(3) The disposition of any item deaccessioned from the Society's collection will be decided by following the procedures set forth in the Society's internal policies on deaccessioning.

**KEY: deaccessioning, artifacts, documentary materials, collections**

**Date of Last Change: 2023**

**Authorizing, and Implemented or Interpreted Law: 9-8-203(2)**

### NOTICE OF PROPOSED RULE

<b>TYPE OF FILING:</b> Repeal		
<b>Rule or Section Number:</b>	<b>R495-808</b>	<b>Filing ID: 56056</b>

### Agency Information

<b>1. Department:</b>	Health and Human Services	
<b>Agency:</b>	Administration (Human Services)	
<b>Room number:</b>	Fourth Floor	
<b>Building:</b>	Multi-agency State Office Building	
<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>
Shannon Thoman-Black	385-223-2941	sthomanblack@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>
R495-808. Fatality Review Act
<b>3. Purpose of the new rule or reason for the change:</b>
This repeal is needed to move Rule R495-808 into the correct section of administrative rule due to the consolidation of Department of Health and Department of Human Services into the Department of Health and Human Services (Department).
<b>4. Summary of the new rule or change:</b>
This change repeals Rule R495-808 in its entirety.

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

There is no anticipated cost or savings to the state budget, as this rule had no cost attached.

The repeal is clerical in nature and will have no impact on how the Department functions or the parties this applies to.

**B) Local governments:**

This rule repeal is not expected to have a fiscal impact on local governments' revenues or expenditures.

This repeal is clerical in nature and only pertains to the staff of the Department.

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

This rule repeal will not have a fiscal impact on small businesses. This rule only affects the Department.

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

The proposed rule repeal does not have a fiscal impact on non-small businesses nor will a service be required of them to implement the amendments.

**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 rule repeal does not have a fiscal impact on any persons or entities.

**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 repeal is clerical in nature and will have no impact on how the Department functions or the parties this applies to.

**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****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 62A-1-111	Section 62A-16-202	Section 2A-16-204
Section 62A-16-101	Section 62A-16-203	Section 62A-16-301
Section 62A-16-201	Section 62A-16-203	Section 62A-16-301

**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>	12/15/2023
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## NOTICES OF PROPOSED RULES

<b>9. This rule change MAY become effective on:</b>	12/22/2023
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>	10/30/2023
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**R495. Human Services, Administration.**
**[R495-808. Fatality Review Act.**
**~~R495-808-1. Authority.~~**

~~(1) The Department of Human Services is authorized to adopt, amend, and enforce rules as necessary in Section 62A-1-111.~~

~~(2) Sections 62A-16-101 through 62A-16-302 sets forth the legal criteria and requirements for Department of Human Services fatality reviews.~~

**~~R495-808-2. Statement of Purpose.~~**

~~(1) The purpose of this rule is to clarify reporting and reviews of fatality reports for the Department of Human Services.~~

**~~R495-808-3. Completion of Deceased Client Reports.~~**

~~(1) In accordance with Section 62A-16-201(1), the following employees are designated by the department to complete a Notification of Deceased Client Form: any worker, supervisor, or other Human Service Department employee who becomes aware of the death.~~

**~~R495-808-4. Referral to Office of Child Protection Ombudsman.~~**

~~(1) In the case of a child fatality, if the Fatality Review Coordinator or the Fatality Review Committee determines that there are policies or procedure issues that are not related to the death, or further case-specific information is needed, the case may be referred to the Office of the Child Protection Ombudsman (OCPO) for a full case review.~~

~~(2) Upon completion of the OCPO Case Review, the analyst will present the finding to the Fatality Review Committee for further review.~~

**KEY: fatality review**

**Date of Last Change: August 23, 2010**

**Notice of Continuation: April 13, 2020**

**Authorizing, and Implemented or Interpreted Law: 62A-16-201; 62A-1-111; 62A-16-101; 62A-16-202; 62A-16-203; 62A-16-204; 62A-16-301; 62A-16-302]**

NOTICE OF PROPOSED RULE		
<b>TYPE OF FILING:</b> Repeal		
<b>Rule or Section Number:</b>	<b>R495-810</b>	<b>Filing ID: 56057</b>

**Agency Information**

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

<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>
Donovan Bergstrom	801-330-2699	dbergst@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>
R495-810. Government Records Access and Management Act
<b>3. Purpose of the new rule or reason for the change:</b>
Following the recodification of the Department of Health and Human Services (Department) statute in the 2023 General Session, the Department is proceeding with a repeal of Rule R495-810, Government Records Access and Management Act.
The Department will utilize Rule R380-20, Government Records Access and Management, to implement and carry out responses to records requests and compliance with the Government Records Access and Management Act (GRAMA).
<b>4. Summary of the new rule or change:</b>
This filing repeals this rule 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>
There are no changes to the state budget as a result of this rule repeal because this filing is technical in nature and the result of the consolidation of the Department of Health and the Department of Human Services.
<b>B) Local governments:</b>
Local governments, city business licensing requirements, were considered.
This proposed rule repeal will not impact local governments' revenues or expenditures because this amendment applies only to Department record requests.
<b>C) Small businesses</b> ("small business" means a business employing 1-49 persons):



This proposed rule repeal will not impact small businesses' revenues or expenditures because this amendment applies only to Department record requests.

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

This proposed rule repeal will not impact non-small businesses' revenues or expenditures because this amendment applies only to Department record requests.

**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 repeal will not impact persons other than small businesses, non-small businesses, state, or local government entities revenues or expenditures because this amendment applies only to Department record requests.

**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 repeal will not impact any other entity's revenues or expenditures because this amendment applies only to Department record requests.

**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		
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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:** 12/15/2023

**9. This rule change MAY become effective on:** 12/22/2023

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>	10/30/2023
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#### R495. Human Services, Administration.

~~[R495-810. Government Records Access and Management Act. R495-810 1. Access to Department of Human Services Records.~~

~~(1) Authority. This rule is authorized by Section 63G-2-204(2) and Section 62A-1-111.~~

~~(2) Definitions. Words used in this rule are defined in Section 63G-2-103.~~

~~(3) Requests for Access. Requests for records shall be submitted to any Department of Human Services office. If the record requested is maintained in that office, that office's designated GRAMA Officer will respond to the request. If the record is not maintained in the office where the request is filed, the request will be sent immediately to the appropriate Department of Human Services office.~~

## NOTICES OF PROPOSED RULES

~~(4) GRAMA requests and GRAMA appeals received after regular business hours of Monday through Friday, 8:00 a.m. to 5:00 p.m., excluding state-recognized holidays, will be deemed received the following business day.~~

### ~~R495-810-2. Fees.~~

~~(1) A schedule of fees that may be charged in response to a records request may be obtained by contacting the records officer. The fee schedule is also available in the annual appropriations bill.~~

~~(2) Fees for providing a record may be waived under certain circumstances described in Subsection 63G-2-203(4). A request for a fee waiver shall be made in writing to the records officer.~~

### ~~R495-810-3. Records Modification and Clarification.~~

~~(1) Hearings. Administrative Hearings regarding denied requests to amend records shall be conducted informally in accordance with Rule R497-100.~~

~~KEY: government documents~~

~~Date of Last Change: May 11, 2020~~

~~Notice of Continuation: December 11, 2021~~

~~Authorizing, and Implemented or Interpreted Law: 63G-2-204]~~

## NOTICE OF PROPOSED RULE

**TYPE OF FILING:** Repeal

<b>Rule or Section Number:</b>	<b>R495-876</b>	<b>Filing ID:</b> <b>56010</b>
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### Agency Information

<b>1. Department:</b>	Health and Human Services	
<b>Agency:</b>	Administration (Human Services)	
<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
<b>Please address questions regarding information on this notice to the persons listed above.</b>		

### General Information

<b>2. Rule or section catchline:</b>
R495-876. Provider Code of Conduct
<b>3. Purpose of the new rule or reason for the change:</b>
The purpose of this filing is to repeal the Department of Human Services code of conduct and create a new Departmental code of conduct under the Department of Health and Human Services (DHHS) rule under Title R380 (Rule R380-80).

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

This filing repeals the outdated Rule R495-876 in its entirety.

### Fiscal Information

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

##### A) State budget:

No changes to the state budget are anticipated from this repeal.

The contents of this rule are being simultaneously proposed under Title R380 (Rule R380-80).

##### B) Local governments:

Local government will not be impacted by this repeal.

The contents of this rule are being simultaneously proposed under Title R380 (Rule R380-80).

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

Small businesses won't be impacted by this repeal, as the content is being reenacted in a new rule.

The contents of this rule are being simultaneously proposed under Title R380 (Rule R380-80).

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

Non-small businesses won't be impacted by this repeal, as the content is being reenacted in a new rule.

The contents of this rule are being simultaneously proposed under Title R380 (Rule R380-80).

##### 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 fiscal impacts on any other persons as a result of this repeal, as the content is being reenacted in a new rule.

The contents of this rule are being simultaneously proposed under Title R380 (Rule R380-80).

##### 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 does not introduce any new processes that will incur a cost for affected persons.



The contents of this rule are being simultaneously proposed under Title R380 (Rule R380-80).

**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		
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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:** 12/15/2023

**9. This rule change MAY become effective on:** 12/22/2023

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>	10/27/2023
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**R495. Human Services, Administration.**

~~[R495-876. Provider Code of Conduct.~~

~~R495-876 1. Authority and Purpose.~~

~~\_\_\_\_\_ This rule is authorized by Section 62A-1-111. The department adopts this rule to:~~

~~\_\_\_\_\_ (1) protect its clients from abuse, neglect, mistreatment, and exploitation; and~~

~~\_\_\_\_\_ (2) clarify the expectation of conduct for department providers and their employees and volunteers who interact with department clients.~~

~~R495-876 2. General Definitions.~~

~~\_\_\_\_\_ (1) "Abuse" includes abuse as defined in Sections 62A-3-301, 62A-4a-101, 78A-6-105, 80-1-102, and R512-80-2.~~

~~\_\_\_\_\_ (2) "Client" means anyone who receives services from the department or a department contracted provider or as defined in Section 62A-2-101.~~

~~\_\_\_\_\_ (3) "Critical incident" means the same as defined in Rule R501-1.~~

~~\_\_\_\_\_ (4) "Department" means the Department of Human Services or any of its divisions, offices or agencies. Effective July 1, 2022, "department" will mean the Department of Health and Human Services.~~

~~\_\_\_\_\_ (5) "Mistreatment" means emotional or physical mistreatment:~~

~~\_\_\_\_\_ (a) as defined in Rule R501-1; and~~

~~\_\_\_\_\_ (b) physical mistreatment includes:~~

~~\_\_\_\_\_ (i) misuse of work, exercise restraint, or seclusion as a means of coercion, punishment, or retaliation against a client, or for the convenience of the licensee, or when inconsistent with the client's treatment or service plan, health or abilities;~~

~~\_\_\_\_\_ (ii) compelling a client to remain in an uncomfortable position or repeating physical movements to coerce, punish, or retaliate against a client, or for the convenience of the licensee; and~~

~~\_\_\_\_\_ (iii) physical punishment.~~

~~\_\_\_\_\_ (6) "Exploitation" includes:~~

~~\_\_\_\_\_ (a) using a client's property without the client's consent or using a client's property in a way that is contrary to the client's best interests, such as expending a client's funds for the benefit of another;~~

~~\_\_\_\_\_ (b) making unjust or improper use of clients or their resources;~~

~~\_\_\_\_\_ (c) accepting gifts in exchange for preferential treatment of a client or in exchange for services that the provider is already obliged to provide to the client;~~

~~\_\_\_\_\_ (d) using the labor of a client for personal gain; and~~

~~\_\_\_\_\_ (e) using the labor of a client without paying the client a fair wage or without providing the client with just or equivalent non-monetary compensation, except where such use is consistent with standard therapeutic practices and is authorized by department policy or the provider's contract with the department.~~

~~\_\_\_\_\_ (7) "Fraud" means a false or deceptive statement, act, or omission that causes, or attempts to cause, property or financial damages, or is made for personal or licensee gain. Fraud includes the offenses identified as fraud in Title 76, Chapter 6, Offenses Against Property.~~

~~\_\_\_\_\_ (8) "Harm" means physical or emotional pain, damage, or injury.~~

~~\_\_\_\_\_ (9) "Neglect" means abandonment or the failure to provide necessary care, including nutrition, education, clothing, shelter, sleep, bedding, supervision, health care, hygiene, treatment, and protection from harm.~~

~~\_\_\_\_\_ (10) "Penalty" means the department's denying, placing conditions on, suspending, or revoking a human services license due to non-compliance with statute or administrative rule. Penalty may include penalties outlined in Section 62A-2-112 or defined in Rule R501-1.~~

~~\_\_\_\_\_ (11) "Provider" means any individual or business entity that contracts or subcontracts with the department to provide services to clients. The term "provider" includes licensed or certified individuals who provide services to clients under the supervision or direction of a provider. The term "provider" also refers to the provider's employees, volunteers, subcontractors, and others who act on the provider's behalf or under the provider's control or supervision. Provider also means "human services program" as defined in Section 62A-2-101.~~

~~\_\_\_\_\_ (12) "Restraint" means physically restricting a person's freedom of movement, physical activity, or normal access to their body and includes chemical and mechanical restraint. An escort used to lead, guide, or direct a client is not a restraint.~~

~~\_\_\_\_\_ (13) "Seclusion" means the same as defined in Section 62A-2-101 and Title R501.~~

~~\_\_\_\_\_ (14) "Staff" means direct care employees, support employees, managers, directors, supervisors, administrators, agents, volunteers, owners, and contractors.~~

~~\_\_\_\_\_ (15) "Written agency policy" means written policy established by the provider. If a written agency policy contains provisions that are more lenient than this rule, those provisions must be approved in writing by the executive director of the department and the Office of Licensing.~~

**R495-876-3. Provider's Compliance with Conduct Requirements Imposed by Law, Contract or Other Policies.**

~~\_\_\_\_\_ In addition to complying with R495-876, Provider Code of Conduct, the provider shall comply with each applicable federal, state, and local law, and each policy required by the department or by other state and federal agencies that regulate or oversee the provider's programs. If a department, state or federal entity requires a policy~~

~~that is more specific or restrictive than this rule, the more specific or restrictive policy shall supersede.~~

**R495-876-4. Providers' Duty to Help Protect Clients.**

~~\_\_\_\_\_ (1) If any provider becomes aware that any client has been subjected to any abuse, neglect, exploitation or mistreatment, the provider's first duty is to protect the client's health and safety.~~

~~\_\_\_\_\_ (2) Each provider shall report any abuse or neglect of a child to the Child Protective Services intake office of the Division of Child and Family Services.~~

~~\_\_\_\_\_ (3) Each provider shall report any abuse or neglect of disabled or elder adults to the Adult Protective Services intake office of the Division of Aging and Adult Services.~~

~~\_\_\_\_\_ (4) Each provider shall make each reports and documentation about abuse, neglect, exploitation, and mistreatment available to appropriate department personnel and law enforcement upon request.~~

~~\_\_\_\_\_ (5) Each provider shall cooperate fully in any investigation conducted by the department, law enforcement or other regulatory or monitoring agencies.~~

~~\_\_\_\_\_ (6) Each provider shall document and report each critical incident to the Office of Licensing and the client's case worker or support coordinator.~~

~~\_\_\_\_\_ (7) If a client dies while receiving services from the provider, the provider shall notify the supervising department division or office immediately and shall cooperate with any investigation into the client's death.~~

**R495-876-5. Provider Code of Conduct.**

~~\_\_\_\_\_ (1) Providers and provider staff:~~

~~\_\_\_\_\_ (a) shall accurately represent services, policies and procedures to clients, guardians, prospective clients, and the public;~~

~~\_\_\_\_\_ (b) shall create, maintain, and comply with a written policy that addresses the appropriate treatment of clients and ensures that clients rights are not violated;~~

~~\_\_\_\_\_ (c) may not abuse, neglect, harm, exploit, mistreat, or act in a way that compromises the health and safety of clients through acts or omissions, by encouraging others to act, or by failing to deter others from acting;~~

~~\_\_\_\_\_ (d) may not use or permit the use of corporal punishment and shall only utilize restraint as described in Rules R501-1; except that providers serving clients under the Division of Services for People with Disabilities shall also comply with the rules on restraint as described in Rule R539-4;~~

~~\_\_\_\_\_ (e) shall maintain the health and safety of clients in each program service and activity;~~

~~\_\_\_\_\_ (f) shall not commit fraud;~~

~~\_\_\_\_\_ (g) shall provide the licensee's records related to any services or supplies billed to each insurer upon request by the insurer or the department;~~

~~\_\_\_\_\_ (h) shall require that any provider or staff member who is aware of or suspects abuse, neglect, mistreatment, fraud, or exploitation shall ensure that a report is made to the applicable investigative agencies as outlined in Rule R501-1 and in compliance with mandatory reporting laws, including Sections 62A-4a-403 and 62A-3-305;~~

~~\_\_\_\_\_ (i) may not use alcoholic beverages or controlled substances, without medical prescription, while on the job, or being under the influence while on the job;~~

~~\_\_\_\_\_ (j) may not use aversive procedures prior to the review and approval of the provider human rights committee or the Human~~

Rights Committee as defined in Section R539-3-4 for individuals with disabilities;

~~(k) shall provide services and supervision that is commensurate with the skills, abilities, behaviors, and needs of each client;~~

~~(l) shall ensure that a report is made to the Office of Licensing or to the applicable department agency for any violation, or suspected violation, of this rule; and~~

~~(m) shall prominently display in each facility a poster notifying employees of their responsibilities to report violations of R495-876, Provider Code of Conduct.~~

~~(2) Each staff will be given a copy of R495-876, Provider Code of Conduct prior to beginning employment. Each staff must sign off on reading, understanding and agreeing to follow R495-876, Provider Code of Conduct prior to working with clients.~~

#### **~~R495-876-6. Client Rights.~~**

~~(1) Clients have the right to:~~

~~(a) be treated with dignity;~~

~~(b) be free from potential harm or acts of violence;~~

~~(c) be free from discrimination;~~

~~(d) be free from abuse, neglect, mistreatment, exploitation, and fraud;~~

~~(e) privacy of current and closed records;~~

~~(f) communicate and visit with family, attorney, clergy, physician, counselor, or case manager, unless therapeutically contraindicated or court restricted; and~~

~~(g) be informed of agency policies and procedures that affect client or guardian's ability to make informed decisions regarding client care, to include:~~

~~(i) program expectations, requirements, mandatory or voluntary aspects of the program;~~

~~(ii) consequences for non-compliance;~~

~~(iii) reasons for involuntary termination from the program and criteria for re-admission;~~

~~(iv) program service fees and billing; and~~

~~(v) safety and characteristics of the physical environment where services will be provided.~~

~~(2) Clients shall be informed of each right listed in Section R495-876-6. Each provider shall maintain in the client file record a copy of the client's rights, signed by each client or client's guardian.~~

~~(3) Each provider shall prominently display in each facility a poster that notifies clients of their rights.~~

~~(4) Each provider staff shall be trained annually on this rule. Each provider shall ensure that each staff personnel file contains documentation of training completion which shall be individually signed and dated by the trainer and staff member.~~

#### **~~R495-876-7. Sanctions for Non-compliance.~~**

~~If a provider or its staff fails to comply with this rule, the department may impose an appropriate sanction such as probation, suspension, disbarment from state contracts, and termination of license or certification. The department may also, as applicable, report the provider's misconduct to licensing authorities, law enforcement, and the provider's clients or legal guardian.~~

**~~KEY: social services, provider conduct\*~~**

**~~Date of Last Change: January 6, 2022~~**

**~~Notice of Continuation: May 28, 2021~~**

**~~Authorizing, and Implemented or Interpreted Law: 62A-1-110; 62A-1-111]~~**

### **NOTICE OF PROPOSED RULE**

**TYPE OF FILING:** Repeal

**Rule or Section Number:** R495-879

**Filing ID:** 56009

#### **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

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

#### **General Information**

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

R495-879. Parental Support for Children in Care

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

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 R527-220 found in the Recovery Services rules (Title R527).

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

This rule is being repealed in its entirety and will be proposed as a new rule in Title R527, Recovery Services.

#### **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 R527-220, 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 R527-220, 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 R527-220, 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 R527-220, 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 R527-220, 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 R527-220, 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**

<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 62A-1-111	Section 62A-5-109	Section 63G-4-102
Section 78A-6-104	Section 78A-6-356	Section 78B-12-106

Section 78B-12-108	Title 78B, Chapter 12, Parts 2 and 3	Rule R527-200
Section R495-883-3		

**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.)

<b>A) Comments will be accepted until:</b>	12/15/2023
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<b>9. This rule change MAY become effective on:</b>	12/22/2023
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>	10/27/2023
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**R495. Human Services, Administration.****[R495-879. Parental Support for Children in Care.****~~R495-879-1. Authority and Purpose.~~**

~~(1) The Department of Human Services is authorized to create rules necessary for the provision of social services by Section 62A-1-111.~~

~~(2) The purpose of this rule is to provide information to parents relating to the establishment and enforcement of child support when a child is placed in an out-of-home program.~~

**~~R495-879-2. Child Support Liability.~~**

~~(1) The Office of Recovery Services (ORS) will establish and enforce child support obligations against parents whose children are in out-of-home placement programs administered by the Department of Human Services or Department of Health. The department shall consider fees for outpatient and day services separate from child support payments.~~

~~(2) Establishment and enforcement of child support shall be pursuant to Title 78B, Chapter 12, Utah Child Support Act, Title 62A, Chapter 11, Part 3, Child Support Services Act; and Section 78A-6-356.~~

**~~R495-879-3. Child Support Guidelines.~~**

~~Child support obligations shall be calculated pursuant to Title 78B, Chapter 12, Parts 2 and 3.~~

**~~R495-879-4. Establishing and Modifying an Order.~~**

~~ORS may modify and establish child support orders pursuant to Title 62A, Chapter 11, Part 3, Child Support Services Act, Title 63G, Chapter 4, Administrative Procedures Act, Section 78A-6-104, and Rule R527-200.~~

**~~R495-879-5. Good Cause Waiver Request.~~**

~~(1) A waiver request is appropriate if:~~

~~(a) the order is established and the requesting division does not intend to waive the child support for both parents. The order does not need to be established before requesting the waiver if the requesting division intends to waive the child support for both parents;~~

~~(b) the child support is being collected on behalf of the state; and~~

~~(c) child support collections interfere with family reunification efforts or when an undue hardship is created by an unpreventable loss of income to the present family. A loss of income may include non-payment of child support from the other parent for the children at home, loss of employment, or loss of monthly pension or annuity payments.~~

~~(2) The request shall be initiated by the responsible case worker and forwarded to their supervisor, regional director, division director, or designee for approval.~~

~~(3) After a support order has been established, if required, the Good Cause Waiver request may be denied or approved by the requesting agency at any stage in the process. The request shall not be approved when it proposes actions that are contrary to state or federal law. Once the waiver has been approved at all levels in the requesting agency, the division director or designee shall send the waiver to the ORS director or designee.~~

~~(4) The ORS director or designee will review the waiver request, and if appropriate, ORS will stop collection efforts and close the child support cases intended to reimburse the state for time in custody. ORS will notify the caseworker for the requesting agency that the waiver has been processed. The requesting agency will notify the family of the final decision.~~

**~~R495-879-6. Child Support and Adoption Assistance.~~**

~~ORS will establish and enforce child support obligations for parents who are currently receiving adoption assistance or who have received adoption assistance from this state or any other state or jurisdiction, for children who are in the custody of the state, pursuant to Sections 78A-6-356, 78B-12-106, and R495-879-2 and R495-883-3. If an order for support does not currently exist, ORS will establish a monthly child support obligation. When establishing a child support obligation, ORS will not include the adoption assistance amount paid to the family in determining the family's income, pursuant to Section 78B-12-207.~~

**~~KEY: child support, custody of children, good cause~~**

**~~Date of Last Change: February 22, 2022~~**

**~~Notice of Continuation: July 17, 2018~~**

**~~Authorizing, and Implemented or Interpreted Law: 62A-1-111; 62A-5-109; 63G-4-102; 78A-6-104; 78A-6-356; 78B-12-106; 78B-12-108; Title 78B, Chapter 12, Parts 2 and 3; R527-200; R495-883-3]~~**

**NOTICE OF PROPOSED RULE**

**TYPE OF FILING:** Repeal

<b>Rule or Section Number:</b>	<b>R495-880</b>	<b>Filing ID:</b> <b>55908</b>
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**Agency Information**

<b>1. Department:</b>	Health and Human Services	
<b>Agency:</b>	Administration (Human Services)	
<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>
Carol Miller	801-557-1772	carolmiller@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>
R495-880. Adoption Assistance
<b>3. Purpose of the new rule or reason for the change:</b>
The Department of Health and Human Services is proceeding with the repeal of this rule because the contents and provisions of adoption assistance are already established in Rule R512-43, Adoption Assistance.
<b>4. Summary of the new rule or change:</b>
This filing repeals Rule R495-880, Adoption Assistance, 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>
There is no anticipated cost or savings associated with this filing as the provisions are covered in Rule R512-43.
<b>B) Local governments:</b>
There is no anticipated cost or savings associated with this filing as the provisions are covered in Rule R512-43.
<b>C) Small businesses</b> ("small business" means a business employing 1-49 persons):
There is no anticipated cost or savings associated with this filing as the provisions are covered in Rule R512-43.
<b>D) Non-small businesses</b> ("non-small business" means a business employing 50 or more persons):
There is no anticipated cost or savings associated with this filing as the provisions are covered in Rule R512-43.

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

There is no anticipated cost or savings associated with this filing as the provisions are covered in Rule R512-43.

**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 filing as the provisions are covered in Rule R512-43.

**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 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  
62A-4a-902

**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:** 12/15/2023

**9. This rule change MAY become effective on:** 12/22/2023

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>	10/22/2023
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**R495. Human Services, Administration.**~~**[R495-880. Adoption Assistance.**~~~~**R495-880-1. Regional Adoption Assistance Advisory Committee.**~~

~~(1) There is established, within each region of the Division of Child and Family Services an adoption assistance advisory committee to review and make recommendations to the division on individual requests for supplemental adoption assistance. For purposes of this rule, supplemental adoption assistance means the same as is defined in Utah Code Annotated Section 62A-4a-902. Each advisory committee shall be comprised of the following members:~~

~~(a) an expert in adoption policy and practice, as determined by the division;~~

~~(b) an adoptive parent;~~

~~(c) a division representative;~~

~~(d) a foster parent; and~~

~~(e) an adoption caseworker.~~

~~(2) The advisory committees established pursuant to Subsection (1) of this rule shall review individual requests for supplemental adoption assistance that meet a threshold amount established by policy by the Board of Child and Family Services in R512-43.~~

**KEY: adoption, child welfare**

**Date of Last Change: August 15, 2001**

**Notice of Continuation: May 28, 2021**

**Authorizing, and Implemented or Interpreted Law: 62A-4a-905]**

**NOTICE OF PROPOSED RULE**

**TYPE OF FILING:** New

<b>Rule or Section Number:</b>	<b>R500-1</b>	<b>Filing ID:</b> <b>56065</b>
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**Agency Information**

**1. Department:** Health and Human Services

**Agency:** Ombudsman (Office of)

**Room number:** MASOB 1091

**Building:** Multi-Agency State Office Building

**Street address:** 195 N 1950 W

**City, state and zip:** Salt Lake City, UT 84116

**Contact persons:**

<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Angie McCourt	385-505-3502	amccourt@utah.gov

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

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

R500-1. Processing Complaints Regarding the Utah Division of Child and Family Services

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

The purpose of this filing is to move this rule from Title R515, Human Services, Ombudsman (Office of), to Title R500 as a new rule, Rule R500-1, Processing Complaints Regarding the Utah Division of Child and Family Services.

The Department of Health and Human Services (Department) has simultaneously filed a proposed repeal for Rule R515-1.

This is in an effort to consolidate rule titles within the Department and allow all of the Office of Ombudsman's rules to exist under a single title.

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

This filing proposes an amended version of Rule R515-1 as a new rule, under Title R500. Changes to the rule are to reflect a consolidated Department and update code citations following the recodification of the Department's statute in the 2023 General Session.

(EDITOR'S NOTE: The proposed repeal of Rule R515-1 is under ID 56066 in this issue, November 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 impact to the state budget as there are only minor changes and technical updates to this rule.

**B) Local governments:**

There is no impact on local governments as the provisions of this rule have not changed from what currently exists in under Rule R515-1.

**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 on non-small businesses 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 is no impact on non-small businesses 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>
<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:**

Section 80-2-1104		
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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:** 12/15/2023

**9. This rule change MAY become effective on:** 12/22/2023

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>	Tray S. Gruber, Executive Order	<b>Date:</b>	10/28/2023
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**R500. Health and Human Services, Ombudsman (Office of).**  
**R500-1. Processing Complaints Regarding the Utah Division of Child and Family Services.**  
**R500-1-1. Purpose and Authority.**

(1) The purpose of this rule is to outline the processing of complaints regarding the Utah Division of Child and Family Services.

(2) Section 80-2-1104 authorizes this rule.

**R500-1-2. Definitions.**

(1) "Office" means the Child Protection Ombudsman within the Office of Ombudsman in the Department of Health and Human Services.

(2) "Complainant" means a person who initiates a complaint with the Ombudsman's Office.

(3) "Division" means the Utah Division of Child and Family Services.

(4) "Services Review Analyst" means an employee of the office assigned to conduct investigations of complaints.

(5) "Complaint" means a complaint regarding an act or omission by the division with respect to a particular child.

**R500-1-3. Receiving and Processing Complaints.**

(1) The complainant may file a written, oral, or electronic complaint with the office no later than 18 months from the date of the alleged circumstances giving rise to the complaint.

(2) The complaint shall include:

(a) a summary of the alleged circumstances giving rise to the complaint;

(b) the names of persons involved in the complaint;

(c) a summary of the actions taken by the complainant to resolve the complaint;

(d) the anticipated outcome the complainant is seeking; and

(e) if the complainant desires, a request that the office conduct an investigation of the complaint.

(3) If there has been no attempt to resolve the complaint with the division, the office may refer the complaint to the division for a response.

(4) If the complaint remains unresolved after referral back to the division, the office may review the records and may contact the involved parties. The office shall make reasonable efforts to facilitate resolution with the division and the complainant.

(5) If the complaint remains unresolved after efforts by the office to facilitate resolution, the office shall determine whether to investigate the complaint, and shall notify the complainant and division in writing of the decision made to accept or deny the investigation request.

(6) If the ombudsman decides not to investigate the complaint, the office shall notify the complainant and the division of the reason for the decision.

(7) If an investigation request is accepted the services review analyst shall:

(a) interview the complainant and gather information as necessary to determine the validity of the complaint;

(b) document the findings of the investigation; and

(c) make recommendations to the division to address the complaints found to be valid as needed. The division must respond in accordance with Section R512-75-5.

(8) The investigation will be completed within 180 days from the date of filing the complaint, taking into consideration

extenuating circumstances such as the complexity of the case or workload.

(9) The office will notify the complainant and division in writing upon the completion of the investigation.

(10) If a complaint indicates there is an immediate risk to the safety of a child or children, the office will immediately notify the division.

(11) The office shall prioritize complaints alleging acts or omissions that place a child's health or safety at risk.

**KEY: complaint, DCFS, ombudsman, investigation**

**Date of Last Change: 2023**

**Authorizing, and Implemented or Interpreted Law: 80-2-1104**

**NOTICE OF PROPOSED RULE**

**TYPE OF FILING:** Amendment

<b>Rule or Section Number:</b>	<b>R501-14</b>	<b>Filing</b>	<b>ID:</b>
		<b>56048</b>	

**Agency Information**

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

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

**General Information**

**2. Rule or section catchline:**

R501-14. Human Service Program Background Screening

**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.

Additionally, this amendment updates titles and citations due to the recodification of the Department of Health and Human Services' (Department) statute.

### Fiscal Information

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

##### A) State budget:

This change will not impact the current process for licensure and re-licensure surveys.

No change to the state budget is expected because no new processes or requirements are introduced and this amendment only modifies and replaces outdated language with the Rulewriting Manual for Utah standards and updates statutory citations where applicable.

There is no fiscal impact to state government resulting from the changes in this rule content.

##### B) Local governments:

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.

These facilities are regulated by the Department and not local governments. There will be no change in local business licensing or any other items with which local government is involved.

There is no anticipated fiscal impact to local governments resulting from the changes in this rule content.

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

No change to small businesses is expected because no new processes or requirements are introduced.

This amendment only modifies and replaces outdated language with the Rulewriting Manual for Utah standards and updates statutory citations where applicable.

There is no anticipated fiscal impact to small businesses resulting from the changes in this rule content.

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

No change to non-small businesses is expected because no new processes or requirements are introduced.

This amendment only modifies and replaces outdated language with the Rulewriting Manual for Utah standards and updates statutory citations where applicable.

There is no anticipated fiscal impact to non-small businesses resulting from the changes in this rule content.

##### 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 change for other persons is expected because no new processes or requirements are introduced.

This amendment only modifies and replaces outdated language with the Rulewriting Manual for Utah standards and updates statutory citations where applicable.

There is no anticipated fiscal impact to other persons resulting from the changes in this rule content.

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

No compliance costs for affected persons are expected because no new processes or requirements are introduced.

This amendment only modifies and replaces outdated language with the Rulewriting Manual for Utah standards and updates statutory citations where applicable.

##### 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-2-104	Section 26B-2-120	Section 26B-2-121
Section 26B-2-122		

#### 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>	12/15/2023

<b>9. This rule change MAY become effective on:</b>	12/22/2023
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>	10/30/2023
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**R501. ~~[Human Services, Administration, Administrative Services, Licensing]~~Health and Human Services, Human Services Program Licensing.**

**R501-14. Human Service Program Background Screening.**

**R501-14-1. Authority and Purpose.**

(1) This [R]rule is authorized by Sections [62A-2-106]26B-2-104, [62A-2-120]26B-2-120, [62A-2-121]26B-2-121, and [62A-2-122]26B-2-122.

(2) This [R]rule clarifies the standards for approving, denying, or revoking an applicant's background screening.

**R501-14-2. Definitions.**

(1) "Abuse" [is-]means as defined in Sections [78A-6-105]80-1-102 and [62A-3-304]26B-6-201, and may include [S]severe [A]abuse["], [S]severe [N]neglect["], and [S]sexual

[A]abuse["], as these terms are defined in Sections [78A-6-105]80-1-102 and [62A-3-304]26B-6-201.

(2) "Adult-only Substance Use Disorder Program" [is]means a program serving substance use disorder[-]-related clients and does not serve [the following:

\_\_\_\_ (a) -]clients under the age of 18,[-]or  
\_\_\_\_ (b) -]those with any serious mental illness or cognitive impairments.[-]

(3) "Applicant" means as defined in Section 26B-2-120 and includes a person whose identifying information is submitted to the [O]office under Sections [62A-2-120]26B-2-120, [62A-3-104.3]26B-6-107, [62A-5-103.5]26B-6-410, 78B-6-128, and 78B-6-113. [Applicant includes the legal guardian of an individual described in Subsection 62A-2-120-1(a).]

[\_\_\_\_ (a) "Applicant" does not mean an individual, including an adult, who is in the custody of the Division of Child and Family Services or the Division of Juvenile Justice Services.]

(4) "BCI" means the Bureau of Criminal Identification, and is the designated state agency of the Division of Criminal Investigation and Technical Services Division[-] within the Department of Public Safety[-] that is responsible for maintaining criminal records in [the State of]Utah.

(5) "Child" [is-]means as defined in Section [62A-2-104]26B-2-101.

(6) "Child Placing" [is-]means as defined in Section [62A-2-104]26B-2-101.

(7) "Committee" means the comprehensive review committee appointed to conduct reviews in accordance with Section [62A-]26B-2-120.

(8) "DAAS Statewide Database" [is]means the Division of Aging and Adult Services database created by Section [62A-3-344.4]26B-6-210 to maintain reports of vulnerable adult abuse, neglect, or exploitation.

(9) "Determination" [is]means the result of the background clearance findings in the online system. [There are]The following four determinations may be made by the office:[that directly inform a screening agent's hiring decisions:]

(a) ["]eligible["] or eligible approval for hire and may work unsupervised;

(b) ["]ineligible["] for hire and may not work;

(c) ["]supervised only["] to work at all times under direct supervision of another employee with an ["]eligible["] department[DHS] clearance while in the presence of clients or client records; or

(d) ["]conditional hire["] or conditional approval under conditions outlined in Subsection R501-14-7(2).

(10) "Direct Access" [is-]means as defined in Section [62A-2-104]26B-2-101.

(11) "Direct Service Worker" [is]means as defined in Section [62A-5-104]26B-6-401.

(12) "Directly Supervised" [is]means as defined in Section [62A-2-104]26B-2-101. [-The agency is responsible to document and provide upon request how the individual remains supervised for the entirety of their supervised employment term prior to full clearance.]

(13) "FBI Rap Back System" [is-]means as defined in Section 53-10-108.

(14) "Fingerprints" means an individual's fingerprints as copied electronically through a fingerprint scanning device or on two ten-print fingerprint cards by a law enforcement agency, an agency approved by the BCI, or a screening agent.

(15) "Foster Home" [is-]means as defined in Section [62A-2-104]26B-2-101.

(16) "Harm" ~~[is] means as defined in Subsection [R501-4-2(14)]~~[R380-600-2(17)], and for ~~[the purpose of]~~ background screenings, also includes causing or threatening to cause financial damage or fraud.

(17) "Human Services Program" ~~[is] means as defined in Section [62A-2-101]~~[26B-2-101].

(18) "Licensee" ~~[is] means as defined in Section [62A-2-101]~~[26B-2-101].

(19) "Licensing Information System" (LIS) ~~[is] means the system created by Section [62A-4a-1006]~~[80-2-1002], as a sub-part of the Division of Child and Family Services' Management Information System (MIS) created by Section ~~[62A-4a-1003]~~[80-2-1001].

(20) "Neglect" ~~means as [may include "Severe Neglect", as these terms are]~~ defined in Sections ~~[78A-6-105]~~[80-1-102] and ~~[62A-3-304]~~[26B-6-201].

(21) "Office" ~~[is] means the Office of Background Processing within the Division of Licensing and Background Checks [defined in Subsection 62A-2-101(30)]~~.

(22) "Online system" ~~[is] means the [Θ]office's electronic online background clearance system.~~

~~[(23) "Personal Care Attendant" is defined in Section 62A-3-101.]~~

~~[2(4)(3)]~~ "Personal Identifying Information" ~~[is] means as defined in Section [62A-2-120]~~[26B-2-120], and ~~[shall] includes:~~

(a) a current, valid state driver's license or state identification card bearing the applicant's photo, current name, and address;

(b) ~~[any]~~ a current, valid government-issued identification card bearing the applicant's name and photo, including passports, military identification, and foreign government identification cards; or

(c) other records specifically requested in writing by the ~~[Θ]office~~.

~~[2(5)(4)(a)]~~ "Reside" means retaining a residence for six or more consecutive months. ~~[(b)]~~

~~[(b)]~~ Reside does not mean religious, educational, or military service as long as the primary state of residence is maintained.

~~[2(6)(5)]~~ "Request Type" means the type of employment and clearance level statutorily required for the type of provider the applicant is applying to work under as categorized in the online system.

~~[(a) Request types delineate the clearance level statutorily required for each type of employment.~~

~~[(b) Clearance transfers are allowed amongst the same request types or from higher level clearance to lower level clearance only. New clearances and committee review if applicable, are required when moving from a lower level request type to a higher level request type.]~~

~~[2(7)(6)]~~ "Screening Agent" ~~[is] means the individual [or individuals who are] responsible for: [initiating, monitoring and maintaining background clearance communications with the Office; entering applications, verifying and protecting personally identifying information and ensuring information is current for their agency, applicants and providers in the online system.]~~

~~[(a) initiating, monitoring, and maintaining background clearance communications with the Office;~~

~~[(b) entering applications;~~

~~[(c) verifying and protecting personally identifying information; and~~

~~[(d) ensuring information is current in the online system for their program's applicants, and providers.~~

~~[2(8)(7)]~~ "Substance Abuse Treatment Program" ~~[is] means as defined in Section [62A-2-101]~~[26B-2-101].

~~[(29) "Substantiated" is defined in Section 62A-4a-101.]~~

~~[(30)(28)]~~ "Supported" ~~[is] means as defined in Sections [62A-3-304]~~[26B-6-201] and ~~[62A-4a-101]~~[80-1-102].

~~[(31)(29)]~~ "Vulnerable Adult" ~~[is] means as defined in Section [62A-2-101]~~[26B-2-101].

~~[(32)(30)]~~ "Youth Residential Program" is also known as ~~["congregate care"]~~ and means a 24-hour group living environment serving ~~[4]four~~ or more youth. This does not include foster homes or child placing agency certified homes.

### **R501-14-3. Initial Background Screening Procedure.**

(1) ~~[A]~~The screening agent shall ensure that an applicant for initial background screening completes ~~[any]~~the required application fields and disclosure statements to authorize the ~~[Θ]office's~~ continual monitoring of their fingerprints and applicable state registries.

(2) An applicant shall disclose any criminal charges, including pending charges, and any supported or substantiated findings of abuse, neglect, or exploitation during the background screening application process.

(3)(a) An applicant may provide disclosure statements and related documents as direct attachments to the application to be uploaded into the online system by a screening agent or directly emailed to the ~~[Θ]office~~.

~~[(b)]~~ If ~~[the]~~an applicant submits a sealed envelope, the ~~[background]~~ screening agent shall forward it to the office unopened.

(4) The office will conduct the highest level clearance including out-of-state child abuse and neglect registry checks for any of the following applicants who have lived out-of-state within the past five years: [An applicant seeking a position in a youth residential program, a prospective foster parent or prospective adoptive parent, adult in the home of a prospective foster or adoptive parent and DHS employee shall require the highest level of clearance to include out of state registry checks for associated applicants who have resided outside of Utah within the past five years.]

(a) an applicant seeking a position in a youth residential program;

(b) a prospective foster parent or prospective adoptive parent; and

(c) an adult in the home of a prospective foster or prospective adoptive parent.

(5)(a) An applicant applying to work in a youth residential program who has resided outside of ~~[the state of]~~ Utah within the ~~[5]five~~ years immediately preceding the date of the background screening application shall provide a child abuse and neglect registry record for each ~~[S]state~~ in which the applicant has resided within those ~~[5]five~~ years.

~~[(a)]~~(b) Instructions for obtaining ~~[out of state]~~ out-of-state child abuse and neglect registry records from each state ~~[may be]~~ are found on the ~~[Θ]office~~ website at: <https://hslic.utah.gov/Out-of-state-registries>.

~~[(b)]~~(c) ~~[Out of state]~~ Out-of-state child abuse and neglect registry records are not required a second time for a screening transfer or renewal as long as a record from every state resided in over the past five years has been previously submitted and reviewed by the ~~[Θ]office~~.

(d) Any applicant for prospective foster or adoptive care is not required to submit their own out-of-state child and abuse registry checks, it is included in the background check conducted by the office.

~~[(e)](c)~~ A youth residential provider who is not department contracted shall supervise an ~~[For youth residential providers who do not have a DHS contract to provide services for DHS,]~~ applicant[s] experiencing delays in receiving a requested ~~[out of state]~~ out-of-state registry record ~~[must be supervised]~~ while the record is ~~[are]~~ pending, unless:

(i) the applicant has initiated the ~~[out of state]~~ out-of-state record search and it is actively in progress; and

(ii) the ~~[O]~~office otherwise approves the applicant's background screening with no committee review required.

~~[(d)](f)~~ The office may not issue a ~~[A]~~ renewal clearance ~~[will not be issued]~~ if the original ~~[out of state]~~ out-of-state registry results have not been provided to the ~~[O]~~office within the 12[-]-month initial clearance time frame.

~~[(e)](g)~~ The ~~[is]~~ allowance outlined in Subsection (d) does not apply to ~~department~~ ~~[DHS]~~ contracted youth residential settings~~[-]~~, ~~[as federal law requires that employees of these settings must have complete clearance prior to working in a licensed youth residential facility.]~~

~~[(f)](g)~~ The office shall deny or revoke a background screening if ~~[A]~~any ~~[out of state]~~ out-of-state registry record ~~[that]~~ contains information that constitutes background screening denial under this rule~~[-]~~, ~~[shall result in a denial or revocation of background screening]~~ and the provider shall end the employee's direct access to clients and client records ~~[must be terminated]~~ immediately upon an ineligible determination notification from the office.

~~[(6)]~~ A prospective foster or adoptive parent or an adult living in the home of a foster or adoptive parent shall identify any state they have resided in over the past five years for the office to conduct the out-of-state registry search for their clearance.

~~[(6)](7)(a)~~ An applicant ~~[must]~~ shall present valid government-issued identification to the screening agent to verify the application.

~~[(b)]~~ The background screening agent shall inspect each applicant's government-issued identification card and determine that it does not appear to have been forged or altered.

~~[(7)](c)~~ The ~~[background]~~ screening agent shall submit the background screening application, personal identifying information, signed consent disclosure statement, and applicable fee ~~[shall be submitted by the background screening agent]~~ into the online system.

~~[(a)]~~ The background screening agent shall inspect the applicant's government-issued identification card and determine that it does not appear to have been forged or altered.

~~[(b)](d)~~ The ~~[background]~~ screening agent may withdraw a background screening application ~~[at any point in]~~ any time during the process.

#### **R501-14-4. Renewal Background Screening Procedure.**

(1) ~~[R]~~A renewal application~~s~~ ~~[are]~~ is not ~~[necessary]~~ required if the applicant has an application entered into the online system under the program ~~[for which]~~ where they work, a signed disclosure statement form uploaded, and initial fingerprints that are enrolled in the rap back system.

(2) The ~~[O]~~office ~~[will]~~ shall monitor criminal records on an ongoing basis and applicable state registries on an annual basis.

~~[(3)](a)~~ ~~[It is a screening agent's responsibility to]~~ The screening agent shall keep their program~~[agency]~~'s roster and employee information current in the online system.

~~[(a)](b)~~ ~~[A]~~The screening agent shall check the roster at least monthly to verify employee information and the employment of employees due for a renewal review.

~~[(b)]~~ A screening agent shall update any names, addresses or other employee information immediately upon becoming aware of changes.

(c) When an employee no longer works for the program, ~~[a]~~the screening agent ~~[must]~~ shall separate that employee from the program's roster in the online system within five days of employee separation from the program.

(4) An individual who is no longer affiliated with any licensed or certified program will have 90 days to become re-employed before the office reports the individual's rap back subscription ~~[will be reported]~~ to the Department of Public Safety to be cancelled.

#### **R501-14-5. General Background Screening Procedure.**

(1)(a) The department may not process ~~[A]~~an application that lacks a signed disclosure statement, applicant information, or applicable fees ~~[will not be processed]~~ until the requirements are provided to the ~~[O]~~office.

~~[(a)](b)~~ The office shall use ~~[P]~~personal identifying information ~~[shall be used]~~ to perform a search in accordance with Section ~~[62A-2-120]~~ 26B-2-120.

~~[(2)](a)~~ ~~[Except as permitted by Subsection 62A-2-120(9),]~~ The screening agent shall submit an application for an initial background screening ~~[shall be submitted]~~ no later than two weeks from the applicant becoming associated with the licensee.

~~[(b)]~~ The provider shall ensure an applicant is directly supervised~~[-]~~ ~~[applicant shall be directly supervised prior to]~~ until the office issues a ~~[receiving]~~ conditional or ~~[full]~~ eligible clearance determination~~[-]~~ ~~[approval from the Office.]~~ and the provider shall document how the individual remains supervised for the entirety of their supervised employment term before receiving a clearance determination.

~~[(a)](c)~~ An applicant is eligible to work unsupervised when:

(i) the criminal record check reveals no criminal offenses subject to automatic denial in accordance with Section ~~[62A-2-120]~~ 26B-2-120;

(ii) ~~[except as outlined in Subsection R501-14-3(5)(e),]~~ both in-state and out-of-state registry checks are completed as applicable, except as outlined in Subsection R501-14-3(5)(f); and

(iii) there is no comprehensive review as required by Section ~~[62A-2-120]~~ 26B-2-120.

~~[(b)](d)~~ The provider shall ensure ~~[A]~~an applicant with a pending committee review ~~[must be]~~ is supervised at all times until the ~~[O]~~office makes the final determination.

~~[(e)](e)~~ The provider may not allow an ~~[An]~~ applicant whose background screening application ~~[has been]~~ is denied ~~[shall]~~ to have ~~[no further]~~ any supervised or unsupervised direct access to clients unless: ~~[the denial is overturned in an administrative hearing or by the Office Director or the Office approves a subsequent application.]~~

~~[(i)]~~ the denial is overturned in an administrative hearing or by the office director; or

~~[(ii)]~~ the office approves a subsequent application.

~~[(a)](f)~~ The provider shall ensure an ~~[An]~~ applicant initiating an appeal of a denied application ~~[shall]~~ works under direct supervision ~~[at all times]~~ until ~~[there is a disposition made]~~ the department issues a disposition regarding the appeal.

(3) The provider shall ensure the applicant or ~~[background]~~ screening agent ~~[shall]~~ promptly notifi[y]ies the ~~[O]~~office of updated application details or new investigations of abuse or neglect or any new criminal charge ~~by~~;



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(a) ~~[by]~~ updating the online system with changes to name and contact information; and

(b) ~~[by]~~ emailing cbsunit@utah.gov ~~[of]~~ with any new allegation[s] or investigation[s] of abuse or neglect or new criminal charges.

(4)(a) ~~[A background]~~ The screening agent may conduct livescan fingerprinting on an independent livescan machine for submission to the ~~[O]~~ office only after ~~[they have received and applied]~~ completing training in the proper methods of taking fingerprints and ensuring~~[ed]~~ all ~~department~~ [DHS] billing codes are accurately entered into the machine.

~~[(a)]~~(b) The ~~[background]~~ screening agent shall verify the identity of the applicant ~~[via]~~ by inspecting the applicant's personally identifying information ~~[at the time that]~~ when the application is entered into the livescan machine.

~~[(b)]~~(c) The applicant ~~[is required to]~~ shall present ~~[to the livescan operator]~~ the same government-issued photo identification required in ~~[under]~~ Subsection ~~[(4)(a)]~~ R501-14-3(6)(a) ~~[and]~~ with the fingerprint authorization form to the livescan operator.

~~[(e)]~~(d) A minor applicant ~~[that submitted]~~ that submits a youth application with no fingerprints and is not currently on the FBI Rap Back System ~~[must]~~ shall submit fingerprints within 30 days ~~[prior to]~~ before the minor applicant's 18th birthday.

### R501-14-6. Background Screening Fees.

(1) The applicant and ~~[background]~~ screening agent ~~[are responsible for ensuring]~~ shall ensure the accuracy of information submitted with applications and fee payments.

(2) The screening agent shall ensure ~~[F]~~ fees ~~[shall only be]~~ are made by E-check, credit card, or internal ~~department~~ [DHS] transfer.

(3) ~~[A background]~~ The screening agent may choose to submit payments individually or in a batch.

(4) The office may not refund or transfer ~~[F]~~ fees ~~[are not refundable or transferable,]~~ unless the fingerprints were never ~~[taken]~~ submitted to the Department of Public Safety and the ~~[O]~~ office was never billed by the Department of Public Safety.

(5) The ~~[O]~~ office processing fee that is set legislatively is not refundable.

### R501-14-7. Application Processing and Results.

(1)(a) The ~~[O]~~ office shall approve an application for background screening in accordance with Subsection ~~[62A-2-120(7)]~~ 26B-2-120(8).

(b) The ~~[O]~~ office shall notify the applicant, through their screening agent, when an applicant's background screening application is approved or denied.

(c) The office shall only provide ~~[Only]~~ approval or denial information ~~[shall be provided]~~ to a screening agent ~~[via]~~ through a determination in the online system.

~~[(b)]~~(d) ~~[The approval granted by the Office shall be valid]~~ The office approval is valid until the individual is either no longer associated with any licensed or ~~department~~ [DHS] contracted program for 90 days ~~[per]~~ in accordance with Subsection R501-14-4(4), [2(b)] or until a new criminal or supported finding of abuse or neglect constitutes screening clearance review or revocation.

(2)(a) The ~~[O]~~ office may conditionally approve an application for background screening in accordance with Subsection [62A-2-120]26B-2-120(8)(9).

~~[(a)]~~(b) The office may not issue a ~~[C]~~ conditional approval ~~[s are prohibited]~~ for an initial applicant[s] who ~~[are]~~ is a resident[s] of a child[-]-placing foster or adoption home ~~[s and for]~~ or

an applicant[s] working in a ~~department~~ [DHS] contracted youth residential program.

~~[(b)]~~(c) ~~[A background]~~ The screening agent seeking the conditional approval of an applicant may not request conditional approval unless ~~[10-]~~ ten business days have passed after the office ~~receives the~~ applicant's complete background screening application ~~[is received by the Office]~~ without receiving notification of the approval or denial of the application.

~~[(e)]~~(d) ~~[A-]~~ The screening agent shall submit a written request for conditional approval ~~[shall]~~ that includes: ~~[the applicant's full name, the last four digits of the applicant's social security number, and the date the application was submitted with the required consent disclosures and fees in the online system. This request must be submitted via the online system or via the cbsunit@utah.gov.]~~

(i) the applicant's full name;

(ii) the last four digits of the applicant's social security number; and

(iii) the date the application was submitted with the required consent disclosures and fees in the online system.

(e) The provider shall submit the written conditional approval request through the online system or by email to cbsunit@utah.gov.

~~[(d)]~~(f) Upon receipt of a written request for conditional approval that complies with Subsections R501-14-7(2)(b)(c) and (d), the ~~[O]~~ office shall make a conditional determination within three business days.

~~[(e)]~~(g) A ~~[C]~~ conditional approval ~~[s shall have expiration dates not to exceed]~~ expires within 60 days unless:

~~[(i)-]~~ the applicant is awaiting the results of an ~~[out of state]~~ out-of-state registry check as the only remaining item prohibiting clearance, ~~[they may be granted a conditional approval; and]~~

~~[(ii)]~~(h) The office may not issue ~~[a-]~~ renewal clearance or new conditional clearance ~~[will not be issued]~~ if the applicant has not provided the out-of-state registry check ~~[has not been provided]~~ within 12 months of the initial application.

~~[(f)]~~(i) If the ~~[O]~~ office does not provide a standard approval before the expiration date of the conditional approval, the provider shall ensure the applicant is directly supervised ~~[applicant shall be directly supervised]~~ until ~~[such an-]~~ approval is granted.

~~[(e)]~~(j) The ~~[O]~~ office may revoke the conditional approval ~~[prior to]~~ before the expiration date.

(3) The ~~[O]~~ office shall deny an application for background screening in accordance with ~~S[ub]~~ section [62A-2-120]26B-2-120(5(a) and 62A-2-120-14(e)).

(4) The provider shall ensure ~~[A]~~ an applicant whose background screening ~~[has been-]~~ is denied ~~[shall have]~~ has no further supervised or unsupervised direct access.

(5)(a) The ~~[O]~~ office shall refer an application to the committee in accordance with Subsections [62A-2-120]26B-2-120(5)(b) and [62A-2-120]26B-2-120(6).

~~[(a)]~~(b) In accordance with Subsection [62A-2-120]26B-2-120(6)(a)(c)(iii), ~~[any-]~~ the committee shall review a misdemeanor conviction[s] except those listed in Subsection (5)(b)(c), that occurred within the ten years ~~[prior to]~~ before submission of the application to the ~~[O]~~ office, ~~[shall be reviewed by the committee.]~~

~~[(b)]~~(c) The committee may not review the following misdemeanors: ~~[will not be reviewed:]~~

(i) violation of local ordinances related to animal licenses, littering, dogs at large, noise, yard sales, land uses, storm water, utilities, business licenses, zoning, building, construction, and park or access hours;



(ii) misdemeanors listed in ~~[Title 41 Chapter 6a, Traffic Codes]~~[Title 41, Chapter 6a, Traffic Codes] except ~~[Section]~~[Title 41 Chapter 6a, Part 5, Driving Under the Influence and Reckless Driving, and Sections 41-6a-401.3], 41-6a-401.5], 41-6a-401.7], 41-6a-1716], 41-6a-1717], and 41-6a-1803];

(iii) misdemeanors listed in Sections 76-10-2, 76-10-21, and 76-10-27, and Subsection 76-10-1(105);

(iv) failure to appear, a misdemeanor charge under Section 77-7-22;

(v) a misdemeanor resulting from unauthorized hunting under Section 23-20-3;

(vi) a misdemeanor resulting from a failure to have the appropriate fishing license under Section 23-19-1;

(vii) a misdemeanor resulting from a failure to comply with the boating safety requirements outlined in Section 73-18-8;

(viii) a misdemeanor resulting from failure to have a business license as required under Section 76-8-410; and

(ix) juvenile misdemeanors except those listed in Subsection ~~[62A-2-120]~~26B-2-120(5)(a) unless there is a pattern of at least three or more similar offenses within the five years ~~[prior]~~before to the submission of the application; and

~~[(c) Any misdemeanor or felony conviction that occurred more than ten years prior to the date the application is submitted in the online system, if the applicant has not committed a misdemeanor or felony offense since the day on which the conviction occurred, will not be reviewed. This comprehensive review exception does not apply to prospective foster or adoptive parents.]~~

(d) The [Θ]office shall refer an applicant to the committee upon learning of a potentially disqualifying offense or finding described in Subsection ~~[62A-2-120]~~26B-2-120(6)(a) ~~if it was not~~

(6) The [Θ]office may provide the status of an application to a ~~[background]~~screening agent, but may not share ~~[any]~~the specific criminal history or abuse or neglect history or findings.

#### **R501-14-8. Comprehensive Review Committee.**

(1) The ~~[D]~~[Θ]director of the following Department of Health and Human Services divisions and offices shall appoint at ~~[minimum]~~least one member and one alternate to serve on the committee:

- (a) the Executive Director's Office;
- (b) the Division of Aging and Adult Services;
- (c) the Division of Child and Family Services;
- (d) the Division of Juvenile Justice Youth Services;
- (e) the Division of Services for People with Disabilities;
- (f) the ~~[Division]~~Office of Substance ~~[Abuse]~~Use and Mental Health; and
- (g) the [Θ]office.

(2) The department directors shall appoint [Committee] professional staff members and alternates to the committee[shall be] who are [professional staff persons who are] familiar with the programs they represent.

(3) The appointed [Θ]office member shall chair the committee as a non-voting member.

(4) Four voting members shall constitute a quorum.

(5) The committee shall conduct a comprehensive review of: ~~[an applicant's background screening application, records from open court cases or convictions not automatically denied in Subsection 62A-2-102-5(a) involving felony or misdemeanor offenses that are no more than ten years old, outstanding warrants for any offenses that require a committee review, abuse, neglect or~~

~~exploitation records, applicant submitted child abuse and neglect registry records from other states and related circumstances, in accordance with Subsection 62A-2-120(6).]~~

(a) an applicant's background screening application;

(b) records from open court cases or convictions not automatically denied in Subsection 26B-2-120(5)(a);

(c) outstanding warrants for the offenses that require a committee review;

(d) abuse, neglect or exploitation records;

(e) applicant-submitted child abuse and neglect registry records from other states; and

(f) related circumstances, in accordance with Subsection 26B-2-120(6).

(6) The committee may not conduct a comprehensive review of an applicant's background screening application if:

(a) the applicant has been previously reviewed and approved by the committee for the same employment request type even if ~~[lapsed]~~the applicant has not been employed in any human services program for the past 90 days or more; and

(b) the applicant has no new criminal charges or findings of abuse or neglect.

#### **R501-14-9. Comprehensive Review[Investigation].**

(1)(a) The committee may not review a background screening application without the [Θ]office first sending the applicant a written notice that the [Θ]office is investigating the applicant's criminal history or findings of abuse, neglect, or exploitation.

~~[(a)](b)~~ The applicant may submit any written statement[s] or record[s] that the committee needs to make a determination of the risk of harm, including:

- (i) original police reports;
- (ii) investigatory and charging documents;
- (iii) proof of any compliance with court orders;
- (iv) any evidence of rehabilitation, counseling, psychiatric treatment received, or additional academic or vocational schooling completed;
- (v) personal statements;
- (vi) reference letters specific to the potential risk of harm;

and

(vii) any other information that specifically addresses the criteria established in Subsection ~~[62A-2-120]~~26B-2-120(7)(a)(vii)[(6)(b)].

~~[(b)](c)~~ The committee shall evaluate [evaluates] information using the criteria established by Subsection ~~[62A-2-120]~~26B-2-120(7)(a)[(6)(b)].

~~[(c)](d)~~ The applicant shall submit [Applicant submissions of] any written statements or records [must be received] within 15 calendar days of the written notice unless an extension [has been] is requested by the [background] screening agent or applicant and granted by the [Θ]office.

(2) The [Θ]office shall gather the information described in Subsection ~~[62A-2-120(6)(b)]~~26B-2-120(7)(a)(vii) from the applicant and provide any available information to the committee.

(3) The [Θ]office may request additional information from any available source, including: ~~[the applicant, victims, witnesses, investigators, the criminal justice system, law enforcement agencies, the courts and any others it deems necessary for the comprehensive evaluation of an application.]~~

(a) the applicant;

(b) victims;

(c) witnesses;

(d) investigators;

(e) the criminal justice system;  
(f) law enforcement agencies;  
(g) the courts; and  
(h) any others deemed necessary for the comprehensive evaluation of an application.

(4) An applicant with a denied application may [be-]re-submit[ted] their application to the [Θ]office after [6]six months or upon [substantial-]a change to circumstances.

#### **R501-14-10. Comprehensive Review Determination.**

(1)(a) The committee shall evaluate the applications and information provided to the committee by the [Θ]office to determine if an applicant poses a risk of harm to children or vulnerable adults.

(b) In assessing the risk of harm, the committee shall consider the type of employment the applicant is seeking and the type of license under which the applicant [will be employed]seeks employment.

[(+)](2)(a) The office may transfer [A]a previously reviewed and cleared background screening approval [may be transferred-]without further committee review to another human service program[s] when providing the same service under the same statutory screening requirements.

(b) The committee shall re-consider previously cleared or denied screenings when the applicant requires a new clearance for a new type of employment.

[(2)](3) The committee members shall conduct an individual review of e[ach] application presented.[that goes to the committee requires an individual review by the committee members.]

[(3)](4)(a) The [comprehensive review-]committee shall recommend approval of the background screening of an applicant only after a simple majority of the voting members of the committee determines that approval will not likely create a risk of harm to a child or vulnerable adult in the request type for which they applied.

[(4)](b) The committee shall recommend denial of the background screening of an applicant when it finds that approval will likely create a risk of harm to the specific population that the applicant will serve[be serving].

(c) Each voting member shall independently document how the voting member reached the conclusion that the individual does or does not pose a risk of harm to the population the applicant is applying to serve.

(5)(a) The applicant shall [If the applicant fails to-]provide additional information requested by the Office within 30 days of the initial request[; the committee may consider and weigh only what was submitted to the committee and only consider additional information that is publicly available in making the committee's evaluation of the risk of harm to clients.]

(b) The committee may consider and weigh only what was submitted to the committee and may only consider additional information that is publicly available in making the committee's evaluation of the risk of harm to clients.

(c) The committee may not deny an application [simply]due to lack of information.

(6) The [Θ]office [D]director or designee shall make the final determination to approve or deny the application after considering the comprehensive review committee's recommendation.

(7)(a) The provider may not allow a[A]n applicant whose background screening [has been-]is denied [shall-]to have [no further]any supervised or unsupervised direct access to clients unless:[overturned by an administrative hearing or by the Office Director or the Office approves a subsequent application.]

(i) the determination is overturned by an administrative hearing or the office director; or

(ii) the office approves a subsequent application.

[(+)](b) The provider shall ensure a[A]n applicant initiating an appeal of a denied application [shall-]works under direct supervision [at all times-]until there is a disposition made regarding the appeal.

#### **R501-14-11. Background Screening Approval Transfer or Concurrent Use.**

(1)(a) An applicant is eligible to have their current background screening approval shared with, or transferred to, another human services program only if the applicant is [currently-]enrolled in the FBI Rap Back System and the screening was [run]processed under the same statutory authority as the original screening.

(b) Clearance transfers are allowed among the same request types or from higher-level clearance to lower level clearance only.

(c) New clearances and committee review, if applicable, are required when moving from a lower-level request type to a higher-level request type.

(2)(a) An applicant who [wishes]seeks to have their current background screening shared with, or transferred to, another human services program shall complete a background screening application through a screening agent of the new program.

[(+)](b) An applicant may not transfer an eligible clearance [Transfers-]from a non-youth residential program to a youth residential program, including a foster home, adoptive home, or certified home [or DHS employee position]without a subsequent review under the new request type.[is not permitted.]

[(+)](c) An applicant shall submit out-of-state registry records for a transfer [Transfers-]from a non-youth residential to a youth residential program [shall require submission of out of state registry records-]when the applicant has resided in another state within [5-]five years of the date the application was submitted.

[(+)](d) An applicant may transfer an eligible clearance [transfers-]from a youth residential program to a non-youth residential program.[are permitted]

(3) The provider shall ensure the applicant is directly supervised[An applicant shall be directly supervised] until the applicant's status in the online system reflects ["eligible[" or ["eligible for hire[" and has been "permanently hired" by a screening agent.]

#### **R501-14-12. Post-Approval Responsibilities.**

(1) An applicant and [background-]screening agent shall immediately notify the [Θ]office at[via] cbsunit@utah.gov if the applicant:[is charged with any felony, misdemeanor, or infraction, or has a new finding in the Licensing Information System, juvenile court records, or the DAAS Statewide Database after a background screening application is approved.]

(a) is charged with any felony, misdemeanor, or infraction; or

(b) has a new finding in the LIS, juvenile court records, or the DAAS statewide database after a background screening application is approved.

(2) The office shall issue a new supervised only determination as listed in Subsection R501-14-2(9) until a disposition on the case is reached if a[A]n eligible applicant:[who has been charged with any felony, misdemeanor, or infraction listed in Subsection 62A-2-120(5)(a) or has a new finding in the Licensing Information System or the DAAS Statewide Database, after a

~~background screening application is approved will have a new clearance status indicating that they shall be directly supervised until a disposition on the case is reached.]~~

~~(a) is charged with any felony, misdemeanor, or infraction listed in Subsection 26B-2-120(5)(a); or~~

~~(b) has a new finding in the LIS or the DAAS statewide database.~~

(3) The [Ø]office may revoke the background screening approval of an applicant who ~~[has been]~~is convicted of ~~[any]~~a felony, misdemeanor, or infraction listed in Subsection ~~[62A-2-120]~~26B-2-120(5), ~~[after]~~if a background screening approval ~~[had]~~was ~~[already been]~~granted by the [Ø]office while ~~conviction was~~~~[charges were]~~ pending.

~~[(4)]~~ The Office shall process identifying information received pursuant to Subsection R501-14-12(2) in accordance with Rule R501-14-1.

~~[(5)]~~(4)(a) The ~~[background]~~screening agent shall notify the [Ø]office of the termination of each employee with ~~[for whom]~~ fingerprints ~~[have been]~~retained under Section ~~[62A-2-120]~~26B-2-120.

(b) The [Ø]office shall report ~~[the]~~each termination to ~~[BCF]~~the Department of Public Safety within 90 days, if the individual has not transferred the clearance to a transfer-eligible program within that time frame.

#### R501-14-13. Confidentiality.

(1)(a) The [Ø]office may disclose registry and criminal background screening information ~~details~~~~[:]~~ only to the applicant in accordance with Section 63G-2-~~[40+]~~202.

~~[(2)]~~(b) The office may grant the ~~[background]~~screening agent~~[s]~~ and ~~department~~~~[DHS]~~ auditor~~[s]~~ with ~~[over]~~oversight of the licensed program ~~[may be granted]~~minimal, read-only access to the online system solely to see application determinations~~[:]~~ with ~~n~~~~[N]~~o additional case details ~~[will be]~~viewable.

~~[(3)]~~2) ~~[Except as described in Section R501-14-11,]~~The office may not transfer or share background screening information ~~[may not be transferred or shared]~~between human service programs~~[:]~~, except as described in Section R501-14-11.

~~[(4)]~~3) ~~[A]~~The ~~[background]~~screening agent or [Ø]office representative may provide the approval letter generated by the online system, in accordance with Subsection 53-10-108(4), to: ~~[the person who is the subject of the approval, the court, another licensed child-placing agency, or the attorney for the adoptive parents, in accordance with Section 53-10-108(4).]~~

~~(a) the person who is the subject of the approval;~~

~~(b) the court;~~

~~(c) another licensed child-placing agency; or~~

~~(d) the attorney for the adoptive parents.~~

#### R501-14-14. Retention of Background Screening Information.

~~[(1)]~~The office~~[online system]~~ shall retain the background screening information of associated individuals ~~in the online system~~ for a minimum of seven years after the termination of the individual's association with the program.

#### R501-14-15. Expungement.

~~[(1)]~~An applicant whose background screening application ~~[has been]~~is denied due to the applicant's criminal record may submit a new application with an official copy of an [Ø]order of ~~[E]~~expungement.

#### R501-14-16. Administrative Hearing.

~~[(1)]~~A ~~[N]~~notice of ~~[A]~~agency ~~[A]~~action issued by the [Ø]office ~~[D]~~director or designee that denies the applicant's background screening application or revokes the applicant's background screening approval shall inform the applicant of the right to appeal in accordance with Rule R497-100 and Section 63G-4-1.

#### R501-14-17. Exemption.

(1)(a) Subsection ~~[62A-2-120]~~26B-2-120(1)~~[3]~~2) provides an exemption for a substance abuse program~~[s]~~ providing services to adults only.

~~(b) [In order to]~~To claim ~~[this]~~exemption, an applicant, human services program, or ~~department~~~~[DHS]~~ contractor may request this exemption on a form provided by the [Ø]office, and demonstrate that they meet exemption criteria.

~~(c) The office shall make a final determination regarding exemption approval or denial.~~Final determination shall be made by the Office.

(2) The substance abuse program exemption ~~[limits the exemption with regard to]~~does not apply to program directors and members as member is defined in Subsection 26B-2-105(2)(a). ~~[Ownership and management of a human services program, as included in the definition of member, for purposes of this rule means a person or entity who alone or in conjunction with other persons or entities has a majority voice in the decision-making and administration of the program.]~~

#### R501-14-18. Automatic Denial Exemption.

(1)(a) ~~[Programs]~~A provider serving only adults whose only impairment is a mental health diagnosis, with or without co-occurring substance use disorder, are exempt from the automatic denial ~~[provisions]~~of Subsection ~~[62A-2-120]~~26B-2-120(5)(a) and are entitled instead to a committee review ~~[per]~~in accordance with Subsection ~~[62A-2-120]~~26B-2-120(5)(~~[e]~~b).

(b) A ~~[Program]~~provider claiming program automatic denial exemption ~~[must]~~shall identify on their program application how they meet the exemption criteria.

~~(c) The office shall make the [F]final determination regarding [potential] exemption.~~will be made by the Office.

(2) A ~~[Programs]~~provider approved for program-exempted screening processes listed in this section ~~[are responsible for informing]~~shall inform the [Ø]office immediately upon any program changes that would ~~[render]~~make them ineligible for the exemption.

**KEY:** licensing, background screening, fingerprinting, human services

Date of Last Change: 2023~~[February 16, 2021]~~

Notice of Continuation: September 1, 2020

Authorizing, and Implemented or Interpreted Law: ~~[62A-2-108 et seq.]~~26B-2-104; 26B-2-120; 26B-2-121; 26B-2-122

#### NOTICE OF PROPOSED RULE

TYPE OF FILING: Amendment

Rule or Section Number:	R501-19	Filing ID: 56053
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#### Agency Information

1. Department:	Health and Human Services
Agency:	Human Services Program Licensing

## NOTICES OF PROPOSED RULES

<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>		
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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>
R501-19. Residential Treatment Programs
<b>3. Purpose of the new rule or reason for the change:</b>
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.
<b>4. Summary of the new rule or change:</b>
The revisions include more specific language consistent with the Rulewriting Manual for Utah.  Additionally, this amendment updates titles and citations due to the recodification of the Department of Health and Human Services' (Department) 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>
This change will not impact the current process for licensure and re-licensure surveys.  No change to the state budget is expected because no new processes or requirements are introduced and this amendment only modifies and replaces outdated language with the Rulewriting Manual for Utah standards and updates statutory citations where applicable.  There is no fiscal impact to state government resulting from the changes in this rule content.
<b>B) Local governments:</b>
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.

These facilities 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.

There is no anticipated fiscal impact to local governments resulting from the changes in this rule content.

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

No change to small businesses is expected because no new processes or requirements are introduced.

This amendment only modifies and replaces outdated language with the Rulewriting Manual for Utah standards and updates statutory citations where applicable.

There is no anticipated fiscal impact to small businesses resulting from the changes in this rule content.

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

No change to non-small businesses is expected because no new processes or requirements are introduced.

This amendment only modifies and replaces outdated language with the Rulewriting Manual for Utah standards and updates statutory citations where applicable.

There is no anticipated fiscal impact to non-small businesses resulting from the changes in this rule content.

#### **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 change for other persons is expected because no new processes or requirements are introduced.

This amendment only updates titles and statutory citations and ensures compliance with the Rulewriting Manual for Utah standards.

There is no anticipated fiscal impact to other persons resulting from the changes in this rule content.

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

No compliance costs for affected persons are expected because no new processes or requirements are introduced and this amendment only updates titles and statutory citations and ensures compliance 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**

<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**

**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-2-104		
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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>	12/15/2023
<b>9. This rule change MAY become effective on:</b>	12/22/2023

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>	10/30/2023
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**R501. ~~[Human Services, Administration, Administrative Services, Licensing, Health and Human Services, Human Services Program Licensing.~~**

**R501-19. Residential Treatment Programs.**

**R501-19-1. Purpose and Authority.**

(1) This rule is authorized by Section ~~[62A-2-106]~~ 26B-2-104 and establishes standards for licensed providers ~~[licensed]~~ to provide residential treatment and intermediate secure care.

(2) This ~~[ese]~~ rule ~~s are intended to~~ supplements the general provisions required of ~~[all]~~ each human services program ~~s~~ outlined in Rule R501-1.

**R501-19-2. Definitions.**

The terms used in this rule are defined in Sections ~~[62A-2-101 and]~~ R501-1-3, and 26B-2-101.

**R501-19-3. Administration.**

(1) Each residential treatment ~~[program]~~ provider shall document local government approval for new program services or increased consumer capacity as described in Section ~~[62A-2-108.2]~~ 26B-2-117.

(2) Each residential treatment provider shall ensure its policies include client privacy accommodation in each bedroom space while assuring client health and safety.

(~~[2]~~) 3) Each residential treatment ~~[program]~~ provider serving a child shall:

(a) provide direct supervision that meets supervision and ratio requirements~~[-]~~;

(~~[3]~~) b) ~~[Each residential treatment program serving a child shall have no less than]~~ ensure two direct care staff are always on duty~~[-]~~;

(~~[4]~~) c) ~~[Each residential treatment program serving a child shall]~~ maintain a ~~[staff to client]~~ staff-to-client ratio of ~~[no less than]~~ one staff to every four clients ~~except:~~

(i) ~~[or]~~ as otherwise ~~[dictated in]~~ required by a department contract~~[-]~~; or

(~~[5]~~) ii) ~~[Except as provided under Section R501-19-4, a residential treatment program serving a child may decrease the staff to client ratio during client sleeping hours]~~ to reduce ratios to one staff to every 16 clients~~[-]~~ during client sleeping hours;

(~~[6]~~) d) ~~[Each residential treatment program serving a child may]~~ only decrease the number of staff as described in ~~[Section R501-19-4]~~ this section if:

(~~[a]~~) i) each client is appropriately supervised to ensure health and safety at the ratio; and

(~~[b]~~) ii) each direct care staff remains awake while on duty~~[-]~~;

(~~[7]~~) e) ~~[Each residential treatment program shall]~~ increase ~~[each staff to client]~~ the staff-to-client ratio as necessary to ensure the health and safety of the current client population~~[-]~~;

(~~[8]~~) f) ~~[Direct supervision may only be performed by]~~ only allow direct care staff ~~[who are in physical proximity to the clients]~~

~~and actively supervising with line of sight check-ins no less frequently than every 15 minutes.]to perform direct supervision with line of sight check-ins every 15 minutes;~~

(19)g) ~~[Except in an emergency situation that is caused by a client's behavior or medical needs, each direct care staff assigned to a one-on-one or line of sight supervision shall not be counted at the same time in the staffing ratio for any other client.]ensure that any direct care staff member assigned to a client's one-on-one supervision is not counted at the same time in the staffing ratio for any other client, except in an emergency situation;~~

~~[(10) Each program policy shall include how the program will accommodate client privacy in each bedroom space while assuring client health and safety.]~~

(14)h) ~~[A residential treatment program may.]~~only utilize on-site video surveillance to directly supervise a client in time out or seclusion or as an enhancement to minimum supervision ratio requirements[-];

(i) ~~conduct and document physical check-ins every 15 minutes[physical check-ins must be conducted and documented] when a client is being monitored by video[-]; and~~

(12)i) ~~only use v[ideo surveillance in a bedroom[s may only be used by a residential treatment program] as follows:~~

(a)i) with client, parent, or guardian permission;

(b)ii) when there is a documented need;

(c)iii) when the [programs]provider monitors cameras or physically checks in at intervals of 15[-] minutes or less; [-]and

(d)iv) ~~[in a program serving an individual with disabilities, where.]~~when video surveillance is in compliance with Rule R539-3 for serving an individual with disabilities.

(13)4) Each residential treatment [program]provider serving a child may provide step-down privileges to include unsupervised time and authorized departures from the program if the provider:

(a) ~~[the program-]maintains a staff-to-client ratio of [1:4 direct care staff to client ratio] one direct care staff to every four clients;~~

(b) ~~[the program-]documents in the client record and communicates to each of the client's direct care staff, the individualized justification for the step-down privileges and which privileges are authorized by a clinical professional;~~

(c) ~~[the program-]obtains written parental or guardian consent [prior to]before allowing step-down privileges; and~~

(d) ~~[the program-]provides a policy to each client and parent or guardian [a policy-]that includes:~~

(i) a description of what constitutes authorized departure and unsupervised time;

(ii) a description of how each step-down privilege, including authorized departure or unsupervised time, is achieved and rescinded;

(iii) a ~~[policy-]statement~~ that the [program]provider will immediately communicate to each client parent or guardian and direct care staff when the step-down privileges have been rescinded; and

(iv) a statement that no step-down client is ~~[permitted]allowed~~ to perform any direct care staff duties.

(5) Each residential treatment provider shall make any necessary accommodation to allow a child to continue the child's education with a curriculum approved by the State Board of Education.

(6) Each residential treatment provider that offers education shall utilize a curriculum that is recognized by an

educational accreditation organization, including the State Board of Education or the National School Accreditation Board.

(14)7) Each residential treatment [program]provider serving adults may admit a 17-year-old ~~[under the following circumstances]if the provider:~~

(a) ~~[the program-]obtains written permission from the individual's parent or legal guardian;~~

(b) ~~[the program-]provides clinical justification;~~

(c) ~~[the program-]ensures that the individual sleeps in a separate room from adults or a room that the individual shares with adults no more than two years older than the individual;~~

(d) ~~[the program-]ensures that any adult with direct access to the 17-year-old is directly supervised by a direct care staff; and~~

(e) ~~[the program-]ensures enhanced safety and supervision measures for treating a minor in an adult setting.~~

(15)8) Each residential treatment [program-]provider providing services to a substance use disorder client shall:

(a) only admit a substance use disorder client with a level of care that falls within American Society of Addiction Medicine levels 3.1 through 3.5; and

(b) obtain any required licenses before providing any service to a substance use disorder client[-] outside of the residential milieu with a level of care described in Subsection (8)(a), unless otherwise outlined in categorical rule.~~[R501-19-3(16).]~~

~~[(16) Each residential treatment program shall make any necessary accommodation before allowing a child to continue the child's education with a curriculum approved by the State Board of Education.]~~

~~[(17) Each program that provides education shall utilize a curriculum that is recognized by an educational accreditation organization such as the State Board of Education or the National School Accreditation Board.]~~

(18)9) Each [program]residential treatment provider that allows a client to participate in ~~[meat]food preparation shall ensure [proper]the client is trained in safe food handling practices[training] and the provider justifi[y]es the client's participation in writing.~~

(19)10) Each residential treatment [program]provider shall provide individual, group, and family counseling or other treatment, including skills development, at least weekly or as outlined in the individual's treatment plan.

(20)11) A clinical professional shall oversee~~[Each residential treatment program that provides] any therapeutic services conducted in the therapeutic environment[such as] including:[life skill development, psychoeducation, or social coaching shall be included in the therapeutic environment and be overseen by a clinical professional.]~~

(i) life skill development;

(ii) psychoeducation; and

(iii) social coaching.

(24)12) Each residential treatment [program]provider shall document the time and date of each service provided to each client and ~~[- Any documentation shall-]include the signature of the individual providing the service.~~

(22)13) Each residential treatment [program]provider shall provide indoor space for free and informal client activities.

#### **R501-19-4. Requirements for Intermediate Secure Treatment.**

(1)a) Each intermediate secure treatment [program]provider shall clearly define in policy the responsibilities of the manager described in Section R501-1-1[8]5.

(b) The licensee shall ensure the manager described in Subsection R501-1-15(2):



- ~~(i) is at least 25 years of age;~~
- ~~(ii) has a bachelor's degree or equivalent training in a human service-related field; and~~
- ~~(iii) has at least three years management experience in a residential or secure treatment setting.~~

(2)(a) Subsection R501-19-3(4)(3)(c) does not apply to an intermediate secure treatment ~~[program]~~ provider serving youth.

~~(b) An [F]intermediate secure treatment [programs]provider serving youth shall maintain a [staff-to-client]staff-to-client ratio of [no less than]one staff to every five clients.~~

~~(3) The manager described in Section R501-1-18 shall:~~

- ~~(a) be at least 25 years of age;~~
- ~~(b) have a BA or BS degree or equivalent training in a human services related field; and~~
- ~~(c) have at least three years management experience in a residential or secure treatment setting.]~~

(4)3 Each intermediate secure treatment provider shall ensure that ~~[E]each~~ direct care staff working in an intermediate secure treatment program ~~[shall be]~~ is trained to work with a child with behavioral or mental health needs and ~~[shall]~~ works under the supervision of a licensed clinical professional.

~~(5)4 [In addition to the direct care staff training requirements described in Subsection R501-1-14(5),]Each intermediate secure treatment provider shall ensure each direct care staff [working in an intermediate secure treatment program shall receive]completes 30 hours of additional training annually regarding:[that shall include training on the following topics:]~~

- ~~(a) human relations and communication skills;~~
- ~~(b) the special needs of children and families;~~
- ~~(c) problem[-]solving and guidance;~~
- ~~(d) client rules and regulations;~~
- ~~(e) client record and incident documentation[-];~~
- ~~(f) maintaining staff, client, and visitor safety in a secure setting; and~~
- ~~(g) universal precautions for blood[-]borne pathogens.~~

~~(6)5 Each intermediate secure treatment [facility]provider shall incorporate the use of fixtures and furnishings that help limit self-harm and suicide[-. Such fixtures and furnishings]to include:~~

- ~~(a) plexiglass or safety glass;~~
- ~~(b) recessed lighting;~~
- ~~(c) sealed light fixtures;~~
- ~~(d) non-exposed fire sprinkler heads; and~~
- ~~(e) pressure release robe hooks.~~

#### **R501-19-5. Specialized Services Required to Serve Clients Under the Division of Services for People With Disabilities (DSPD).**

(1) Each residential treatment ~~[program]~~ provider serving a DSPD client shall:

~~(a) develop and adhere to [make policy-]policies and procedures governing [each facility-]the daily operation and activity available and applicable to each client and visitor;[-. Each policy and procedures governing facility daily operation and activity shall apply to any individual that enters the facility.]~~

~~(2)b [Each residential treatment program shall]specify, in policy, the amount of time non-client individuals may stay as overnight guests[-];~~

~~(3)c [Each residential treatment program shall]present each client with an individual plan that addresses appropriate day treatment[-];~~

~~(4)d [Each residential treatment program shall-]share [with each client-]a monthly activity schedule[-] with each client;~~

~~(5)e [Each residential treatment program shall-]maintain a record of income [earned and unearned-]and client service fees[-];~~

~~(6)f [Each residential treatment facility shall be-]ensure the facility is located within a reasonable distance from school, church, recreation, and other community facilities[-];~~

~~(7) Each residential treatment program shall maintain an accurate record of each fund deposited with the residential facility for client use. This record shall contain a list of each deposit and withdrawal.~~

~~(8) Each residential treatment program shall substantiate client purchase of over \$20 with receipts signed by the client and professional staff. Each residential treatment program shall keep a record of each client petty cash fund.~~

~~(9) Each residential treatment program shall, in conjunction with the support coordinator for the Division of Services for People With Disabilities and each client's parent or guardian, apply for unearned income benefits for which a client is entitled.]~~

~~(g) maintain an accurate record of each fund deposited with the residential facility for client use;~~

~~(h) maintain a list of each deposit and withdrawal;~~

~~(i) maintain a receipt signed by the client and professional staff for any purchase over \$20;~~

~~(j) maintain a record of each client petty cash fund; and~~

~~(k) apply for any unearned income benefits the client is entitled to, in conjunction with the support coordinator for DSPD and each client's parent or guardian.~~

~~(10)2 [In the event of]If there is a conflict between a licensing rule and the [Federal Home and Community Based Settings Final]settings rule as defined in Rule R501-1, the settings rule shall prevail.~~

#### **R501-19-6. Compliance.**

~~(1) A residential treatment program provider that is in operation on the effective date of this rule shall comply with this rule.~~

~~(2) The department may issue a penalty enumerated in Section 26B-2-112, Section 26B-2-113, and Rule R380-600 to any provider who is found in noncompliance with this rule.~~

**KEY: human services, licensing**

**Date of Last Change: 2023[January 21, 2022]**

**Notice of Continuation: March 30, 2020**

**Authorizing, and Implemented or Interpreted Law: [62A-2-404]26B-2-104 et seq.**

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

**TYPE OF FILING:** Amendment

<b>Rule or Section Number:</b>	<b>R501-21</b>	<b>Filing ID:</b> <b>55926</b>
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#### **Agency Information**

<b>1. Department:</b>	Health and Human Services
<b>Agency:</b>	Human Services Program Licensing
<b>Building:</b>	MASOB
<b>Street address:</b>	195 N 1950 W
<b>City, state and zip:</b>	Salt Lake City, UT 84116



Contact persons:		
Name:	Phone:	Email:
Janice Weinman	385-321-5586	jweinman@utah.gov
Jonah Shaw	385-310-2389	jshaw@utah.gov
Please address questions regarding information on this notice to the agency.		

## General Information

<b>2. Rule or section catchline:</b>
R501-21. Outpatient Treatment Programs
<b>3. Purpose of the new rule or reason for the change</b> (Why is the agency submitting this filing?):
The purpose of this amendment is to modify and replace outdated language and citations with the Rulewriting Manual for Utah standards, comply with recodification citations introduced in S.B. 38 of the 2023 General Session, and align with federal and industry standards.
<b>4. Summary of the new rule or change</b> (What does this filing do? If this is a repeal and reenact, explain the substantive differences between the repealed rule and the reenacted rule):
The revisions include more specific language and formatting consistent with the Rulewriting Manual for Utah.
Additionally, it removes outdated citations and aligns with changes to the federal terminology and requirements medically assisted treatment (now medication for opioid use disorder).
Substantive changes to substance use disorder content were made with stakeholder and OSUMH collaboration and approval.

## Fiscal Information

<b>5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:</b>
<b>A) State budget:</b>
The state government process was thoroughly reviewed. This change will not impact the current process for licensure and re-licensure.
No change to the state budget is expected because this amendment modifies and replaces outdated language and citations, most of the stricken content is now located in Rule R501-1.
New content aligns with federal and industry standards already in practice.

<b>B) Local governments:</b>
Local governments, 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 Day Treatment Programs 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.
There is no fiscal impact to small businesses resulting from the substantive or nonsubstantive changes in this rule content.
<b>C) Small businesses</b> ("small business" means a business employing 1-49 persons):
Impact to small businesses will be insignificant, as the new rule content was specifically tailored to address small businesses who operate distinct versions of Day Treatment. These entities have always fit into the statutory definition requiring licensure, so the new content just better addresses their services and clarifies and guides them toward compliance.
There is no fiscal impact to small businesses resulting from the substantive or nonsubstantive changes in this rule content.
<b>D) Non-small businesses</b> ("non-small business" means a business employing 50 or more persons):
Impact to non-small businesses will be insignificant, as the new rule content was specifically tailored to address non-small businesses who operate distinct versions of Day Treatment. These entities have always fit into the statutory definition requiring licensure, so the new content just better addresses their services and clarifies and guides them toward compliance.
There is no fiscal impact to non-small businesses resulting from the substantive or nonsubstantive changes in this rule content.
<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> ):

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

The substantive and nonsubstantive changes being made clarify and outline existing industry standards and requirements for the protection of clients in day treatment programs.

There will be no fiscal impact on any affected persons as a result 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 amendment does not introduce any new processes that will incur a cost 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>

**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-2-104

**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:** 12/15/2023

**9. This rule change MAY become effective on:** 12/22/2023

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>	10/15/2023
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**R501. Health and Human Services, [Administration, Administrative-]Human Service[s] Program, Licensing.**

**R501-21. Outpatient Treatment Programs.**

**R501-21-1. Authority.**

~~[(1) Pursuant to Section Title 62A Chapter 2, the Office of Licensing shall license outpatient treatment programs according to the following rules.]~~ This rule is authorized by Section 26B-2-104.

**R501-21-2. Purpose.**

~~[(1)-]The purpose of this rule is to establish [O]outpatient treatment programs [shall]to serve [consumers]clients who require less structure than offered in day treatment or residential treatment programs.~~

**R501-21-3. Definitions.**

(1)(a) "Outpatient [F]treatment" is defined in Section [62A]26B-2-101, and includes early intervention, outpatient services or intensive outpatient services on the American Society of Addiction Medicine (ASAM) continuum of care.

(b) "Partial Hospitalization" on the ASAM continuum of care is not an outpatient service, and instead requires a day treatment license.

(2)(a) "Outpatient Treatment Program" means two or more individuals, at least one of whom provides outpatient treatment, and also meets one or more of the following criteria:

(~~(a)~~i) allows agents, contractors, persons with a financial interest, staff, volunteers, or individuals who are not excluded under Subsection R501-21-3[2](3) to either:

(~~(i)~~A) provide direct client services, including case management, transportation, assessment, screening, education, or peer support services, and do not~~[-Direct client services do not]~~ include office tasks unrelated to client treatment, [~~such as~~]including~~[:]~~ billing, scheduling, standard correspondence, and payroll; or

(~~(ii)~~B) manages or direct program operations, including intake, admissions or discharge, setting of fees, or hiring of staff~~[-:]~~;

(~~(b)~~ii) offers outpatient treatment services to satisfy criminal court requirements~~[-:]~~;

(~~(c)~~iii) is specifically required by [DHS]a Department of Health and Human Services contract to be licensed for outpatient treatment~~[-:]~~;

(~~(d)~~iv) provides services requiring alcohol and drug education by the Office of Substance Use and Mental Health (OSUMH) as described in Rule R523-11; or~~[DUI Education Certification, or Justice Certification by the Division of Substance Abuse and Mental Health as authorized in 62A-15-103 and described in R523-4 and R523-11.]~~

(~~(e)~~v) refers clients to services that present a conflict of interest or otherwise provide an opportunity for exploitation or fraud by the referring provider. Services may include: laboratory services, private probation, housing, employment, transportation, or travel.

(~~[3]~~b) "Outpatient treatment program" does not mean:~~[The following individuals are excluded from subsection (2) above:]~~

(~~(a)~~i) individuals who are exempt from individual professional licensure under [Utah Code]Section 58-1-307;

(~~(b)~~ii) individuals who are licensed, certified, or authorized under [Utah Code]Title 58, Chapters 60, 61, 67, 68; and

(~~(c)~~iii) entities that are excluded under Section [62A-2-440]26B-2-115.

(3) "Validated Criminogenic Screen" means an evidence based tool for predicting recidivism and categorizing individuals into risk groups.

#### **R501-21-4. Administration and Direct Services.**

(1) In addition to ~~[the following rules]~~this rule, ~~[all]~~each outpatient treatment program~~[s]~~ shall comply with Rules R501-1, [General Provisions]and R501-14.~~[-Background Screening Rules.]~~  
~~[(2) Programs shall have current program information readily available to the Office and the public, including a description of:~~

- ~~\_\_\_\_\_ (a) program services;~~
- ~~\_\_\_\_\_ (b) the client population served;~~
- ~~\_\_\_\_\_ (c) program requirements and expectations;~~
- ~~\_\_\_\_\_ (d) information regarding any non-clinical services offered;~~
- ~~\_\_\_\_\_ (e) costs, fees, and expenses that may be assessed, including any non-refundable costs, fees or expenses; and~~
- ~~\_\_\_\_\_ (f) complaint reporting and resolution processes.]~~

(~~[3]~~2) ~~[The Program]~~An outpatient treatment program shall:

(a) provide general outpatient treatment on a weekly basis, or less than weekly only with individualized clinical justification~~[outpatient and/or intensive outpatient treatment services not to exceed nineteen hours per week, as clinically recommended and documented];~~

(b) only provide intensive outpatient treatment, if offered, for between 9 and 19 hours weekly for adults, and six or more hours weekly for adolescents; and

(c) ensure the following when clients are present in the facility for six or more consecutive hours:

- (i) client meals;
- (ii) administration of any required medications;
- (iii) maximum group sizes according to building capacity;

and

(iv) a physical environment that provides for the comfort of clients.

(3) An outpatient treatment provider that provides only telehealth services may apply for a single license for one centralized site to cover any telehealth services offered and shall ensure that any telehealth services provided to out of state clients are done so in accordance with the telehealth laws of the client's state of residence.

~~[(\_\_\_\_\_ (b) identify and provide to the Office the organizational structure of the program including:~~

~~\_\_\_\_\_ (i) names and titles of owners, directors and individuals responsible for implementing all aspects of the program, and~~

~~\_\_\_\_\_ (ii) a job description, duties and qualifications for each job title;~~

~~\_\_\_\_\_ (c) identify a director or qualified designee who shall be immediately available at all times that the program is in operation;~~

~~\_\_\_\_\_ (d) ensure at least one CPR/First Aid trained or certified staff member is available onsite at all times with clients present;~~

~~\_\_\_\_\_ (e) disclose any potential conflicts of interest to the Office;~~

~~\_\_\_\_\_ (f) ensure that staff are licensed or certified in good standing as required and that unlicensed individuals providing direct client services shall do so only in accordance with the Mental Health Professional Practices Act;~~

~~\_\_\_\_\_ (g) train and monitor staff compliance regarding:~~

~~\_\_\_\_\_ (i) program policy and procedures;~~

~~\_\_\_\_\_ (ii) the needs of the program's consumers;~~

~~\_\_\_\_\_ (iii) Office of Licensing rule 501-21 and annual training on the Licensing Code of Conduct and client rights as outlined in R501-1-11;~~

~~\_\_\_\_\_ (iv) emergency procedures;~~

~~\_\_\_\_\_ (h) create and maintain personnel files for each staff member to include:~~

~~\_\_\_\_\_ (i) applicable qualifications, experience, certifications and licenses;~~

~~\_\_\_\_\_ (ii) approved and current Office of Licensing background screening except as excluded in 501-14-17; and~~

~~\_\_\_\_\_ (iii) training records with date completed, topic and employee signature(s) verifying completion.~~

~~\_\_\_\_\_ (i) comply with Office rules and all local, state and federal laws to include maintaining a current business license, fire inspection and health clearance as applicable;~~

~~\_\_\_\_\_ (j) maintain proof of financial viability of the program;~~

~~\_\_\_\_\_ (k) maintain general liability insurance, professional liability insurance that covers all program staff, vehicle insurance for transport of clients, fire insurance and any additional insurance required to cover all program activities; and~~

~~\_\_\_\_\_ (l) maintain proof of completion of the National Mental Health Services Survey (NMHSS) annually for each site providing mental health services; and~~

~~\_\_\_\_\_ (m) ensure that all programs and individuals involved with the prescription, administration or dispensing of controlled substances shall do so per state and federal law, including maintenance of DEA registration numbers for:~~

~~(i) all prescribing physicians; and~~  
~~(ii) the specific site where the controlled substances are being prescribed, as required.~~

~~(4) The program shall develop, implement and comply with policies and procedures sufficient to ensure the health and safety and meet the needs of the client population served. Policies and procedures shall address:~~

~~(a) client eligibility;~~  
~~(b) intake and discharge process;~~  
~~(c) client rights as outlined in R501-1-12;~~  
~~(d) staff and client grievance procedures;~~  
~~(e) behavior management;~~  
~~(f) medication management;~~  
~~(g) critical incident reporting as outlined in R501-1-2-9 and R501-1-9-2d;~~

~~(h) emergency procedures;~~  
~~(i) transportation of clients to include requirement of insurance, valid driver license, driver and client safety and vehicle maintenance;~~

~~(j) firearms;~~  
~~(k) client safety including any unique circumstances regarding physical facility, supervision, community safety and mixing populations; and~~

~~(l) provision of client meals, administration of required medications, maximum group sizes, and sufficient physical environment providing for the comfort of clients when clients are present for six or more consecutive hours.~~

~~(5) Programs shall maintain client files to include the following:~~

~~(a) client name, home address, email address if available, phone numbers, date of birth and gender;~~

~~(b) legal guardian and emergency contact names, address, email address and phone numbers;~~

~~(c) all information that could affect the health, safety or well-being of the client including all medications, allergies, chronic conditions or communicable diseases;~~

~~(d) intake assessment;~~

~~(e) treatment plan signed by the clinical professional or service plan for non-clinical services;~~

~~(f) detailed documentation of all clinical and non-clinical services provided with date and signature of staff completing each entry;~~

~~(g) signed fee disclosure statement including Medicaid number, insurance information and identification of any other entities that are billed for the client's services;~~

~~(h) client or guardian signed consent or court order of commitment to services in lieu of signed consent, for all treatment and non-clinical services; and~~

~~(i) grievance and complaint documentation.~~

~~(j) discharge documentation~~

~~(6) Programs shall document a plan detailing how all program, staff, and client files shall be maintained and remain available for the Office and other legally authorized access, for seven years, regardless of whether or not the program remains licensed.~~

~~(7) The program shall ensure that assessment, treatment and service planning practices are clinically appropriate, updated as needed, timely, individualized, and involve the participation of the client or guardian.~~

~~(8) Programs shall maintain documentation of all critical incidents; critical incident reports shall contain:~~

~~(a) time of incident;~~

~~(b) summary of incident;~~

~~(c) individuals involved; and~~

~~(d) program response to the incident.~~

#### **R501-21-5. Physical Facility.**

~~(1) Space shall be adequate to meet service needs and ensure client confidentiality and comfort.~~

~~(2) The program shall maintain potentially hazardous items on-site lawfully, responsibly and with consideration of the safety and risk level of the population(s) served.~~

~~(3) All furniture and equipment shall be maintained in a clean and safe condition.~~

~~(4) Programs offering supplemental services or activities in addition to outpatient treatment shall:~~

~~(a) remain publically transparent in the use of the equipment, practices and purposes;~~

~~(b) ensure the health and safety of the consumer;~~

~~(c) gain informed consent for participation in supplemental services or activities; and~~

~~(d) provide verification of all trainings or certifications as required for the operation and use of any supplemental equipment.~~

~~(5) The program shall post the following documents where they are clearly visible by clients, staff, and visitors:~~

~~(a) Civil Rights and anti-discrimination laws;~~

~~(b) program license;~~

~~(c) current or pending Notices of Agency Action;~~

~~(d) abuse and neglect reporting laws; and~~

~~(e) client rights and grievance process.~~

~~(6) The program site shall provide access to a toilet and lavatory sink in a manner that ensures basic privacy, and shall be:~~

~~(a) stocked with toilet paper, soap, and paper towels/dryer; and~~

~~(b) maintained in good operating order and kept in a clean and safe condition.~~

~~(7) The program shall ensure that the physical environment is safe for consumers and staff and that the appearance and cleanliness of the building and grounds are maintained.]~~

#### **R501-21-[6]5. Substance Use Disorder Treatment Programs.**

~~(1) [AH]Each substance use disorder treatment program[s] shall:[- develop and implement a plan on how to support opioid overdose reversal:]~~

~~(a) develop and implement a plan on how to support opioid overdose reversal;~~

~~(b) maintain proof of completion of the National Survey of Substance Abuse Treatment Services annually; and~~

~~(c) ensure medical cannabis is not an enticement or offered, referred, or recommended as treatment for substance use disorder.~~

~~[(2) Maintain proof of completion of the National Survey of Substance Abuse Treatment Services (NSSATS) annually.]~~

~~[(3)2] A program providing medication for opioid use disorder (MOUD) shall:[Medication-assisted treatment (MAT) in substance use disorder programs shall:]~~

~~(a) maintain a program-wide counselor to [MAT consumer]client ratio of: 1:[50]65 to provide adequate substance use counseling to each client as clinically necessary; and~~

~~(b) assure [all consumers]each client sees a licensed practitioner that may[is authorized to] prescribe controlled substances at least once yearly[;].~~

~~[(c) show proof of completion of federally required physician training for physicians prescribing buprenorphine;]~~

~~([d]3) Each MOUD provider that prescribes, administers or dispenses methadone shall: [admit consumers to the program and prescribe, administer or dispense medications only after the completion of a face-to-face visit with a licensed practitioner having authority to prescribe controlled substances who confirms opioid dependence. A licensed practitioner having authority to prescribe controlled substances must approve every subsequent dose increase prior to the change;]~~

~~(a) admit a client to the program only after the completion of a face-to-face visit with a licensed practitioner authorized to prescribe controlled substances who confirms opioid dependence;~~

~~(b) ensure that a licensed practitioner authorized to prescribe controlled substances approves every subsequent dose increase before the change;~~

~~(c) require each client admitted to the program to participate in random drug testing performed randomly at least eight times per year, per patient in maintenance treatment, in accordance with generally accepted clinical practice and in accordance with 42CFR part 8; and~~

~~(e) require all consumers admitted to the program to participate in random drug testing. Drug testing will be performed by the program a minimum of two times per month for the first three months of treatment, and monthly thereafter; except for a consumer whose documented lack of progress shall require more frequent drug testing for a longer period of time;~~

~~(f) require that consumers participate in at least one counseling session per week for the first 90 days. Upon documented successful completion of this phase of treatment, consumers shall be required to participate in counseling sessions at least twice monthly for the next six months. Upon documented successful completion of nine months of treatment, consumers shall be seen by a licensed counselor at least monthly thereafter until discharge; and]~~

~~([g]d) require one hour of prescribing practitioner time at the program site each month for every ten [MAT consumers] MOUD clients enrolled.~~

~~(4) [MAT] Each MOUD [Programs] program that [prescribing, administering or dispensing] prescribes, administers or dispenses m[M]ethadone[ (Opioid Treatment Programs)] shall:~~

~~(a) maintain Substance Abuse and Mental Health Services Administration [(SAMHSA)] certification and accreditation as an opioid treatment program[-];~~

~~(b) comply with DSAMH Rule R523-10 Governing Methadone and other opioid treatment service providers;]~~

~~([e]b) employ [a] the following:~~

~~(i) a licensed physician who is an [American Society of Addiction Medicine] ASAM-certified physician; [or]~~

~~(ii) a prescribing licensed practitioner who can document specific training in current industry standards regarding methadone treatment for opioid addictions; or~~

~~(iii) a prescribing licensed practitioner who can document specific training or experience in methadone treatment for opioid addictions; and~~

~~([d]c) provide one [nurse] qualified provider as defined in Section 58-17b-309.7 to dispense or administer medications for every 150 [M] methadone [consumers] clients dosing on an average daily basis.~~

~~(5) An outpatient treatment program may offer mobile MOUD services under their physical site license if:~~

~~(a) the existing licensed site provides MOUD services;~~

~~(b) the licensee maintains policy and procedures addressing the agency policies as they apply to the mobile unit; and~~

~~(c) registration requirements of the Drug Enforcement Administration Code of Federal Regulations, Title 21, Parts 1300, 1301 and 1304, 2021 edition are met.~~

~~([5]6) [Certified DUI Education Programs] An alcohol and drug education provider shall provide court ordered education only if certified to do so through the OSUMH in accordance with Rule R523-11.~~

~~(a) Only programs certified with the Division of Substance Abuse and Mental Health (DSAMH) to provide Prime for Life education in accordance with and R523-11 shall provide court ordered DUI education.]~~

~~(7) A licensed substance use disorder counselor (SUDC) in a substance use disorder outpatient treatment program may:~~

~~(a) collect client information;~~

~~(b) conduct the screening portion of an assessment;~~

~~(c) make level of care recommendations; and~~

~~(d) identify a substance use disorder.~~

~~(8) A SUDC may not diagnose a client.~~

~~([b]9) A OSUMH [C]certified [DUI] alcohol and drug education [programs] provider shall:~~

~~([i]a) complete and maintain a substance use screening, that may be shared between providers with written client consent, for each [participant] client [prior to] before providing the education course;~~

~~(A) screenings may be shared between providers with client written consent.;~~

~~([i]b) provide a workbook to each participant to keep upon completion of the course;~~

~~([iii]c) ensure at least 16 hours of course education; and~~

~~([iv]d) provide separate classes for adults and youth.~~

~~(e) Any violations of this rule section will be reported to DSAMH for evaluation of certification.]~~

~~([6]10) [Justice Reform Initiative (JRI) Certified Programs] A provider offering services to justice-involved clients shall:~~

~~(a) operate in compliance with [DSAMH rules] Rules R523-3 and R523-4[-];~~

~~([a]b) [JRI-certified programs shall] maintain a validated criminogenic screen[4] or risk assessment for each justice[-]involved client [and separate clients into treatment groups according to level of risk assessed.] that is conducted with an accepted tool including:~~

~~(i) Level of Service Inventory-Revised (LSI-R);~~

~~(ii) Risk and Needs Triage (RANT);~~

~~(iii) Ohio Risk Assessment System (ORAS); or~~

~~(iv) any other screen that the provider can demonstrate their validation to the OSUMH;~~

~~(c) separate clients into treatment groups according to level of risk assessed;~~

~~([b]d) [Providers shall] complete screenings that assess both substance abuse and mental health comorbidity[-]; and~~

~~([e]e) [JRI programs shall] treat, or refer to other [DHS] licensed Department of Health and Human Services [Heensed] programs that [have obtained a justice certification from the DSAMH] serve justice-involved clients to treat the array of disorders noted in the screening[s].~~

~~(d) Any violations of this rule section shall be reported to DSAMH for evaluation of certification.]~~

## **R501-21-[7]6. Domestic Violence.**

~~(1) A [D] domestic [V] violence (DV) treatment [programs] provider shall comply with generally accepted and current~~

practices in ~~[domestic violence]~~DV treatment, and shall meet the following requirements:

(a) maintain and document cooperative working relationships with ~~[domestic violence]~~DV shelters, treatment programs, referring agencies, local DV coalitions, and custodial parents when the ~~[consumer]~~client is a minor ~~[-and local domestic violence coalitions]~~;

~~[(i)b]~~ treatment ~~[sessions]~~for children and victims ~~[shall]~~ offers ~~[a minimum of]~~at least ten sessions for each ~~[consumer]~~client, not including intake or orientation;

~~[(b)c]~~ if the ~~[consumer]~~client is a perpetrator, ~~[program]~~provider contact with the victims, current partner, and the criminal justice referring agencies is also required, as ~~[appropriate]~~applicable; and

~~[(i)d]~~ ~~[In accordance with UCA 50-60-102(5),]~~a Licensed Mental Health Therapist shall complete a ~~[domestic violence]~~DV treatment evaluation for each offender to include individualized recommendations for the offender's treatment.

(2) A provider shall ensure [S]taff to [Consumer]client [R]ratios are set as follows:

(a) the staff to client ratio in a one hour long adult treatment group is one staff to eight clients;

(b) the staff to client ratio in a group exceeding one hour is one staff to ten clients;

(c) the maximum group size may not exceed 16;

(d) child victim or child witness groups shall have a ratio of one staff to eight children, when the clients are under 12 years of age; and

(e) a staff to client ratio of one staff to ten children when the clients are 12 years of age and older.

~~[(a) The staff to consumer ratio in adult treatment groups shall be one staff to eight consumers, for a one hour long group; or one staff to ten consumers for an hour and a half long group. The maximum group size shall not exceed 16.~~

~~[(b) Child victim, or child witness groups shall have a ratio of one staff to eight children, when the consumers are under 12 years of age; and a ratio of one staff to ten children when the consumers are 12 years of age and older.]~~

(3) The licensee shall ensure [C]lient [I]ntake and [S]afety as follows:

(a) [W]hen a [ny consumer] client enters a DV treatment program, the staff shall conduct an in-depth, face-to-face interview and assessment to determine the [consumers]client's clinical profile and treatment needs, [-] and the [-The] evaluation in Subsection R501-2[3]1-7(1)(d) shall count for this assessment when the [consumer]client is an offender[-];

(b) [F]obtain additional information for perpetrator [consumers]clients [additional information shall be obtained -]from the police incident report, perpetrator's criminal history, prior treatment providers, the victim, or victim advocate[-];

(c) [W]hen appropriate, obtain additional information for a child [consumers]client [shall be obtained -]from parents, prior treatment providers, schools, and Division of Child and Family Services Child Protective Services[-];

(d) [W]hen any of [the above]Subsections R501-21-6(3)(a) through (c) cannot be obtained, the provider shall document the reason [-shall be documented.]; and

(e) [F]the provider shall ensure that the intake assessment [shall -]includes the following:

(i) a profile of the frequency, severity, and duration of the [domestic violence]DV behavior, [which]that includes a summary of psychological violence;

(ii) documentation of any homicidal, suicidal ideation and intentions, as well as abusive behavior toward[s] children;

(iii) a clinical diagnosis and a referral for evaluation to determine the need for medication, if indicated;

(iv) documentation of safety planning when the [consumer]client is an adult victim, child victim, or child witness[-] and [that]they have contact with the perpetrator;

[(A)v] address safety planning upon contact for victims who choose not to become treatment [consumers]clients[-, safety planning shall be addressed when they are contacted]; and

(vi) documentation that appropriate measures have been taken to protect children from harm.

(4) A provider shall ensure that t[F]reatment [P]rocedures adhere to the following:

(a) [Consumers]an individualized treatment plan addressing relevant treatment issues is created for each client[ deemed appropriate for a domestic violence treatment program shall have an individualized treatment plan, which addresses all relevant treatment issues-];

(b) [Consumers]refer each client [who are not -]deemed not appropriate for a DV program[domestic violence programs shall be referred] to the appropriate resource, with the reasons for referral documented, and notification given to the referring agency[-];

(c) [D]provide DV [omestic violence] counseling [shall be provided -]concurrently with, or after, other necessary treatment[-] when appropriate[-];

(d) [C]onjoint or group therapy sessions with victims and perpetrators[-together], or with [both -]co-perpetrators[-] [shall]may not be provided until a comprehensive assessment has been completed to determine that the violence has stopped, and that conjoint treatment is appropriate[-];

(e) [F]the perpetrator [must]shall complete [a minimum of]at least [4]four DV [domestic violence -]treatment sessions, unless otherwise noted in the offender evaluation recommendations [prior to]before the provider implements[ing] conjoint therapy[-];

(f) [A]implement a written procedure [shall be implemented -]in an efficient and timely manner to facilitate[-the following, in an efficient and timely manner-];

(i) entry of the court ordered defendant into treatment;

(ii) notification of [consumer]client compliance, participation, or completion;

(iii) disposition of a non-compliant [consumers]client;

(iv) notification of the recurrence of violence; and

(v) notification of factors [which]that may exacerbate an individual's potential for violence[-];

(g) [The]a [program]provider shall comply with the ["D]uty to [W]arn,[-] in accordance with Section 78B-3-502[-];

(h) [The]a [program]provider shall document specialized training in DV[domestic violence] assessment and treatment practices[-] for any individual providing treatment service, to include:[ing]

(i) 24 hours of Utah Association for Domestic Violence Treatment [(UADVT) -]pre-service training[-] within the last two years;[-and]

(ii) 16 hours annual training thereafter [for all individuals providing treatment service-]; and

(i) [C]linical supervision for treatment staff that are not clinically licensed shall consist of [a minimum of]at least one hour per week to discuss clinical dynamics of cases.

~~[(5) Training]~~

[(a)5] The provider shall ensure [F]training [that -]is documented and approved by the designated Utah [DHS]Department



## NOTICES OF PROPOSED RULES

of Health and Human Services DV Specialist [R]regarding assessment and treatment practices for treating[+] DV victims and perpetrators.

[—(i) DV victims; and

—(ii) DV perpetrators.]

(6) A [Programs]provider [must]shall disclose [all]any current [DHS]Department of Health and Human Services contracts and actions against the contract to the Office of Licensing.

(7) A provider [Programs must]shall disclose [all]any current [A]accreditations and actions against accredited status to the Office of Licensing.

### R501-21-[8]7. Compliance.

[(4)—]A [licensee]provider that is in operation on the effective date of this rule[+] shall [be given]achieve compliance with this rule within 30 days.[—to achieve compliance with this rule.]

**KEY:** human services, licensing, outpatient treatment programs

**Date of Last Change:** [February 12, 2019]2023

**Notice of Continuation:** March 30, 2020

**Authorizing, and Implemented or Interpreted Law:** [62A-2-101 et seq.]26B-2-104

## NOTICE OF PROPOSED RULE

**TYPE OF FILING:** Amendment

<b>Rule or Section Number:</b>	<b>R501-22</b>	<b>Filing ID:</b> <b>55927</b>
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### Agency Information

<b>1. Department:</b>	Health and Human Services	
<b>Agency:</b>	Health Care Facility Licensing	
<b>Building:</b>	MASOB	
<b>Street address:</b>	195 N 1950 W	
<b>City, state and zip:</b>	Salt Lake City, UT 84116	
<b>Contact persons:</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Janice Weinman	385-321-5586	jweinman@utah.gov
Carmen Richins	385-242-6354	crichins@utah.gov

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

### General Information

<b>2. Rule or section catchline:</b>
R501-22. Residential Support Programs
<b>3. Purpose of the new rule or reason for the change:</b>
This rule amendment is being filed to comply with H.B. 499 passed in the 2023 General Session.

It additionally updates citations in response to S.B. 38 passed in the 2023 General Session for statute recodification, and re-title rules to the new division titles with content consistent with the Rulewriting Manual for Utah.

Other substantive changes align content with other rules within human services licensing and industry standards.

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

H.B. 499 (2023) amended statute to create a "code blue alert" whereby homeless shelters can increase capacity during these events and other entities are exempt from licensing requirements in order to provide shelter during code blue cold weather events.

The Office of Licensing licenses homeless shelters and needs to amend this rule in order to comply with the new law. The entity within the Department of Health and Human Services (Department) who will be issuing the alerts is Population Health. The Office of Licensing collaborated with Population Health on drafting this rule. Population Health's rule addressing these alerts (Rule R380-67) is being filed simultaneously with this filing. That filing is being pushed to the December 1, 2023, Bulletin.

(EDITOR'S NOTES: The proposed new Rule R380-67, ID 55994, will be published in the December 1, 2023, issue of the Bulletin.

However, a corresponding emergency (120-day) Rule R380-67, ID 55803, that was effective as of 10/01/2023 is available on OAR's website: <https://adminrules.utah.gov/public/search/R380-67/Emergency%20Rules> and it was published in the October 15, 2023, issue of the Bulletin.

The Administration agency under the Department (Title R380) has filed a second emergency Rule R380-67, ID 56177, that supersedes ID 55803 and is effective as of 11/09/2023. It is available on the [adminrules.utah.gov](https://adminrules.utah.gov) website and will be published in the December 1, 2023, issue of the Bulletin.)

### Fiscal Information

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

##### A) State budget:

This change will not impact the current process for licensure and re-licensure surveys.

No change to the state budget is expected because this filing does not introduce any changes to the licensure or oversight process.

##### B) Local governments:

This proposed rule amendment should not impact local governments' revenues or expenditures because these

facilities are regulated by the Department and not local governments.

There will be no change in local business licensing or any other items with which local governments are involved.

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

There are no costs or savings to small businesses resulting from the changes in this proposed rule because these non-profit providers are federally funded to provide these services.

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

There are no costs or savings to non-small businesses resulting from the changes in this proposed rule because these non-profit providers are federally funded to provide these services.

**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 costs or savings to other entities resulting from the changes in this proposed rule because these non-profit providers are federally funded to provide these services.

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

This rule amendment does not introduce any new processes that will incur a cost 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>

#### 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-2-104

#### 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:** 12/15/2023

**9. This rule change MAY become effective on:** 12/22/2023

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>	10/24/2023
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**R501. Health and Human Services, [Administration, Administrative Services, Human Services Program Licensing.**

**R501-22. Residential Support Programs.**

**R501-22-1. Authority and Purpose.**

This rule is authorized under Section ~~62A-2-106~~ 26B-2-104 and establishes basic health and safety standards for residential

## NOTICES OF PROPOSED RULES

support programs. Th[ese]is rule[s-are] is intended to supplement the general provisions required of each human services program in Rule R501-1.

### R501-22-2. Definitions.

(1) The terms used in this rule are defined in Sections ~~[62A-2-101]~~26B-2-101 and R501-1-3.

(2) "Code Blue Event" is defined in Section 35A-16-701.

(3) "Dangerous Weather Conditions" means any condition that warrants a public warning or alert by the National Weather Service.

~~[(4)]~~(2) "Temporary homeless youth shelter" is defined in ~~Section 80-5-102.~~

(3)~~(4)~~ "Emergency homeless shelter" means any facility that has a primary purpose of providing a temporary shelter for those experiencing homelessness and does not require each occupant to sign a lease or occupancy agreement.

(4)~~(5)~~ "Receiving center" means any facility that has received written office approval to allow short-term residential support. A receiving center is not a secure or lock-down facility.

(6) "Settings Final Rule" is defined in Subsection R501-1-3(40).

(7) "Temporary Homeless Youth Shelter" is defined in Section 80-5-102.

### R501-22-3. Administration.

(1) ~~[Each residential support program.]~~The licensee may offer treatment through referrals or within the agency by voluntary client participation.

(2) ~~[Each residential support program.]~~The licensee that offers treatment shall obtain the appropriate categorical department license for that treatment.

(3) ~~[Each residential support program.]~~The licensee serving an individual experiencing homelessness in a setting with a contracted service provider shall identify each key decision maker and service provider that is associated with the license application and accountable for compliance with licensing rules within the licensed setting.~~[While operating in the licensed setting, the identified decision maker and service provider shall be subject to each licensing rule and requirement.]~~

(4) Residential support may not require treatment as a condition of admission.

(5) The licensee shall provide evidence of ongoing coordination with the local health authorities regarding managing communicable diseases within the licensed setting.

(6) The licensee shall inform staff regarding:

(a) various types of communicable diseases;

(b) recognizing signs and symptoms of communicable diseases; and

(c) steps to take when a potential disease is identified or an outbreak occurs.

### R501-22-4. Staffing.

(1) ~~[Each residential support program.]~~The licensee ~~[serving adults]~~is not required to provide 24-hour supervision unless that program is an emergency homeless shelter or a domestic violence shelter serving adults.

(2) ~~[Each program.]~~The licensee shall establish ~~[a policy and procedure]~~safe practices that identify~~[ies]~~ each situation requiring medical attention and how the program will meet the client's medical needs.

(3) ~~[Each program.]~~The licensee ~~[that accepts the services of a student or volunteer shall provide screening, training, and evaluation for each student or volunteer]~~shall conduct eligible background clearance and document required training completion for each student of volunteer.

(4)~~(a)~~ ~~[Each]~~A volunteer or student who ~~[that]~~provides care without a paid staff present in any emergency homeless shelter or domestic violence shelter shall have direct communication access to designated staff and ~~[shall have a cleared]~~an eligible background screening ~~[prior to]~~before any unsupervised client access.

(5)~~(b)~~ The licensee shall inform each ~~[Each]~~volunteer or student~~[shall be informed]~~ verbally and in writing of program objectives and the scope of service.

~~[(6)]~~ Each emergency homeless shelter shall be able to provide the following information regarding each client or have documented reasons why each piece of information is not obtainable:

~~\_\_\_\_\_~~(a) name;

~~\_\_\_\_\_~~(b) date of birth;

~~\_\_\_\_\_~~(c) race;

~~\_\_\_\_\_~~(d) ethnicity;

~~\_\_\_\_\_~~(e) gender;

~~\_\_\_\_\_~~(f) veteran status;

~~\_\_\_\_\_~~(g) disabling condition;

~~\_\_\_\_\_~~(h) start date;

~~\_\_\_\_\_~~(i) exit date;

~~\_\_\_\_\_~~(j) destination;

~~\_\_\_\_\_~~(k) relationship to head of household;

~~\_\_\_\_\_~~(l) service location;

~~\_\_\_\_\_~~(m) prior living situation;

~~\_\_\_\_\_~~(n) case management log and service plan, where applicable;

~~\_\_\_\_\_~~(o) information that could affect health, safety, or well-being, include medication needs;

~~\_\_\_\_\_~~(p) documentation, which shall be updated to include each service and contact and shall be summarily updated at 90-day intervals; and

~~\_\_\_\_\_~~(q) service plans, which shall emphasize self-sufficiency and identify and refer to applicable sources.

~~\_\_\_\_\_~~(7) Documentation for each client shall remain in effect for re-opening for 30 days past the last shelter stay with the exception of single night stays.]

### R501-22-5. Physical Facility.

(1) Except as otherwise provided in this section, each ~~[residential support program]~~licensee shall have at least one bathroom for every ten clients.

(2) Each domestic violence shelter and emergency homeless shelter licensee may allow family members to share a bathroom. Where a bathroom is shared by more than one family or by children over the age of eight, either the child's parent or program staff shall ensure that client privacy is maintained.

(3) Each emergency homeless shelter may exceed the bathroom ratio set forth in Subsection R501-22-5(1) if:

(a) each bathroom ratio is approved by either the local authority that determines capacity or the ~~[D]~~department~~[of Health]~~;

(b) each bathroom ratio is specifically designated ~~[for males and females]~~in adult-only nightly shelter settings;

(c) each bathroom is inspected, cleaned, and re-stocked daily and as needed;

(d) the ~~[emergency homeless shelter]~~licensee ensures individual privacy in bathing and toileting;

(e) each individual with disabilities has access to at least one locking bathroom or stall; and

(f) ~~[each emergency homeless shelter]~~the licensee accommodates each parent's needs for changing, toileting, and bathing their children.

(4) ~~[Each emergency homeless setting]~~The licensee shall ~~[have a policy]~~develop safe practices to identify how to manage emergency overflow when capacity has been reached during ~~[extreme]~~dangerous weather conditions.

(5) ~~[Each residential support program]~~The licensee shall ~~[have a policy and procedure]~~develop safe practices that allow[s] and encourage[s] each client to have clean linen at least weekly.

(6) ~~[Each]~~The emergency homeless ~~[program]~~licensee may have portable beds, cots, or mats to accommodate fluctuating client volume.

(7) ~~[Each residential support program]~~Except as outlined in Subsection R501-22-5(13), the licensee shall provide clean bedding that is laundered at least weekly or as needed for[~~to~~] each client[~~as needed~~]. ~~[Bedding shall be laundered at least weekly.]~~

(8) ~~[Each]~~A family may ~~[be permitted to]~~share bedroom space.~~[with rules outlined by the program as described in this rule and in dormitory settings allowed by this rule.]~~

(9) The licensee shall comply with the following bedroom standards ~~[apply to]~~for domestic violence shelters, family support centers, temporary homeless youth shelters, emergency homeless family shelters, and children's shelters:

(a) ~~[Each program shall provide]~~there is at least 40 square feet per client in a multiple occupant bedroom, not counting storage space or one crib for children under two years old if the~~[Storage space and the use of one crib for children under two years of age shall not be counted in the square foot requirement as long as the]~~crib does not inhibit access to and from the room~~[.];~~

(b) ~~[Each program may use]~~roll away and hide-a-beds are only used when~~[as long as]~~ the ~~[client]~~40 square foot space requirement is maintained~~[.]; and]~~

(c) ~~[Each family member is allowed to share a bedroom with another family member. Where]~~when a bedroom is shared by more than one family, program staff ~~[shall]~~make ~~[appropriate]~~arrangements to ensure client privacy~~[.];~~

(10) ~~[Each]~~The temporary youth shelter licensee shall ensure that children in a temporary youth shelter with their own children ~~[shall]~~have at least 40 square feet per person, excluding storage space, in a separately enclosed bedroom that houses only children that have their own children.~~[Storage space may not be counted in the square foot requirement.]~~

(11) ~~[Each]~~The licensee shall comply with the following bedroom standards for emergency homeless shelters, temporary homeless youth shelters, and receiving centers:~~[shall ensure that the standards of this subsection are met.]~~

(a) ~~[D]~~dormitory style bedrooms ~~[may be permitted with]~~meet the square footage and capacity determinations made by the local fire authority.~~[Capacity determinations shall include any staff present in the facility.]~~

(b) capacity determinations include any staff present in the facility;

~~[(b)]c~~ ~~[If]~~if the local fire authority does not identify capacity, licensing square footage requirements apply~~[.]; and]~~

~~[(e)]d~~ ~~[F]~~there is a ~~[policy]~~safe practice to identify how to manage overflow when capacity has been reached.

(12) Each ~~[program]~~licensee shall outline safe practices~~[policies and procedures]~~regarding:

(a) rules and guidelines for each family or mixed gender sharing the same dormitory space or bedroom, including each individualized bedroom assignment;

(b) securing personal belongings;

(c) responsibility for each client supervising the client's own children;

(d) conflict resolution;

(e) nuisance and disruptive behavior;

(f) housekeeping responsibilities;

(g) daily schedules;

(h) prohibited items; and

(i) search policy.

(1)~~[3]~~4 Each ~~[program]~~licensee that requires a client to provide the client's own laundry supplies and locate a laundromat for laundering shall have a ~~[policy]~~safe practice to assist each client on a limited basis when the client ~~[is unable to]~~cannot provide the client's laundry supplies and locate a laundromat.

#### **R501-22-6. Specialized Services for Programs Serving Client[s] With Substance Use Disorders.**

(1) Each ~~[program]~~licensee may not admit anyone who is currently experiencing convulsions, shock, delirium tremens, unconsciousness, or is in a coma.

(2) Each ~~[residential support program]~~licensee~~[potentially]~~ serving clients with substance use disorder shall provide evidence of ongoing coordination with the local health authorities regarding managing communicable diseases within the licensed setting.

(3) The licensee shall screen staff and clients for risk of tuberculosis.~~[Staff shall be informed regarding:~~

~~—(a) various types of communicable diseases;~~

~~—(b) recognizing signs and symptoms of communicable diseases;~~

~~—(c) steps to take when a potential disease is identified or an outbreak occurs; and~~

~~—(d) screening staff and clients for risk of tuberculosis.]~~

(4) A licensed substance abuse treatment program shall complete the National Survey of Substance Abuse Treatment annually.

#### **R501-22-7. Specialized Services for Programs Serving Children.**

(1) ~~[Each residential support program]~~A licensee serving only child populations is considered ~~[“]congregate care[“]~~as defined in Section ~~[62A]~~26B-2-101 and ~~[must]~~shall adhere to each requirement of Sections ~~[62A]~~26B-2-120, ~~[62A]~~26B-2-123, and ~~[62A]~~26B-2-124 for background clearances, policy development, and behavior management practices.~~[This subsection applies to youth programs who retain clients past the age of 18 to complete treatment or education.]~~

(2) Congregate care rules under Title R501 apply to youth programs that retain clients past the age of 18 to complete treatment or education.

~~[(2)]3~~ ~~[Each residential support program]~~The licensee shall provide clean and safe age appropriate toys for children.

~~[(3)]4~~ ~~[Each residential support program]~~The licensee shall provide an outdoor play area enclosed with a five-foot safety fence or enclosure as otherwise required by local ordinances.

~~[(4)]5~~ Only a custodial parent, legal guardian, or person designated in writing ~~[is allowed to]~~may remove any child from the program.

(1)(5)(6) ~~[Each residential support program]~~The licensee shall provide adequate staff to supervise children or be available to monitor parents supervising their own children.

(1)(6)(7) ~~[Each residential support program]~~The licensee shall comply as required with Title 80, Chapter 2, Part 9, the Interstate Compact on ~~[the]~~Placement of Children (ICPC), including ~~[by]~~ensuring the disruption plan is followed when an out of state minor presents at a shelter as a result of a failed ICPC placement in a Utah residential setting.

**R501-22-8. Specialized Services for Domestic Violence Shelters.**

(1) ~~[Each domestic violence shelter]~~The licensee shall document that shelter rules, reason for termination and rights to confidentiality are provided to ~~[the]~~each client, verbally and in writing, ~~[and document shelter rules, reasons for termination, and confidentiality issues.]~~

(2) Each parent is responsible for supervising ~~[the parent's]~~their own child while at the shelter. If a parent is required to be away from the shelter or involved in shelter activities without ~~[the parent's]~~their child, the parent shall arrange for appropriate child~~[care services.]~~

(3) The licensee shall ensure that e[E]ach domestic violence shelter action plan~~[shall]~~ documents and includes:

(a) a review ~~[and discuss]~~with each victim regarding danger and lethality and ~~[discuss]~~the level of the victim's risk of safety assessment;

(b) a review of the victim's safety plan with each victim;

(c) a review of the procedure for a protective order and a referral for the victim to the appropriate agency or clerk of the court authorized to issue the protective order; and

(d) a review of supportive services for each client, including medical care, self-sufficiency, day care, legal assistance, financial assistance, and housing assistance.

(4) ~~[Each program]~~The licensee shall ~~[facilitate connecting services to]~~assist with connecting the client to identified resources.

(5) The licensee shall make and document a~~[An appropriate]~~ referral ~~[shall be made and documented]~~when indicated in the client record for victim treatment, psychiatric consultation, drug and alcohol treatment, or other allied service.

(6) ~~[Each domestic violence s]~~The licensee shall ensure that shelter staff completing an action plan ~~[shall be]~~are supervised by an experienced and trained domestic violence provider.

**R501-22-9. Specialized Services for Temporary Homeless Youth Shelters.**

(1) Each ~~[temporary homeless youth shelter]~~licensee shall provide a staff ratio of at least one direct care staff for every ten children.

(2) ~~[Each individual admitted shall be]~~Except as outlined in Subsection R501-22-9(4), the licensee may only admit individuals under the age of 18.

(3) ~~[Each child may be admitted]~~The licensee may admit a child with the child's own biological child~~[ren].~~

(4) ~~[Each temporary homeless youth shelter]~~The licensee may provide shelter to an individual that is older than 18 but younger than 21 under the following conditions:

(a) each individual ~~[that is older than 18 but younger than 21]~~is placed in age and gender appropriate sleeping quarters away from the minor population;

(b) each individual ~~[that is older than 18 but younger than 21]~~remains in the program voluntarily and is made aware of program rules and the repercussions of criminal behavior as an adult;

(c) a ratio of at least one staff to every ten clients is maintained;~~[and]~~

(d) children and individuals ~~[who are older than 18 but younger than 21 shall be]~~are assessed by a facility staff member that is a mental health therapist, as described in Section 58-60-102, to determine whether the individual is at imminent risk of harming themselves~~[ves]~~ or others; ~~and[. Individuals that are assessed as at imminent risk shall be referred to programs qualified to serve them.]~~

(e) individuals that are assessed as at imminent risk of harm to self or others are referred to a program qualified to serve them.

(5) ~~[Each temporary youth homeless shelter]~~The licensee shall document and maintain individualized assessments of risk of harm and justification for each client admitted in the youth setting.

(6) ~~[Each temporary homeless youth shelter]~~The licensee shall comply with Section 80-5-601 regarding mandatory ~~[notifications]~~reporting requirements for harboring a runaway.

(7) ~~[Each temporary homeless youth shelter]~~The licensee shall comply with Section ~~[62A-2-108.4]~~26B-2-116 to coordinate educational requirements for each individual.

(8) ~~[Each temporary homeless youth shelter]~~The licensee shall coordinate and transition each client to a more appropriate setting when the client ~~[is unable to]~~cannot remain in the youth setting.

**R501-22-10. Specialized Services for Emergency Homeless Shelters.**

(1) ~~[Each]~~An emergency shelter[s] licensee shall prioritize the safety of those needing services and emphasize transitioning into a more permanent housing setting.

(2) ~~[Each]~~An emergency homeless shelter licensee shall ensure that no less than two direct care staff are always present and available~~[A ratio shall be maintained]~~ and maintain a ratio of no fewer than one staff present for every 40 clients during weekday daytime hours.~~[Ratios may be increased as needed.]~~

(3) An emergency homeless shelter may operate above staffing ratios during dangerous weather conditions, on weekends, and during sleeping hours if:~~[deviate from the staffing and capacity ratio requirements of Subsection R501-22-10(2) in emergency homeless settings during extreme weather, on weekends, and during sleeping hours if:]~~

(a) the program has a documented chain of command for on-call availability;

(b) the program has a surveillance camera system;

(c) the program has an emergency radio onsite and each staff on-duty are trained regarding how and when it is to be used; or

(d) the program identifies and can rely upon other means of back up support in case of emergency.

(4) In accordance with Subsections 35A-16-703(1), (2), and (3), an emergency homeless shelter licensee operating in a county where a code blue alert is in effect may increase capacity by 35% when:

(a) fire code and building code capacities permit the increase;

(b) procedures are implemented for expediting intake; and

(c) procedures are implemented for only denying entry if the building capacity is at maximum or the individual poses a risk to the population.

(1)(4)(5) Each emergency homeless shelter shall require each adult resident to sign an agreement form at admission ~~[which outlines]~~that outlines the following:~~[visitors are allowed on premises to assist with housing, food stamps, assessments, religious, social and other]~~

client specific needs. Each agreement shall outline that participation in any meetings or groups with these visitors is strictly voluntary. Each client signature on the form and voluntary participation in the visitation shall constitute the client's invitation to these visitors in the department licensed setting. Each client that has not signed the agreement shall not participate in any voluntary services offered onsite. Staff in the homeless setting may not be considered a visitor as outlined in this section.]

(a) visitors are allowed on premises to assist with housing, food stamps, assessments, religious, social and other client-specific needs;

(b) participation in any meetings or groups with these visitors is voluntary;

(c) each client signature on the form and voluntary participation in the visitation constitutes the client's invitation to the visitors in the department-licensed setting; and

(d) each client must sign the agreement before participation in any voluntary services offered onsite.

(6) Visitors as outlined in Subsection R501-22-10(5) do not include staff in the homeless shelter setting.

(7) The emergency homeless shelter licensee shall maintain the following information regarding each client or have documented reasons why the information is not obtainable:

(a) name;

(b) date of birth;

(c) race;

(d) ethnicity;

(e) gender;

(f) veteran status;

(g) disabling condition;

(h) start date;

(i) exit date;

(j) destination;

(k) relationship to head of household;

(l) service location;

(m) prior living situation;

(n) case management log and service plan, where applicable;

(o) information that could affect health, safety, or well-being of the client, including medication needs;

(p) documentation that is updated at 90-day intervals to include each service and contact; and

(q) service plans that emphasize self-sufficiency and identify and refer to applicable sources.

(8) The shelter maintains the documentation listed in Subsection (7) for re-opening the client file, if the client returns up to 30 days past the last shelter stay, with the exception of single night stays.

#### **R501-22-11. Specialized Services for Programs Serving Clients of the Division of Services for People with Disabilities.**

(1) In accordance with the federal Home and Community-Based Services (HCBS) Settings [f]Final [r]Rule, a program[s] serving clients on the HCBS Waiver [clients-]shall complete and adhere to the [characteristics of a compliant setting outlined in the] residential attestation agreement form and self-assessment survey for each licensed site.

(2) The licensee shall maintain current c[E]opies of the residential attestation agreement form and self-assessment survey forms[shall be located] in program documentation.[and updated as needed.]

(3) In the event of a conflict between this rule and the Settings Final Rule the Settings Final R[rule] shall prevail.

(4) The office shall report any [violation]noncompliance of the [s]Settings Final R[rule] to the DHHS Division of Continuous Quality and Improvement[Office of Quality Design] for contract compliance consideration.[After 2022, violations of settings rule will constitute a violation of federal law.]

#### **R501-22-12. Specialized Services for Receiving Centers.**

(1) Each receiving center may be licensed under multiple license types to [be able to]assess and triage immediate client needs.

(2) [Each]A receiving center licensee may offer short-term residential support that is intended to mitigate the initial identified problem, stabilize each client, and return each client to the community as quickly and safely as possible.

(3) [Each]A receiving center licensee shall outline [in policy and procedure]safe practices in [and]consumer agreements regarding how each population will be separated and maintained and [under which]the circumstances when interactions between populations [will be]are permitted.

(4) [Each]A receiving center licensee shall include individualized clinical documentation outlining the ongoing need and anticipated time frame for discharge for each instance that [in which]a client's stay lasts longer than 30 days.[The individualized clinical documentation shall outline the ongoing need and anticipated time frame during which the client will remain in the receiving center.]

(5) A receiving center licensee shall ensure that[Each] placement in a receiving center [shall be]is a voluntary alternative that the client may choose instead of [to-]a more restrictive placement.[A receiving center may not mandate treatment as a condition to residence.]

(6) A receiving center may not mandate treatment as a condition to residence.

#### **R501-22-13. [Compliance.**

(1) Programs operating within the scope of this rule at the time it is made effective shall have 60 days to come into compliance with this rule.[Exception to Licensure.

Subsection 35A-16-703(4) exempts private, nonprofit or government entities from licensing requirements to provide emergency homeless shelter services during, and up to 7 days following, a code blue event as long as the site is compliant with local fire and building codes.

#### **R501-22-14. Compliance.**

A program operating within the scope of this rule shall have 60 days to come into compliance with this rule.

**KEY:** human services, licensing

**Date of Last Change:** 2023[January 6, 2022]

**Notice of Continuation:** March 30, 2020

**Authorizing, and Implemented or Interpreted Law:** [62A-2-101 et seq.]26B-2-104

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

**TYPE OF FILING:** Amendment

**Rule or Section Number:**

**R510-302**

**Filing ID:**  
**56063**



**Agency Information**

<b>1. Department:</b>	Health and Human Services	
<b>Agency:</b>	Aging and Adult Services	
<b>Building:</b>	Cannon Health Building	
<b>Street address:</b>	288 N1460 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>
Jean Boyack	801-538-4263	jboyack@utah.gov
Nan Mendenhall	801-538-4591	nmendenha@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>
R510-302. Adult Protective Services
<b>3. Purpose of the new rule or reason for the change:</b>
The integration of the Departments of Health and Human Services resulted in renumbering combined codes and clarification of intake ineligibility for out-of-state victims.
<b>4. Summary of the new rule or change:</b>
The integration of the Departments of Health and Human Services resulting in renumbering combined codes and a clarification of intake ineligibility for out-of-state victims which is not new but has not been clearly understood.
This amendment also modifies and replaces outdated language with the Rulewriting Manual for Utah standards.

**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 anticipated cost or savings to the state budget, as this rule change is clerical in nature and will have no impact on how the Department of Health and Human Services functions.
<b>B) Local government:</b>
No change to local governments is expected because no new processes or requirements are introduced.
This amendment only modifies and replaces outdated language with the Rulewriting Manual for Utah standards and updates statutory citations where applicable.

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

No change to small business is expected because no new processes or requirements are introduced.

This amendment only modifies and replaces outdated language with the Rulewriting Manual for Utah standards and updates statutory citations where applicable.

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

No change to non-small business is expected because no new processes or requirements are introduced.

This amendment only modifies and replaces outdated language with the Rulewriting Manual for Utah standards and updates statutory citations where applicable.

**E) Persons other than small businesses, non-small businesses, or 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 change for other persons is expected because no new processes or requirements are introduced.

This amendment only modifies and replaces outdated language with the Rulewriting Manual for Utah standards and updates statutory citations where applicable.

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

No compliance costs for affected persons are expected because no new processes or requirements are introduced.

This amendment only modifies and replaces outdated language with the Rulewriting Manual for Utah standards and updates statutory citations where applicable.

**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>
<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 26B-6-202		

**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>	12/15/2023

<b>9. This rule change MAY become effective on:</b>	12/22/2023
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>	10/30/2023
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**R510. Health and Human Services, Aging and Adult Services.****R510-302. Adult Protective Services.****R510-302-1. Purpose.**

This rule clarifies the responsibilities of Adult Protective Services.

**R510-302-2. Authority.**

This rule is authorized by Section ~~[62A-3-302]~~26B-6-202.

**R510-302-3. Principles.**

(1) Adult Protective Services (APS) shall respect the lifestyle that is knowingly and voluntarily chosen by the vulnerable adult.

(2) A vulnerable adult with capacity to consent has the right to self-determination.

(3) Services provided are voluntary unless court ordered.

(4) Services provided should be the least restrictive possible.

(5) Services provided shall be community-based unless community-based services are unavailable.

(6) Adult Protective Services shall encourage a vulnerable adult's family and community to take responsibility for providing necessary services.

(7) Adult Protective Services shall coordinate and cooperate with other agencies to protect vulnerable adults.

(8) Adult Protective Services shall treat vulnerable adults and others in a courteous, dignified and professional manner.

**R510-302-4. Definitions.**

(1) Definitions found in Section ~~[Title 62A Chapter 3]~~26B-6-201.

(2) "Activities of daily living" (ADL's) means the ability to:

(a) take a full body bath or shower, including transfer in and out of the bath or shower;

(b) tend to personal hygiene needs, including care of teeth, dentures, shaving, and hair care;

(c) put on, fasten and take off clothing, and select appropriate attire;

(d) walk without supervision or cues, including using a walker or cane;

(e) use steps or ramps;

(f) use toilet or commode, including transferring on and off toilet, cleansing self, changing pads, and caring for colostomy or catheter in appropriate manner;

(g) transfer without supervision or devices in and out of a bed or chair; and

(h) the ability to feed oneself, prepare food, drink or use necessary adaptive devices.

(3) "Instrumental activities of daily living" (IADL's) means the core life activities of independent living, including using the telephone, managing money, preparing meals, doing housework, remembering to take medications, providing for one's necessities, and obtaining services.

(4) "Durable" with respect to a power of attorney, means not terminated by the principals incapacity.

(5) "Conservator" means an individual or agency appointed by a court in accordance with Section 75-5-401.

(6) "Guardian" means an individual or agency appointed by a court in accordance with Section 75-5-303.

## NOTICES OF PROPOSED RULES

(7) "Incapacitated person" is as defined in Subsection 75-1-201(22).

(8) "Intentionally" is as defined in Subsection 76-2-103(1).

(9) "Knowingly" is as defined in Subsection 76-2-103(2).

(10) "Lifestyle choice" means a knowing and voluntary choice to live a certain way, including a non-conventional way, by a person who has capacity to make that choice.

(11) "Limited capacity" means that an adult person's ability to understand, communicate, make decisions regarding the nature and consequences the person's life or property is limited in one or more, but not all, functional areas, or during identified times of day, due to a mental illness, developmental disability, organic brain disorder, physical illness or disability, chronic use of drugs, chronic intoxication, short-term memory loss, or other cause.

(12) "Long-term care facility" is as defined in Section ~~62A-3-202~~ 26B-2-301.

(13) "Power of attorney" means a writing or other record that grants authority to an agent to act in the place of the principal, whether or not the term power of attorney is used.

(14) "Protective intervention funding" means payments made to the vulnerable adult, family, or caregiver or other provider that will alleviate or resolve a protective need.

(15) "Protective needs" means factors identified by the APS protective needs assessment that pose significant risk for, or are the result of abuse, neglect or exploitation of a vulnerable adult.

(16) "Protective needs assessment" means an assessment of a vulnerable adult's impairments and alleged risk factors for abuse, neglect or exploitation that are found to be present in that APS case investigation.

(17) "Protective services" means services to protect a vulnerable adult from abuse, neglect, or exploitation.

(18) "Protective supervision" means an APS service offered to reduce or resolve a vulnerable adult's protective need.

(19) "Recklessly" is as defined in Subsection 76-2-103(3).

(20) "Respite care" means a time-limited period of relief from care giving responsibilities paid to a respite care provider or individual from ~~[P]~~protective ~~[I]~~intervention ~~[F]~~funds.

(21) "Service plan" means a document created by the APS caseworker for an approved short term service case that includes a goal, objectives, methods, and progress reviews to resolve the protective needs identified in an APS investigation, and that implements recommendations of the ~~[e]~~case ~~[F]~~review ~~[e]~~committee.

(22) "Short term services" include: crisis intervention, emergency shelter, protective supervision, respite care, supported living services, or short term intervention funding.

(23) "Short term intervention funding" means short term payments made to the vulnerable adult, family, or caregiver or other provider, during a short term service case for goods or services other than for respite care or supported living, that will alleviate or resolve a protective need.

(24) "Supported living" means short term payments made to individuals or providers that enable the vulnerable adult to remain in ~~[his or her]~~ their own home or in the home of a relative.

### **R510-302-6. Adult Protective Services Intake Criteria.**

(1) Referrals may be submitted to the APS Intake Office in any format from any person who has reason to believe that a vulnerable adult has been abused, neglected, or exploited.

(2) Referrals shall be evaluated by APS Intake to determine whether APS shall investigate the allegation.

(3) APS shall investigate referrals of allegations of abuse, neglect, or exploitation of a vulnerable adult, except as follows:

(a) when the referral does not involve an allegation that a vulnerable adult may have been or is being abused, neglected or exploited;

(b) when the referral does not identify a current abuse, neglect or exploitation but anticipates that abuse, neglect or exploitation may occur;

(c) when the referral involves a vulnerable adult on an Indian reservation, unless a written agreement between APS and tribal authorities granting APS authority to investigate is in effect or the referral shall be forwarded by Intake to federal or tribal authorities;

(d) when the referral involves an alleged incident in a long-term care facility involving an alleged theft or alleged loss of a resident's money or personal property, the alleged perpetrator is unknown, and the money or personal property has been replaced, returned, or reimbursed by the facility;

(e) when the referral involves an alleged financial scam or alleged consumer fraud; ~~and~~

(f) when the referral contains insufficient information to either locate the alleged victim or reasonable attempts by APS Intake to gather that information are unsuccessful ~~[-]; and~~

(g) when the alleged victim or alleged perpetrator lived out of state during the time period when the abuse or neglect occurred, or the alleged victim or alleged perpetrator lives out of state during the time period of the investigation.

(4) APS shall notify:

(a) the Department of Health and Human Services and the local Long-term Care Ombudsman when a referral involves a long-term care facility;

(b) the Division of Services for People with Disabilities (DSPD), when the referral involves a person who receives services from DSPD; and

(c) the Department of Health and Human Services, Office of Licensing, and Office of Quality and Design, if the referral involves a ~~[Division of Services for People with Disabilities {DSPD}]~~ who reside in a DHHS licensed provider facility or if the incident occurred at a DHS licensed provider facility.

(5) APS may submit a referral that involves a ~~[D]~~department employee or other potential conflict of interest to the ~~[DHS]~~department Office of ~~[Services Review]~~ Quality and Design for review.

### **R510-302-7. Investigation.**

(1) The assigned investigator shall initiate the investigation and determine whether:

(a) there is an allegation of abuse, neglect or exploitation;

(b) the alleged victim is a vulnerable adult;

(c) the alleged victim has the capacity to consent;

(d) the alleged victim has a legal guardian or conservator;

(e) an emergency exists; and

(f) the extent of the alleged victim's mental or physical impairment.

(2) The investigator shall make a face-to-face visit with the alleged victim except as outlined in Subsection R510-~~[7]-302-6~~(2).

(a) The investigator shall seek the consent of the vulnerable adult to provide services if the vulnerable adult has the capacity to consent.

(b) The investigator shall seek the consent of the vulnerable adult's legal guardian to provide services if the vulnerable adult does not have the capacity to consent.

(3) The investigator may not enter the home of a vulnerable adult unless the vulnerable adult, their legal guardian or their caretaker consents, except when;

(a) the investigator has reason to believe exigent circumstances exist to protect the vulnerable adult from imminent harm; and

(b) the alleged perpetrator is the vulnerable adult's legal guardian or caretaker.

(4) Adult Protective Services may not require a face-to-face visit with the alleged victim in instances where a Public Health Emergency Declaration or Natural Disaster Emergency Declaration is issued by the federal, state, or local government. In such instances, Adult Protective Services will make visit determinations to safeguard the alleged victim based on circumstances that are ~~[deemed]~~ considered to be emergent, or where there is an imminent risk to the alleged victim's health and safety.

(5) The investigator shall interview the alleged perpetrator unless:

(a) specifically requested not to do so by law enforcement to avoid impeding an ongoing criminal investigation or proceeding;

(b) interviewing the alleged perpetrator would likely endanger or cause harm to any person;

(c) ~~[prior to]~~ before interviewing the alleged perpetrator, the allegation is found to be without merit;

(d) the alleged victim with capacity to understand the allegation and protective need, denies the allegation and they do not want the alleged perpetrator to be contacted;

(e) APS ~~[is unable to]~~ cannot locate the victim;

(f) the alleged victim died before the investigation started;

(g) the alleged perpetrator cannot be located or is unknown after APS has made reasonable efforts to locate and identify the alleged perpetrator; and

(h) the alleged perpetrator has refused the interview, or has not responded to efforts to contact the investigator.

(6) When the investigator has reason to believe any hazardous waste or illegal drugs may be located at an investigative home, the investigator will contact law enforcement agencies and not enter the home until the local health department determines it is safe to do so. The law enforcement agencies may be asked:

(a) to assess and secure a vulnerable adult's immediate safety;

(b) facilitate the vulnerable adult's exit from the home; and

(c) arrange for emergency transportation to the hospital for decontamination.

(7) The investigator may obtain an administrative subpoena when one of the following circumstances applies:

(a) the vulnerable adult does not have capacity to consent to allow access to records to further the investigation;

(b) the vulnerable adult's legal guardian refuses to consent;

(c) the custodian of the records or items pertinent to an investigation refuses to allow access to those records or items without a subpoena; or

(d) the information sought is necessary to investigate allegations of abuse, neglect or exploitation or to protect the alleged victim.

(8) An administrative subpoena form:

(a) shall include a list that specifically identifies the documents or objects being subpoenaed; and

(b) is not valid until signed by the director or program administrator.

(9) The investigator shall document items received as a result of the subpoena.

(10) the investigator shall evaluate information obtained during the investigation and determine:

(a) whether each allegation of abuse, neglect and exploitation identified during the investigation is supported, inconclusive, or without merit; and

(b) law enforcement shall be contacted to coordinate or assist on an investigation, if the investigation indicates that criminal abuse, neglect or exploitation may have occurred or the safety of the any person is endangered.

(11) If an unmet protective need exists:

(a) the investigator may refer the vulnerable adult and the vulnerable adult's legal guardian to available community resources and services to resolve the protective need;

(b) the investigator or supervisor may request a review by the short term services ~~[e]~~ Case ~~[f]~~ Review committee to determine if short term services may help to resolve the protective need;

(c) the investigator may make a referral to the Office of Public Guardian;

(d) the investigator may provide crisis intervention to assist the vulnerable adult in obtaining services or benefits as it relates to the abuse, neglect or exploitation;

(e) the investigator may contact the family of a vulnerable adult who does not have capacity to consent and inform the family that the vulnerable adult requires alternate living arrangements in an environment that is safe and meets the vulnerable adult's protective needs;

(f) the investigator may provide protective intervention funds at the sole discretion of APS, these funds may be made available to the vulnerable adult, family caregiver or other provider to alleviate or resolve a protective need, and must directly benefit the vulnerable adult;

(g) the investigator may provide one-time payments for medications, medical treatment, or medical equipment or supplies not covered by insurance or other medical coverage, transportation, minor repairs or modifications, rent, food, or clothing, or other needs that directly benefit the vulnerable adult to alleviate or resolve a protective need; or

(h) the investigator may provide payments for a service provider or individual for approved short term services for respite care, supported living, or for short term intervention funds.

#### **R510-302-8 Settlement Agreements.**

(1) The Division may enter into a settlement agreement with a person who has received a notification of agency action letter pursuant to Section 62A-3-311.5.

(2) A settlement agreement ~~[shall]~~ may not be entered into once the supported finding has been upheld by a court of competent jurisdiction.

#### **R510-302-9. Eligibility.**

(1) There are no income eligibility requirements for an APS investigation of allegations of abuse, neglect, or exploitation.

(2) There are no eligibility requirements to receive short term protective supervision services.

(3) There are no eligibility requirements to receive protective intervention funds to resolve a situational crisis or an immediate protective need.

(4) (a) A vulnerable adult shall meet income eligibility requirements to receive short term services, including respite care, supported living, short term intervention funding, and other services approved by the APS director or designee.

## NOTICES OF PROPOSED RULES

(~~(a)~~**b**) Eligibility for short term services, "family" includes an adult, the adult's spouse, and their natural children under age 18, who are residing in the same household.

(~~(b)~~**c**) A person living under the care of someone other than their spouse is considered a one-person family.

(~~(c)~~**d**(**i**) In determining whether a vulnerable adult meets income eligibility requirements for short term services, family assets shall be disclosed and evaluated.

(**ii**) Family assets include the fair market value of stocks, bonds, certificates of deposit, notes, savings and checking accounts, inheritance, capital gains, or gifts, that can be readily converted to cash.

(**iii**) A client's income and deductions will be used to determine the client's adjusted gross income to determine the client's eligibility status.

(~~(iii)~~**iv**) Monthly gross income includes:

(A) the total monthly income received by an individual from earnings, military pay, commissions, tips, piece-rate payments, and cash bonuses;

(B) net income from self-employment;

(C) Social Security pensions, SSI, survivor's benefits, and permanent disability insurance payments; dividends, interest, income from estates or trusts, net rental income or royalties, net income from rental of property, receipts from boarders or lodgers;

(D) pensions or annuities;

(E) unemployment compensation;

(F) strike benefits;

(G) worker's compensation;

(H) alimony, child support, money received as specified in a divorce or support decree;

(I) Veterans' pensions or subsistence allowances; and

(J) other regular, three out of the last six months, financial assistance.

(~~(iv)~~**v**) Monthly gross income does not include:

(A) per capita payments to or funds held in trust for any individual in satisfaction of a judgment of the Indian Claims Commission or the Court of Claims;

(B) net proceeds received from the sale of a primary residence or an automobile;

(C) money borrowed; insurance payments [~~in excess of~~ **more than**] incurred costs that must be paid from the settlement;

(D) the value of the coupon allotment under the Food Stamp Act;

(E) the value of USDA donated foods; the value of supplemental food assistance under the Child Nutrition Act of 1966 and the special food service program for children under the National School Lunch Act;

(F) any payment received under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970;

(G) earnings of a child under 18 years of age residing in the home;

(H) payments for energy assistance and weatherization HEAT program;

(I) housing subsidies paid by the federal government;

(J) payments or grants received due to natural disaster;

(K) educational loans, grants, or scholarships to any undergraduate student for educational purposes that is made or insured by the U.S. Commissioner of Education, BEOG, SEOG, NDSL, Guaranteed Student Loans, SSIG, and PELL Grants;

(L) payments to participate in a service learning program, such as College Work-Study or University Year for Action; and

(M) that portion of any other loan, grant, or scholarship that is conditioned upon school attendance, [~~actually~~] used for tuition, books, fees, equipment, special clothing needs, transportation to and from the school, and the child care services necessary for school attendance.

(~~(v)~~**vi**) The expenses that shall be deducted in determining adjusted gross income are limited to:

(A) medical expenses, including Medicaid spend-down and insurance;

(B) storage expenses;

(C) child support paid, including money paid for house payments, rent, [~~etc.~~] **including** as specified in a divorce or support decree;

(D) the dollar amount of first mortgage or rental payment over 25% of monthly countable income, not counted for Foster Care; and

(E) fees paid for other programs and protective services.

(**vii**) The sum of family assets shall be divided by the number of family members, and if that amount exceeds \$4,000 per family member, then the value over \$4,000 shall be prorated over [~~twelve~~] **12** months, and the resulting amount shall be added to the monthly countable income.

(**viii**) Eligibility status must be verified annually and within 30 days of any family member's increase in assets.

(~~(viii)~~**ix**) A client's adjusted gross income for income tax purposes is not the same as the adjusted gross income for short term service eligibility purposes.

(**ix**) Family assets and expenses shall be supported with current bank records, check stubs, and other verifiable records. Documentation must clearly [~~indicate~~] **show** the name of the applicable family member.

### **R510-302-10. Short Term Protective Need Intervention.**

(~~(1)~~) An investigator may request protective intervention funding for an emergency shelter placement to alleviate the vulnerable adult's protective need. Emergency shelter placements may be made for up to 30 days within a [~~twelve~~] **12** month period for a vulnerable adult who has been abused, neglected, or exploited only if:

(**(a)**1) the vulnerable adult's circumstances require immediate alternate living arrangements in a safe environment;

(**(b)**2) the vulnerable adult or legal guardian consents to the emergency shelter placement or a court order authorizes the placement;

(**(c)**3) the vulnerable adult does not meet the eligibility requirements for shelter under the Family Violence program; and

(**(d)**4) the emergency shelter has the required current licenses and certifications.

### **R510-302-11. Short Term Services.**

(1) Short term services may only be provided to a vulnerable adult who is the victim of abuse, neglect or exploitation, and in accordance with the terms of a service plan consented to and signed by the vulnerable adult or the vulnerable adult's legal guardian, or pursuant to a court order. An updated service plan shall be signed at each case review.

(2) A short term services Case Review Committee shall monitor and review short term services. The Case Review Committee:

(a) shall consist of the primary caseworker, supervisor or designee, and workers a program administrator;

(b) shall oversee the progress made toward[s] resolution of the protective need;

(c) may recommend that short term services are initiated, extended, or terminated; and

(d) may recommend community referrals or alternative actions.

(3) The case supervisor may approve or deny short term services recommended by the Case Review Committee.

(4) Short term services may only be provided under the following conditions:

(a) [S]short term services are voluntary and [shall]may not be implemented without the written consent of the vulnerable adult or the vulnerable adult's legal representative[-];

(b) [E]very short term service case shall include a protective supervision service[-];

(c) [P]rotective intervention funds for short term services [shall]may not be disbursed without the approval of the APS supervisor or designee[-];

(d) [R]espite care funds may not be used for caring for other members of the family, performing extensive household tasks, or transportation[-];

(e) [R]espite care may be provided in the vulnerable adult's home, a caregiver's home, or in a licensed facility[-]; and

(f) [P]ayments for short term services may not be made until a case has been approved by the Case Review Committee and services voluntarily agreed to in writing by the vulnerable adult, [his or her]their guardian, or approved by court order.

#### **R510-302-12. Protective Payee Services.**

[4]—Adult Protective Services [shall]may not provide payee services.

#### **R510-302-13. Termination of Short Term Services.**

(1) A vulnerable adult has no entitlement or right to short term services from APS.

(2) Short term services may be terminated at any time by the vulnerable adult, APS, or through a court of competent jurisdiction.

(3) Short term services shall be terminated when:

(a) the vulnerable adult is no longer in immediate danger of abuse, neglect or exploitation;

(b) a vulnerable adult who voluntarily accepted services requests that those services be terminated;

(c) recommended by the Case Review Committee;

(d) the court terminates an order requiring APS to provide services;

(e) the vulnerable adult is receiving short term services from other persons or agencies;

(f) the vulnerable adult's behavior is abusive or violent and constitutes a threat;

(g) the vulnerable adult no longer meets the eligibility requirements for services;

(h) the vulnerable adult refuses to comply with the service plan;

(i) there is insufficient funding to pay for the service;

(j) the vulnerable adult moves out of state; or

(k) the vulnerable adult dies. APS shall complete a deceased client report form in accordance with DHS policy 05-02.

(4) When APS terminates short term services, a letter shall be sent to the vulnerable adult stating the case is going to be terminated and the reason for termination. The letter shall state that termination becomes effective 10 days from the date the letter was

sent unless the vulnerable adult requests an administrative review of the reason for the termination and to decide if the services should be reinstated or alternative services may be available.

**KEY: vulnerable adults, adult protective services investigation, shelter care facilities, short term services**

**Date of Last Change:** 2023~~January 4, 2021~~

**Notice of Continuation:** June 29, 2022

**Authorizing, and Implemented or Interpreted Law:** ~~[62A-3-301 et seq.]~~26B-6-201

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

**TYPE OF FILING:** Amendment

<b>Rule or Section Number:</b>	<b>R512-43</b>	<b>Filing ID:</b> <b>55905</b>
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#### **Agency Information**

<b>1. Department:</b>	Human Services	
<b>Agency:</b>	Child and Family Services	
<b>Building:</b>	Multi-Agency State Office Building	
<b>Street address:</b>	120 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>
Carol Miller	801-557-1772	carolmiller@utah.gov

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

#### **General Information**

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

R512-43. Adoption Assistance

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

The purpose of this rule filing is to bring this rule in-line with H.B. 365 passed in the 2021 General Session, State Agency Realignment of the Departments of Health and Human Services.

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

This rule has been updated to change references from the Department of Human Services to the Department of Health and Human Services, correct references to citations, and to bring this rule in-line with the Rulewriting Manual for Utah.

#### **Fiscal Information**

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



**A) State budget:**

The amendment to this rule is due to H.B. 365 (2021). It is technical in nature and does not reflect substantive changes to current practices or procedures.

It is not anticipated that this amendment would create a fiscal cost or savings to the state budget.

**B) Local governments:**

The amendment to this rule is due to H.B. 365 (2021). It is technical in nature and does not reflect substantive changes to current practices or procedures.

It is not anticipated that this amendment would create a fiscal cost or savings to local governments.

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

The amendment to this rule is due to H.B. 365 (2021). It is technical in nature and does not reflect substantive changes to current practices or procedures.

It is not anticipated that this amendment would create a fiscal cost or savings to small businesses.

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

The amendment to this rule is due to H.B. 365 (2021). It is technical in nature and does not reflect substantive changes to current practices or procedures.

It is not anticipated that this amendment would create a fiscal cost or savings to non-small businesses.

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

The amendment to this rule is due to H.B. 365 (2021). It is technical in nature and does not reflect substantive changes to current practices or procedures.

It is not anticipated that this amendment would create a fiscal cost or savings to persons other than small businesses, non-small businesses, state, or local government entities.

**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 associated with implementing this rule because these changes are not fiscal 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 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 80-2-301	Section 80-2-302	Section 80-2-801
Section 80-2-806	Section 80-2-807	42 USC 673
42 USC 675		

**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:** 12/15/2023

**9. This rule change MAY become effective on:** 12/22/2023

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>	10/23/2023
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#### R512. Health and Human Services, Child and Family Services.

##### R512-43. Adoption Assistance.

##### R512-43-1. Purpose and Authority.

(1) The adoption assistance program aids an adoptive family in establishing and maintaining a permanent adoptive living arrangement for a child who qualifies for the program under state or federal law.

(2) ~~[Title 62A, Chapter 4a, Part 9, Adoption Assistance] Sections 80-2-806 and 80-2-807~~ authorizes the state to provide adoption assistance and supplemental adoption assistance and 42 USC 673 authorizes federal adoption assistance.

(3) This rule is authorized by Section ~~[62A-4a-102]~~80-2-302.

##### R512-43-2. Definitions.

In addition to terms defined in Section ~~[62A-4a-902]~~80-2-801, the following terms apply:

(1) "AFDC" means the Aid to Families with Dependent Children program that was in effect on July 16, 1996.

(2) "Child in public foster care" means:

(a) a judicially removed child whose placement resulting in adoption was immediately preceded by protective, temporary, or legal custody with a state IV-E agency, or a child who was placed with a state IV-E agency through a Voluntary Placement Agreement, or the child of a minor parent in foster care;

(b) a child or youth who was taken into protective custody and, as a result of the protective episode, was placed with a relative who was given legal custody, even if Child and Family Services no longer has an open case when adoption proceedings are initiated, as long as the child continues to reside with and is being adopted by the relative granted custody by the court as a result of the protective custody episode; or

(c) a child or youth who was taken into protective custody and placed with a relative and the court orders Child and Family Services to continue to provide Protective Supervision Services for the family in making safety and permanency decisions for the child, including placement decisions and permanency goals if the child's permanency goal becomes adoption, and if all other criteria in Section R512-43-3 are met. This may include a change in placement to another relative while the Protective Supervision Services continue to be court ordered.

(3) "Child with a previous IV-E agreement" means a child who was Title IV-E eligible in a previous adoption with a fully executed adoption assistance agreement originating in any state, and

the previous adoption was legally dissolved or ended due to the death of both of the adoptive parents.

(4) "Initiation of adoption proceedings" means:

(a) the date an Intent to Adopt a Specific Child is signed with Child and Family Services; or

(b) the adoption finalization court date.

(5) "SSI" means Supplemental Security Income.

(6) "State IV-E agency" means Child and Family Services or a public agency or tribal organization with whom Child and Family Services has an agreement in effect for foster care maintenance payments in accordance with Title IV-E.

##### R512-43-3. General Requirements for Adoption Assistance.

(1) Qualification for adoption assistance is based upon the child meeting qualifying factors, not the adoptive family.

(2) A child qualifies for adoption assistance if the following are met:

(a) the state has determined that the child cannot or should not be returned home;

(b) the state can document that reasonable efforts were made to place the child for adoption without providing adoption assistance;

(c) an exception applies if the child has significant emotional ties with the adoptive family and it is not in the child's best interest to consider a different adoptive placement;

(d) the state determines the child meets the definition of a child with a special need in accordance with ~~[Title 62A, Chapter 4a, Part 9, Adoption Assistance] Section 80-2-801~~; and

(e) a child under age five in public foster care meets the special need definition of "a child with a physical, emotional or mental disability" when the child is at risk to develop such a condition due to specific factors identified in the child's or birth parents' health and social histories.

(3) In determining eligibility for adoption assistance, there is no income eligibility requirement or means test for the adoptive parents.

(4) A child must be a United States citizen or qualified alien to receive adoption assistance.

(5) The adoptive family shall submit [A]an application for adoption assistance [shall be submitted]to the regional adoption assistance committee on a form provided by Child and Family Services.

(6) Application for adoption assistance, approval, and completion of the adoption assistance agreement, including signatures of an adoptive parent and a representative from Child and Family Services, are to be completed before finalization of the adoption. For Title IV-E eligibility, the adoption assistance agreement is considered fully executed when signed by an adoptive parent and a representative from Child and Family Services before finalization of the adoption.

(7) Adoptive parents may request adoption assistance after an adoption is finalized by requesting a fair hearing through the Office of Administrative Hearings. Adoption assistance may only be granted by the regional adoption assistance committee after finalization when the conditions stated in Section R512-43-12 are met.

(8) Adoption assistance usually begins after finalization of an adoption. However, the regional adoption assistance committee may initiate adoption assistance [may be initiated]at the time of placement if the child is legally free for adoption, the adoptive home is approved, adoption proceedings are initiated, an adoption

assistance agreement is fully executed before placement, and foster care maintenance payments are not being provided for the child.

(9) The regional adoption assistance committee shall approve [A] an adoption assistance agreement [shall be approved] and shall have the required signatures before any payments may be made to an adoptive family or before state medical assistance may be initiated by the adoption assistance committee.

(10) A qualified child shall continue to be eligible to receive adoption assistance until a child reaches age 18 unless causes for termination apply as stated in Section R512-43-11. The regional adoption assistance committee may extend adoption [A] assistance [may be extended] until a child reaches age 21 when:

(a) the regional adoption assistance committee has determined that the child has a mental or physical disability that warrants continuing assistance; or

(b) if the child meets the criteria for services in the Department of Health and Human Services, Division of Services for People with Disabilities.

(11) Child and Family Services is responsible for notifying a prospective adoptive family of the availability of adoption assistance when the family begins an adoptive placement of a qualified child in public foster care.

(12) The adoptive parents are responsible to notify Child and Family Services of any circumstances that may affect the child's eligibility for adoption assistance or eligibility for adoption assistance in a different amount.

#### **R512-43-4. Reimbursement of Non-Recurring Adoption Expenses.**

(1) The regional adoption assistance committee may reimburse [A] a parent who adopts a child meeting qualifying factors for adoption assistance listed in Section R512-43-3 [may be reimbursed] for non-recurring adoption expenses on behalf of the child.

(2) The regional adoption assistance committee may reimburse [A] a parent [may be reimbursed] up to \$2,000 per child for allowable non-recurring expenses directly related to the legal adoption of a child with a special need. Reimbursement shall be limited to costs approved by the regional adoption assistance committee.

(3) Expenses may include reasonable and necessary adoption fees, court costs, adoption-related attorney fees, pre-placement adoptive evaluation, health and psychological examinations of adoptive parents, post-placement adoptive evaluation before adoption, and transportation and reasonable costs of lodging and food for the child and adoptive parents during the placement or adoption process.

(4) Adoptive parents are responsible to provide necessary receipts for reimbursement.

(5) Only costs that are incurred by the adoptive family in accordance with state and federal law and that have not been reimbursed from other sources or funds may be included.

(6) Non-recurring adoption expenses are reimbursable through Title IV-E adoption assistance. The child does not have to be determined Title IV-E eligible for the parents to receive this reimbursement.

#### **R512-43-5. Monthly Subsidy.**

(1) A child qualifies for a monthly subsidy when the following requirements are met:

(a) the child meets the qualifying factors for adoption assistance listed in Section R512-43-3;

(b) the child meets the definition of child in public foster care, qualifies for SSI, or the child had a previous IV-E agreement or state adoption assistance agreement; and

(c) the child's eligibility for SSI is established no later than the time adoption proceedings are initiated.

(2) The amount of monthly subsidy to be paid for a child is based on the child's present and long-term care and treatment needs and available resources, including the family's ability to meet the needs of the child. A combination of the parents' resources and subsidy should cover the ordinary and special needs expenses of the child projected over an extended period.

(3) The amount of the monthly subsidy may not exceed the payment that would be made if the child was placed in a foster family home at the point in time when the agreement is being initiated or revised.

(4) The amount of monthly subsidy may increase or decrease when the child's level of need or the family's ability to meet those needs changes. The family or the Child and Family Services worker may initiate a request for a change in the amount of subsidy up to two times per fiscal year, when needs or resources change.

(5) If the adoptive family is receiving post adoption services and has an open Child and Family Services case, a change in the amount of subsidy may be initiated at any time during the open case to address service needs.

(6) For a child in public foster care, the requested amount of monthly subsidy is negotiated between the adoptive parent and the Child and Family Services worker. Before subsidy negotiation, the adoptive parents must have reviewed the child's case file information and discussed in depth with the Child and Family Services worker what will be needed after the child leaves state's custody.

(7) The amount of the monthly subsidy is subject to the approval of the regional adoption assistance committee. If the requested amount is not granted, the adoptive parent has a right to appeal as stated in Section R512-43-12.

(8) Utilizing the level of need criteria specified in Section R512-43-5, the Child and Family Services worker and adoptive family identify the child's level of need.

(9) The Child and Family Services worker and adoptive family shall identify the applicable monthly subsidy payment range, according to the child's specified level of need, as specified in Section R512-43-5.

(10) The Child and Family Services worker and adoptive family shall negotiate the amount of monthly subsidy to be requested from the regional adoption assistance committee. The requested monthly subsidy amount may not exceed the maximum amount for the specific level of need identified for the child nor the maximum amount that the child would receive if placed in a foster family home;

(11) The identified need level for the child and requested amount of monthly subsidy shall be presented to the regional adoption assistance committee for approval. If the requested amount is not approved or is reduced by the committee, Child and Family Services shall send a written notice to the adoptive parents within 30 days informing them of the process to request a fair hearing.

(12) The level of need is determined by considering the child's age, history, physical, mental, emotional, and social functioning and needs, and any other relevant factors. Frequency of occurrence, duration, severity, and number of needs or problem areas are also considered.

(13) The presence of a particular issue listed within a designated level does not mandate that the child be categorized at that level as the child's needs, taken as a whole, determine the level selected for the child.

(14) The level of need is classified into three categories.

(a) Level one applies to a child with a minimal number and severity of needs. It is expected that most of these issues will improve with time, and significant improvement may be anticipated over the course of the adoption.

(i) For children ages five and under issues may include feeding problems, aggressive or self destructive behavior, victimization from sexual abuse, victimization from physical abuse; or no more than one developmental delay in fine motor, gross motor, cognitive or social and emotional domains.

(ii) For children ages six through 18, issues may include social conflict, physical aggression, minor sexual reactivity, need for education resource classes or tutoring, minor medical problems requiring ongoing monitoring, or mental health issues requiring time limited counseling[?].

(b) Level two applies to a child with a moderate number and severity of needs.

(i) It is expected that a number of these issues are long-term in nature and the adoptive family and child will be working with them over the course of the adoption, and may intensify or worsen if not managed carefully.

(ii) Outside provider support will probably continue to be needed during the adoption.

(iii) For children ages five and under, issues may include developmental delays in two or more areas of fine motor, gross motor, cognitive or social and emotional domains; diagnosis of failure to thrive; moderate genetic disease or physical disability condition; or physical aggression expressed several times a week, including superficial injury to self or others.

(iv) For children ages six to 18, issues may include daily social conflict or serious withdrawn behavior; moderate risk of harm to self or others due to physically aggressive behavior; emotional or psychological issues with a mental health diagnosis requiring ongoing counseling sessions over an extended period; moderate sexual reactivity or perpetration; chronic patterns of being destructive to items or property; cruelty to animals; mild cognitive disability, autism, or fetal alcohol spectrum disorder with ongoing need for special education services; and physical disabilities requiring ongoing attendant care or other caretaker support.

(c) Level three applies to a child with a significant number or high severity of needs.

(i) It is expected that these issues will not moderate and may become more severe over time.

(ii) The child's level of need may require personal attendant care or specialized care outside of the home, when prescribed by a professional.

(iii) For children ages five and under issues may include severe life threatening medical issues; moderate or severe cognitive disability, autism, or fetal alcohol spectrum disorder; serious developmental delays in three or more areas of fine or gross motor, cognitive or social and emotional domains; anticipated need for ongoing support for activities of daily living, such as feeding, dressing and self care; or high levels of threat for harm to self or others due to aggressive behaviors.

(iv) For children ages six to 18 issues may include moderate or severe retardation or autism; life threatening medical issues; severe physical disabilities not expected to improve over time; predatory sexual perpetration; high risk of serious injury to self or others due to aggressive behavior; serious attempts or threats of suicide; severely inhibiting diagnosed mental health disorders diagnosed within the past year that limit normal social and emotional

development, such as a need for ongoing self contained or special education services.

(15) The regional adoption assistance committee must approve the level of need identified for the child.

(16) A child's need level may be increased in severity by one level if the adoption assistance committee determines that the child's permanency may be compromised due to financial barriers to the child's adoption and if at least one of the following circumstances apply:

(a) the child has been in state custody for longer than 24 months;

(b) the child is nine years of age or older; or

(c) the child is part of a sibling group of three or more children being placed together for adoption.

(17) Each level of need corresponds to a dollar range in the amount of monthly subsidy that may be paid for a child, with the specific amount based upon the individual child's needs and the family's ability to meet those needs.

(18) The monthly subsidy amount for an individual child may not exceed the maximum amount for the payment range applicable to the child's level of need.

(19) A family may choose to defer receipt of a monthly subsidy that a child qualifies for, with the option to initiate a monthly subsidy at a later date.

(20) A family may choose to receive a lesser amount than would be allowable for the level of need at a given point in time.

(21) Monthly subsidy payments for a child's needs categorized as level one range from 0% to 40% of the maximum maintenance payment that ~~may~~could be paid for a child in a foster family home in State Fiscal Year 2023.

(22) A family may choose to receive a lesser amount than would be allowable for the child's level of need at a given point in time.

(23) Monthly subsidy payments for a child's needs categorized as level two range from 20% to 70% of the maximum maintenance payment that ~~may~~could be paid for a child in a foster family home in State Fiscal Year 2023.

(24) Monthly subsidy payments for a child's needs categorized as level three range from 50% to 100% of the maximum maintenance payment that ~~may~~could be paid for a child in a foster family home in State Fiscal Year 2023.

(25) For extraordinary, infrequent, or uncommon documented needs that cannot be covered by a monthly subsidy or state medical assistance, refer to supplemental adoption assistance in Section R512-43-7.

(26) The two funding sources for the monthly subsidy are Title IV-E ~~[A]~~adoption ~~[A]~~assistance and state adoption assistance funds. The child's eligibility determines which funding source is used for payment.

(27) Title IV-E adoption assistance shall be considered first for the monthly subsidy. To receive Title IV-E adoption assistance, a child with special needs shall meet at least one of the following federal requirements:

(a) a child is determined eligible for SSI for a disability by the Social Security Administration before the initiation of adoption proceedings;

(b) a child in foster care who meets the age criteria defined by the federal fiscal year qualifies for Title IV-E adoption assistance if other enhanced eligibility criteria is met;

(c) a child in foster care who has been in foster care for any previous 60 consecutive months may qualify for Title IV-E Adoption Assistance if other enhanced eligibility criteria is met;

## NOTICES OF PROPOSED RULES

(d) a child in foster care who is a sibling of another child in foster care who qualifies under the enhanced age criteria and is being adopted into the same family may qualify for Title IV-E adoption assistance if other enhanced eligibility criteria is met;

(e) the removal home for the child in public foster care received, or would have been eligible to receive, AFDC before removal, and the child was removed from the home as a result of a judicial determination that remaining in the home would be contrary to the child's welfare;

(f) the child was voluntarily placed for foster care with the state, and was or would have been AFDC eligible at the time of voluntary placement if application had been made, the child lived with a specified relative within the six months before the voluntary placement, and Title IV-E foster care maintenance payments were made on behalf of the child;

(g) the child's needs were met through foster care maintenance payments made to and for the child's minor parents as provided by Subsection 475(4)(B) of the Social Security Act; or

(h) the child had a previous IV-E adoption assistance agreement.

(28) The adoptive family may use [S]state adoption assistance funds [may be used] for the monthly subsidy if the qualified child is not eligible for Title IV-E adoption assistance.

(29) The monthly subsidy may be used according to the parents' discretion. Examples of the uses of the monthly subsidy payment are:

(a) medical, dental, or mental health services not paid for by the state medical assistance or family insurance;

(b) special equipment for physically or mentally challenged children;

(c) respite care;

(d) child care;

(e) therapeutic equipment;

(f) minor renovation of the home to meet special needs of the child;

(g) damage and repairs;

(h) speech therapy;

(i) tutoring;

(j) specialized preschool based on needs of the child;

(k) private school;

(l) exceptional basic needs such as special food, clothing, and shelter;

(m) visitations with biological relatives; and

(n) cultural and heritage activities and information.

(30) The adoption assistance agreement will specify the child's eligibility for Title XIX and Title XX services, if available.

### R512-43-6. State Medical Assistance.

(1) A child qualifies for state medical assistance as a component of adoption assistance when the following requirements are met:

(a) the child meets the qualifying factors for adoption assistance listed in Section R512-43-3;

(b) the child meets the definition of child in public foster care, qualifies for SSI disability benefits, or the child had a previous IV-E adoption assistance agreement or Utah state adoption assistance agreement;

(c) the child's eligibility for SSI benefits is established no later than the time adoption proceedings are initiated; and

(d) the child meets state medical assistance citizenship requirements.

(2) A qualified child may receive state medical assistance through an adoption assistance agreement without also receiving a monthly subsidy payment.

(3) The adoptive family must meet Medicaid requirements.

### R512-43-7. Supplemental Adoption Assistance.

(1) A child who meets each qualifying criteri[a]on for a monthly subsidy and for whom an adoption assistance agreement for a monthly subsidy or state medical assistance is in effect may qualify for supplemental adoption assistance.

(2) The adoptive family may only use [S]supplemental adoption assistance [may only be used] for extraordinary, infrequent, or uncommon documented needs not otherwise covered by a monthly subsidy, state medical assistance, or other public benefits that a child who has a special need is eligible for.

(3) Supplemental adoption assistance is not an entitlement, and will be granted only when justified by unique needs of the child and when other resources that a child is eligible for have been exhausted.

~~(4) Supplemental adoption assistance requests up to \$3,000 will be considered and are subject to the approval of the regional adoption assistance committee.]~~

~~([5]4) The post adoption worker shall bring [S]supplemental adoption assistance requests [from \$3,001 to \$10,000] to the state supplemental committee [shall be considered by the appropriate regional advisory committee] established under Section [62A-4a-905]80-2-807.~~

~~(6) Supplemental adoption assistance requests exceeding \$10,001 shall be considered by a state level advisory committee with the same membership composition as the regional advisory committees.~~

~~(7) Recommendations from the advisory committee are subject to the approval of the region director or designee.~~

~~(8) Any obligation made or expense incurred by a family before approval shall not be reimbursed with supplemental adoption assistance funds unless approval is granted by the region director.]~~

~~([9]5) The same entity that received the initial request will review [A]a request for an amendment or extension of an existing supplemental adoption assistance agreement. [will be reviewed by the same committee that reviewed the initial request. If the total amount of multiple requests in a year is \$3,000 to \$10,000, the request shall be submitted to the appropriate regional advisory committee. If the request exceeds \$10,000, the request shall be submitted to the state level advisory committee.]~~

~~([10]6) Supplemental adoption assistance is subject to the availability of state funds appropriated for adoption assistance.~~

### R512-43-8. Regional Adoption Assistance Committee.

(1) Each region shall establish at least one regional adoption assistance committee.

(2) The regional adoption assistance committee shall be comprised of at least five members, and a minimum of three members must be present for making decisions regarding adoption assistance. The committee shall make [Ø]decisions [shall be made] by consensus.

(3) Members of the committee ~~[may]~~shall include the following:

(a) chairperson;

(b) clinical consultant or casework supervisor;

(c) regional budget officer or fiscal representative;

(d) allied agency representative from agencies such as a community mental health center, private adoption agency, or other agencies within the department;

(e) regional administrator or other staff with relevant responsibilities; and

(f) adoptive parent; ~~or~~ and

~~(g) foster parent.~~

(4) Responsibilities of the regional adoption assistance committee include:

(a) verification that a child qualifies for adoption assistance;

(b) approval for reimbursement of allowable, reasonable non-recurring costs;

(c) approval of level of need and amount of monthly subsidy for initial requests, changes, amendments, and renewals;[

~~(d) approval of supplemental adoption assistance up to \$3,000;]~~

~~([e]d)~~ extension of adoption assistance up to age 21 for a qualifying child;

~~([f]e)~~ renewal of adoption assistance; and

~~([g]f)~~ documentation of committee decisions.

#### **R512-43-9. Adoption Assistance Review.**

~~(1)~~—The adoption assistance agreement for a monthly subsidy or state medical assistance shall continue until the month of the adopted child's 18th birthday.[

~~(2) An agreement for supplemental adoption assistance exceeding \$3,000 shall be reviewed according to a time frame determined on a case by case basis by the appropriate regional advisory committee.]~~

#### **R512-43-10. Adoption Monthly Subsidy Suspension.**

(1) The regional adoption assistance committee may temporarily suspend ~~[M]~~monthly subsidy payments ~~[may be temporarily suspended]~~in situations in which a payment is sent to a parent's home address and cannot be delivered or a direct deposit payment notice is returned to the office of Child and Family Services as unable to deliver.

(2) The ~~[monthly]~~regional adoption assistance committee may suspend subsidy payments ~~[may be suspended]~~until the parent contacts Child and Family Services to establish an address for the parent.

(3) The regional adoption assistance committee will terminate the monthly subsidies [A]after one year of suspended monthly subsidies~~[, the monthly subsidy payment will be terminated].~~

(4) If the parent contacts Child and Family Services after termination of the monthly subsidy, Child and Family Services will repay up to one year of monthly subsidy payments at the amount determined in the adoption assistance agreement.

#### **R512-43-11. Termination of Adoption Assistance.**

(1) The regional adoption assistance committee shall terminate [A]an adoption assistance agreement for a monthly subsidy or state medical assistance ~~[shall be terminated]~~if any of the following occur:

(a) the terms of the adoption assistance agreement are concluded;

(b) the adoptive parents request termination;

(c) the month following the child's 18th birthday, unless approval has been given by the adoption assistance committee to

continue until the month following the child's 21st birthday due to mental or physical disability;

(d) the child dies;

(e) the adoptive parents die;

(f) the adoptive parents' legal responsibility for the child ceases;

(g) the state determines that the child is no longer receiving financial support from the adoptive parents;

(h) the child enters the military; or

(i) the child marries.

(2) Termination of state medical assistance is subject to the policies of the ~~[Division of Health Care Financing]~~Department of Health and Human Services.

(3) Supplemental adoption assistance shall terminate when:

(a) an adoption assistance agreement for a monthly subsidy or state medical assistance is terminated;

(b) the terms of the agreement are concluded;

(c) the authorizing committee determines that the services funded with supplemental funds are no longer effective or appropriate based upon an independent review by a qualified provider; or

(d) if lack of availability of state funding prevents continuation.

(4) The regional adoption assistance committee shall provide [W]written notice as described in Section R512-43-5 ~~[shall be provided]~~to the adoptive family at least 30 days before funding is discontinued due to lack of availability of state funding appropriated for adoption assistance or due to determination that services are no longer effective or appropriate.

#### **R512-43-12. Fair Hearings.**

(1) The adoptive family may submit [A]a written request for a fair hearing ~~[may be submitted]~~to the Department of Health and Human Services, Finance and Administration within ten working days after receiving a Child and Family Services decision if:

(a) the adoption assistance application is denied;

(b) the adoption assistance application is not acted upon with reasonable promptness;

(c) adoption assistance or supplemental adoption assistance is reduced, suspended, terminated, or changed without the concurrence of the adoptive parents;

(d) the amount of adoption assistance or supplemental adoption assistance approved was less than the amount requested by adoptive parents; or

(e) adoption assistance was not requested before finalization of the adoption and one of the criteria in Section R512-43-5 applies.

(2) The fair hearing officer may approve appropriate state or federal adoption assistance for post finalization requests if one of the following is met:

(a) relevant facts regarding the child, the biological family, or child's background were known but not presented to adoptive parents before finalization;

(b) a denial of assistance was based upon a means test of the adoptive family;

(c) an erroneous state determination was utilized to find a child ineligible for assistance; or

(d) the state or adoption agency failed to advise adoptive parents of the availability of assistance.

(3) The adoptive parents bear the burden of documenting that the child meets the definition of a child with a special need and



## NOTICES OF PROPOSED RULES

that one of the criteria in Section R512-43-5 applies. The state may provide corroborating facts to the family or the fair hearing officer.

### **R512-43-13. Interstate Adoption Assistance.**

(1) Child and Family Services is responsible to determine if a child in Utah public foster care qualifies for adoption assistance when the child is placed in an adoptive home in another state. If the child qualifies, Child and Family Services provides adoption assistance regardless of the state of residence of the adoptive family and child.

(2) If a child with a previous IV-E adoption assistance agreement enters public foster care because the adoption was dissolved or ended due to the result of the death of the parents, the state in which the child is taken into custody in public foster care is responsible to provide adoption assistance in a subsequent adoption.

(3) If a child with a previous IV-E adoption assistance agreement does not enter public foster care when the adoption dissolved or ended due to the death of both parents, the new adoptive parent is responsible to apply for adoption assistance in the new adoptive parent's state of residence.

(4) A parent desiring to adopt an out-of-state child who is not in public foster care but is receiving SSI disability benefits shall apply for adoption assistance in the parent's state of residence.

(5) An adoption assistance agreement remains in effect regardless of the state of residence of the adoptive parents as long as the child continues to qualify for adoption assistance.

(6) If a needed service specified in the agreement is not funded by the new state of residence, the state making the original adoption assistance payment remains financially responsible for paying for the specific service.

**KEY:** adoption, child welfare, foster care

**Date of Last Change:** ~~2023~~~~March 11, 2022~~

**Notice of Continuation:** August 12, 2020

**Authorizing, and Implemented or Interpreted Law:** ~~62A-4a-102; 62A-4a-105; Title 62A, Chapter 4a, Part 9~~~~80-2-301; 80-2-302; 80-2-801; 80-2-806; 80-2-807~~

### **NOTICE OF PROPOSED RULE**

**TYPE OF FILING:** Amendment

<b>Rule or Section Number:</b>	<b>R512-80</b>	<b>Filing ID:</b> <b>56038</b>
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### **Agency Information**

<b>1. Department:</b>	Human Services	
<b>Agency:</b>	Child and Family Services	
<b>Building:</b>	Multi-Agency State Office Building	
<b>Street address:</b>	120 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>
Carol Miller	801-557-1772	carolmiller@utah.gov

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

### **General Information**

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

R512-80. Definitions of Abuse, Neglect, and Dependency

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

The purpose of this rule filing is to bring this rule in-line with H.B. 365 passed in the 2021 General Session, State Agency Realignment of the Departments of Health and Human Services.

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

This rule has been updated to change references from the Department of Human Services to the Department of Health and Human Services, correct references to citations, and to bring this rule in-line with the Rulewriting Manual for Utah.

### **Fiscal Information**

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

##### **A) State budget:**

The amendment to this rule is due to H.B. 365 (2021). It is technical in nature and does not reflect substantive changes to current practices or procedures.

It is not anticipated that this amendment would create a fiscal cost or savings to the state budget.

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

The amendment to this rule is due to H.B. 365 (2021). It is technical in nature and does not reflect substantive changes to current practices or procedures.

It is not anticipated that this amendment would create a fiscal cost or savings to local governments.

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

The amendment to this rule is due to H.B. 365 (2021). It is technical in nature and does not reflect substantive changes to current practices or procedures.

It is not anticipated that this amendment would create a fiscal cost or savings to small businesses.

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

The amendment to this rule is due to H.B. 365 (2021). It is technical in nature and does not reflect substantive changes to current practices or procedures.

It is not anticipated that this amendment would create a fiscal cost or savings to non-small businesses.

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

The amendment to this rule is due to H.B. 365 (2021). It is technical in nature and does not reflect substantive changes to current practices or procedures.

It is not anticipated that this amendment would create a fiscal cost or savings to persons other than small businesses, non-small businesses, state, or local government entities.

**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 associated with implementing this rule because these changes are not fiscal 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>

#### 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 53G-6-210	Section 76-5-109	Section 76-5-112
Section 76-5-112.5	Sections 76-10-1201 through 76-10-1206	Section 78B-7-102
Section 80-1-102	Section 80-2-302	Section 80-4-302
Section 80-4-502		

#### 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:** 12/15/2023

**9. This rule change MAY become effective on:** 12/22/2023

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>	10/30/2023
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#### R512. Health and Human Services, Child and Family Services.

##### R512-80. Definitions of Abuse, Neglect, and Dependency.

##### R512-80-1. Purpose and Authority.

(1) This rule specifies definitions utilized by the Division of Child and Family Services (Child and Family Services).

(2) This rule is authorized by Section ~~[62A-4a-102]~~80-2-302.

##### R512-80-2. Definitions.

(1) "Abandonment" means conduct by either a parent or legal guardian showing a conscious disregard for parental obligations where that disregard leads to the destruction of the parent-child

relationship, except in the case of the safe relinquishment of a newborn child pursuant to Section ~~[62A-4a-802]~~80-4-502. Abandonment also includes conduct specified in Section ~~[s-62A-4a-4002 and]~~ 80-4-302.

(2) "Abuse" is as defined in Section 80-1-102. It includes child endangerment, Domestic Violence Related Child Abuse, emotional abuse, fetal exposure to alcohol or other harmful substances, dealing in material harmful to a child, Pediatric Condition Falsification or medical child abuse, physical abuse, sexual abuse, and sexual exploitation.

(3) "Child endangerment" means subjecting a child to threatened harm. This also includes conduct outlined in Sections 76-5-112 and 76-5-112.5.

(4) "Chronic abuse" is as defined in Section ~~[62A-4a-404]~~80-1-102.

(5) "Chronic neglect" is as defined in Section ~~[62A-4a-404]~~80-1-102.

(6) "Cohabitant" is as defined in Section 78B-7-102.

(7) "Custodian" means a person who has legal custody of a child or a person responsible for a child's care ~~[as defined in Section 62A-4a-402]~~.

(8) "Dealing in material harmful to a child" means distributing, providing, or transferring possession; exhibiting or showing; or allowing immediate access to material harmful to a child or any other conduct constituting an offense under Sections 76-10-1201 through 76-10-1206.

(9) "Dependency" is as defined in Section ~~[62A-4a-404]~~80-1-102. Dependency includes safe relinquishment of a newborn child as provided in Section ~~[62A-4a-802]~~80-4-502.

(10) "Domestic Violence Related Child Abuse" means domestic violence between cohabitants in the presence of a child. It may be an isolated incident or a pattern of conduct as defined in ~~[Administrative]~~ Rule R512-205.

(11) "Educational neglect" means failure or refusal to make a good faith effort to ensure that a child receives an appropriate education, after receiving notice that the child has been frequently absent from school without good cause or that the parent has failed to cooperate with school authorities in a reasonable manner in accordance with Sections 80-1-102 and 53G-6-210.

(12) "Emotional abuse" means engaging in conduct or threatening a child with conduct that causes or can reasonably be expected to cause the child emotional harm. This includes:

(a) demeaning or derogatory remarks that affect or can reasonably be expected to affect a child's development of self and social competence; or

(b) threatening harm, rejecting, isolating, terrorizing, ignoring, or corrupting.

(13) "Environmental neglect" means an environment that poses an unreasonable risk to the physical health or safety of a child.

(14) "Failure to protect" means failure to take reasonable action to remedy or prevent child abuse or neglect. Failure to protect includes the conduct of a non-abusive parent or guardian who knows the identity of the abuser or the person neglecting the child, but lies, conceals, or fails to report the abuse or neglect or the alleged perpetrator's identity.

(15) "Failure to thrive" means a medically diagnosed condition in which the child fails to develop physically. This condition is typically indicated by inadequate weight gain.

(16) "Fetal exposure to alcohol or other harmful substances" means a condition in which a newborn is adversely affected by the child's mother's substance abuse during pregnancy, has fetal alcohol syndrome or fetal alcohol spectrum disorder, or

demonstrates drug or alcohol withdrawal symptoms. Newborn withdrawal symptoms due to medications taken by the mother as legally prescribed, without indication of misuse, are expected and do not constitute fetal exposure.

(17) "Harm" is as defined in Section 80-1-102.

(18)(a) "Harmful to minors" is in accordance with Section 76-10-1201 and means that quality of any description or representation of nudity, sexual conduct, sexual excitement, or sadomasochistic abuse when it:

(i) taken as a whole, appeals to the prurient interest of sex of minors;

(ii) is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable material for minors; and

(iii) taken as a whole does not have serious value for minors.

(b) Serious value includes only serious literary, artistic, political, or scientific value for minors."

~~(1[8]2) "Material" [harmful to a child] means any visual, pictorial, audio, or written representation in whatever form, including performance, that includes pornographic or sexually explicit material, including nudity, sexual conduct, sexual excitement, or sadomasochistic abuse that:~~

~~(a) taken as a whole, appeals to the prurient interest in sex of a child;~~

~~(b) is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable material for a child; and~~

~~(c) taken as a whole does not have serious value for a child. Serious value includes only serious literary, artistic, political, or scientific value for a child.] is in accordance with Section 76-10-1201 and means anything printed or written or any picture, drawing, photograph, motion picture, or pictorial representation, or any statue or other figure, or any recording or transcription, or any mechanical, chemical, or electrical reproduction, or anything which is or may be used as a means of communication. Material includes undeveloped photographs, molds, printing plates, and other latent representational objects.~~

~~(1[9]20) "Medical neglect" means failure or refusal to provide proper or necessary medical, dental, or mental health care or to comply with the recommendations of a medical, dental, or mental health professional necessary to the child's health, safety, or well-being. Exceptions and limitations are as provided in Section 80-1-102.~~

~~(2[0]1) "Molestation" is as defined in Section 80-1-102.~~

~~(2[1]2) "Neglect" is as defined in Section 80-1-102. It includes abandonment, educational neglect, environmental neglect, failure to protect, failure to thrive, medical neglect, non-supervision, physical neglect, [and]-sibling at risk, and an unregulated child custody transfer.~~

~~(2[2]3) "Non-supervision" means the child is subjected to accidental harm or an unreasonable risk of accidental harm due to failure to supervise the child's activities at a level consistent with the child's age and maturity.~~

~~(2[3]4) "Pediatric Condition Falsification," formerly Munchausen Syndrome by Proxy, means a cluster of symptoms or signs, circumstantially related, in which the parent or guardian misrepresents information or simulates or produces illness in a child, has knowledge about the etiology of the child's illness but denies such knowledge, seeks multiple medical procedures, or acute symptoms and signs of the illness [cease]stop when the child is separated from the parent or guardian.~~

(2[4]5) "Perpetrator" means a person substantially responsible for causing child abuse or neglect, or a person responsible for a child's care who permits another to abuse or neglect a child, and includes a person who engages in conduct in Section 76-5-109.

(2[5]6) "Physical abuse" means non-accidental physical harm or threatened physical harm of a child that may or may not be visible. It includes unexplained physical harm of an infant, toddler, disabled, or non-verbal child. "Physical harm" includes "physical injury" and "serious physical injury" as defined in Section 76-5-109.

(2[6]7) "Physical neglect" means failure to provide for a child's basic needs of food, clothing, shelter, or other care necessary for the child's health, safety, morals, or well-being.

(2[7]8) "Serious harm" includes "serious physical injury" as defined in Section 76-5-109.

(2[8]9) "Severe abuse" is as defined in Section 80-1-102 for all categories except sexual abuse, sexual exploitation, abandonment, and certain conduct by an individual under 18 years of age. In Section ~~62A-4a-1002~~ 80-1-102:

(a) if committed by an individual 18 years of age, all sexual abuse, sexual exploitation, or abandonment constitute severe abuse, irrespective of whether there is evidence of harm or threatened harm; or

(b) if committed by an individual under 18 years of age, serious physical injury or sexual conduct that indicates a significant risk of harm constitute severe abuse.

(~~29~~30) "Severe neglect" is as defined in Section 80-1-102.

(3[0]1) "Sexual abuse" is as defined in Section 80-1-102. Sexual abuse also includes forcing a child under 18 years of age into marriage or cohabitation with an adult in an intimate relationship.

(3[1]2) "Sexual exploitation" is as defined in Section[s ~~62A-4a-1002 and~~ 80-1-102.

(3[2]3) "Sibling at risk" means a child who is at risk of being abused or neglected because another child in the same home or with the same caregiver has been or is abused or neglected.

(3[3]4) "Threatened harm" is as defined in Section 80-1-102.

#### KEY: child welfare

Date of Last Change: ~~2023~~ March 11, 2022

Notice of Continuation: October 13, 2016

Authorizing, and Implemented or Interpreted Law: ~~62A-4a-102~~ 63G-6-210; 76-5-112; 76-5-109; 76-5-112.5; 76-10-1201 through 76-10-1206; 78B-7-102; 80-1-102; 80-2-302; 80-4-302; 80-4-502

#### NOTICE OF PROPOSED RULE

TYPE OF FILING: Amendment

Rule or Section Number:	R512-202	Filing ID: 55987
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#### Agency Information

1. Department:	Health and Human Services
Agency:	Child and Family Services
Building:	Multi-Agency State Office Building
Street address:	120 N 1950 W
City, state and zip:	Salt Lake City, UT 84116

#### Contact persons:

Name:	Phone:	Email:
Carol Miller	801-557-1772	carolmiller@utah.gov

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

#### General Information

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

R512-202. Child Protective Services, General Allegation Categories

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

The purpose of this rule filing is to bring this rule in-line with H.B. 365 passed in the 2021 General Session, State Agency Realignment of the Departments of Health and Human Services.

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

This rule has been updated to change references from the Department of Human Services to the Department of Health and Human Services, correct references to citations, and to bring this rule in-line with the Rulewriting Manual for Utah.

#### Fiscal Information

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

###### A) State budget:

The amendment to this rule is due to H.B. 365 (2021). It is technical in nature and does not reflect substantive changes to current practices or procedures.

It is not anticipated that this amendment would create a fiscal cost or savings to the state budget.

###### B) Local governments:

The amendment to this rule is due to H.B. 365 (2021). It is technical in nature and does not reflect substantive changes to current practices or procedures.

It is not anticipated that this amendment would create a fiscal cost or savings to local governments.

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

The amendment to this rule is due to H.B. 365 (2021). It is technical in nature and does not reflect substantive changes to current practices or procedures.

It is not anticipated that this amendment would create a fiscal cost or savings to small businesses.

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

The amendment to this rule is due to H.B. 365 (2021). It is technical in nature and does not reflect substantive changes to current practices or procedures.

It is not anticipated that this amendment would create a fiscal cost or savings to non-small businesses.

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

The amendment to this rule is due to H.B. 365 (2021). It is technical in nature and does not reflect substantive changes to current practices or procedures.

It is not anticipated that this amendment would create a fiscal cost or savings to persons other than small businesses, non-small businesses, state, or local government entities.

**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 associated with implementing this rule because these changes are not fiscal 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 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 76-5-109	Section 76-5-112	Section 76-5-112.5
Sections 76-10-1201 through 76-10-1206	Section 78B-24-202	Section 78B-24-203
Section 80-1-102	Section 80-2-301	Section 80-2-302
Section 80-3-304	Section 80-4-203	Section 80-4-502

**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:** 12/15/2023

**9. This rule change MAY become effective on:** 12/22/2023

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>	10/25/2023
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**R512. Health and Human Services, Child and Family Services.**  
**R512-202. Child Protective Services, General Allegation Categories.**

**R512-202-1. Purpose and Authority.**

(1) This rule provides information about the allegation categories used by the Division of Child and Family Services (Child and Family Services).

(2) Pursuant to Section ~~[62A-4a-105]~~80-2-301, Child and Family Services ~~[is authorized to]~~may provide Child Protective Services (CPS).

(3) This rule is authorized by Section ~~[62A-4a-102]~~80-2-302.

**R512-202-2. Definitions.**

The following terms are defined for the use of referral and investigation allegation categories for abuse, neglect, and dependency.

(1) "Abuse" means non-accidental harm or threatened harm of a child or sexual exploitation or sexual abuse, including other conduct as described in Section ~~[80-5-102]~~80-1-102 and Rule R512-80. Abuse does not include reasonable discipline or management of a child including withholding privileges, or the use of reasonable and necessary physical restraint or force on a child in self-defense, defense of others, to protect the child, or to remove a weapon in the possession of a child. Abuse includes:

(a) "Child endangerment" as defined in Rule R512-80, and conduct described in:

(i) Section 76-5-112, recklessly engaging in conduct that creates a substantial risk of death or serious bodily injury to a child; or

(ii) Section 76-5-112.5, knowing or intentionally causing or permitting a child to be exposed to, inhale, ingest, or have contact with a controlled substance, chemical substance, or drug paraphernalia. "Exposed to" means the child can access ~~[or view]~~ an unlawfully possessed controlled substance or chemical substance, has reasonable capacity to access drug paraphernalia, or can smell an odor produced during or as a result of the manufacture or production of a controlled substance.

(b) "Dealing in material harmful to a child" as defined in Rule R512-80 or any other conduct constituting an offense under Sections 76-10-1201 through 76-10-1206.

(c) "Domestic violence related child abuse" as defined in Rules R512-80 and R512-205.

(d) "Emotional abuse" as defined in Rule R512-80.

(e) "Fetal exposure to alcohol or other harmful substances" as defined in Rule R512-80.

(f) "Pediatric condition falsification" as defined in Rule R512-80.

(g) "Physical abuse" as defined in Sections 76-5-109 and 80-1-102, and Rule R512-80.

(h) "Sexual abuse" as defined in Section 80-1-102 and Rule R512-80.

(2) "Neglect" as defined in Section ~~[s-63G-6-210 and]~~ 80-1-102 and Rule R512-80. Neglect also includes:

(a) "Abandonment," ~~[s]~~ except in the case of the safe relinquishment of a newborn child pursuant to Section ~~[62A-4a-802]~~80-4-502, conduct by either a parent or legal guardian showing a conscious disregard for parental obligations, where that disregard leads to the destruction of the parent and child relationship. Abandonment also arises when a parent:

(i) although having legal custody of the child, has surrendered physical custody of the child, and for a period of six

months following the surrender has not manifested to the child or to the person having the physical custody of the child a firm intention to resume physical custody or to make arrangements for the care of the child;

(ii) has failed to communicate with the child by mail, telephone, or otherwise for six months;

(iii) has failed to have shown the normal interest of a natural parent, without just cause; or

(iv) has abandoned an infant as described in Section 80-4-203.

(b) "Failure to protect" as defined in Rule R512-80.

(c) "Failure to thrive" as defined in Rule R512-80.

(d) "Medical neglect" as defined in Rule R512-80.

Exceptions and limitations provided in Section 80-1-102 include:

(i) a parent or guardian legitimately practicing religious beliefs and who, for that reason, does not provide specified medical treatment for a child; and

(ii) a health care decision made for a child by the child's parent or guardian does not constitute neglect unless clear and convincing evidence shows that the health care decision is not reasonable and informed. Nothing may prohibit a parent or guardian from exercising the right to obtain a second health care opinion per Section 80-3-304.

(e) "Non-supervision" as defined in Rule R512-80.

(f) "Physical neglect" as defined in Rule R512-80.

(g) "Sibling at risk" as defined in Rule R512-80.

(h) "Unregulated custody transfer" is conduct defined in Sections 78B-24-202, 78B-24-203, and 80-1-102.

(3) "Dependency" as defined in Section ~~[62A-4a-101]~~80-1-102 and Rule R512-80.

(4) "Safe relinquishment of a newborn child" means a parent or a parent's designee may safely relinquish a newborn child at a hospital in accordance with the requirements of Section ~~[62A-4a-802]~~80-4-502 and retain anonymity, as long as the newborn child has not been subjected to abuse or neglect.

**R512-202-3. Qualification for Services.**

The Child and Family Services worker receiving or investigating a report of child abuse, neglect, or dependency shall categorize the information into an allegation category.

**KEY:** social services, child welfare, domestic violence, child abuse

**Date of Last Change:** 2023~~[March 11, 2022]~~

**Notice of Continuation:** February 14, 2023

**Authorizing, and Implemented or Interpreted Law:** ~~[62A-4a-102; 62A-4a-105]~~76-5-109; 76-5-112; 76-5-112.5; 76-10-1201 through 76-10-1206; 78B-24-202; 78B-24-203; 80-1-102; 80-2-301; 80-2-302; 80-3-304; 80-4-203; 80-4-502

**NOTICE OF PROPOSED RULE**

**TYPE OF FILING:** Amendment

<b>Rule or Section Number:</b>	<b>R512-306</b>	<b>Filing ID:</b> <b>55989</b>
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**Agency Information**

<b>1. Department:</b>	Health and Human Services
<b>Agency:</b>	Child and Family Services

<b>Building:</b>	Multi-Agency State Office Building	
<b>Street address:</b>	120 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>
Carol Miller	801-557-1772	carolmiller@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>
R512-306. Out-of-Home Services, Transition to Adult Living Services, Education and Training Voucher Program
<b>3. Purpose of the new rule or reason for the change:</b>
The purpose of this rule filing is to bring this rule in-line with H.B. 365 passed in the 2021 General Session, State Agency Realignment of the Departments of Health and Human Services.
<b>4. Summary of the new rule or change:</b>
This rule has been updated to change references from the Department of Human Services to the Department of Health and Human Services, correct references to citations, and to bring this rule in-line with the Rulewriting Manual for Utah.

**Fiscal Information**

<b>5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:</b>
<b>A) State budget:</b>
The amendment to this rule is due to H.B. 365 (2021). It is technical in nature and does not reflect substantive changes to current practices or procedures.
It is not anticipated that this amendment would create a fiscal cost or savings to the state budget.
<b>B) Local governments:</b>
The amendment to this rule is due to H.B. 365 (2021). It is technical in nature and does not reflect substantive changes to current practices or procedures.
It is not anticipated that this amendment would create a fiscal cost or savings to local governments.

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

The amendment to this rule is due to H.B. 365 (2021). It is technical in nature and does not reflect substantive changes to current practices or procedures.

It is not anticipated that this amendment would create a fiscal cost or savings to small businesses.

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

The amendment to this rule is due to H.B. 365 (2021). It is technical in nature and does not reflect substantive changes to current practices or procedures.

It is not anticipated that this amendment would create a fiscal cost or savings to non-small businesses.

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

The amendment to this rule is due to H.B. 365 (2021). It is technical in nature and does not reflect substantive changes to current practices or procedures.

It is not anticipated that this amendment would create a fiscal cost or savings to persons other than small businesses, non-small businesses, state, or local government entities.

**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 associated with implementing this rule because these changes are not fiscal 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>
<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 63G-4-201	Section 80-2-301	Section 80-2-302

**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>	12/15/2023

<b>9. This rule change MAY become effective on:</b>	12/22/2023
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>	10/27/2023
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**R512. Health and Human Services, Child and Family Services.**  
**R512-306. Out-of-Home Services, Transition to Adult Living Services, Education and Training Voucher Program.**

**R512-306-1. Purpose and Authority.**

(1) The Education and Training Voucher Program assists individuals in out-of-home care to make a more successful transition to adulthood. The Education and Training Voucher [p]Program provides the financial resources for postsecondary education and vocational training necessary to obtain employment or to support the individual's employment goals.

(2) The Education and Training Voucher Program is authorized by Pub. L. No. 107-133.

(3) This rule is authorized by Section [62A-4a-102]80-2-302.

**R512-306-2. Definitions.**

(1) "Child and Family Services" means the Division of Child and Family Services.

(2) "~~Federal CARES Act~~" means the ~~Federal Coronavirus Aid, Relief, and Economic Security Act of 2020.~~

([3]2) "Full-time" means enrollment in the standard number of credit hours for each semester or quarter as defined by the educational institution.

([4]3) "GED" means General Education Development.

([5]4) "Institution of higher education" means a school that:

(a) awards a bachelor's degree or not less than a two-year program that provides credit toward[s] a degree;

(b) provides not less than one year of training toward[s] gainful employment; or

(c) is a vocational program that provides training for gainful employment and has been in existence for at least two years, and that also meets the following:

(i) public or non-profit facility; and

(ii) accredited or pre-accredited by a recognized accrediting agency that the Secretary of Education determines to be reliable and [is authorized to] may operate in the state.

([6]5) "Out-of-home care" means substitute care for children in the custody of Child and Family Services and Native American Tribes.

([7]6) "Part-time" means enrollment in fewer credit hours than the full-time standard as defined by the educational institution.

([8]7) "Satisfactory progress" means maintaining at least a C grade average or 2.0 on a 4.0 scale on a cumulative basis or equivalent passing status as determined by the educational institution.

**R512-306-3. Scope of Program.**

(1) To be eligible for the Education and Training Voucher Program, an individual must meet the following requirements:

(a) an individual in out-of-home care who has not yet reached 26 years of age;

(b) an individual no longer in out-of-home care who reached 18 years of age while in out-of-home care and who has not yet reached 26 years of age;

(c) an individual adopted or entered guardianship from out-of-home care after reaching 16 years of age and who has not yet attained 26 years of age;

(d) has an individual educational assessment and individual education plan completed by Child and Family Services or their designee;

## NOTICES OF PROPOSED RULES

(e) submits a completed application for the Education and Training Voucher Program;

(f) has applied for or been accepted to a qualified college, university, or vocational program;

(g) applies for available financial aid from other sources before obtaining funding from the Education and Training Voucher Program;

(h) enrolls as a full-time or part-time student in the college, university, or vocational program~~[- however, this requirement has been temporarily suspended until September 30, 2022 due to the Federal CARES Act];~~ and

(i) maintains a 2.0 cumulative grade point average on a 4.0 scale or equivalent as determined by the educational institution.

(2) The ~~[application and attachments will be reviewed and approved by]~~ regional Transition to Adult Living program staff or their designee will review and approve the application and attachments. Individuals meeting the requirements will be accepted for program participation when Education and Training Voucher Program funding is available. If demand exceeds available funding, Child and Family Services may establish a waiting list, which will then be awarded to the applicants in the order received on a first-come first-serve basis for funding or Child and Family Services may approve applications for lesser amounts of funding. The individual will receive written notice of approval or denial of the application. If denied or terminated, a ~~[written reason for denial]~~ notice of agency action will be provided.

(3) If an application for benefits under the Education and Training Voucher Program is denied, the applicant has the right to appeal the decision through an administrative hearing in accordance with Section ~~[63G-4-301]~~ 63G-4-201.

(4) The individual may participate in the Education and Training Voucher Program until:

(a) the completion of the degree or vocational program;

(b) the individual reaches age 26 years; or

(c) the individual has completed a maximum of five years in the Education and Training Voucher Program.

(5) The individual must provide ongoing documentation of full-time or part-time enrollment, satisfactory progress as detailed in the individual education plan, additional requests for funding, and any changes in total costs for attendance or other financial aid to Child and Family Services to continue receiving benefits under the program.

(6) A program participant who receives less than a 2.0 GPA in a single grading period will be placed on probationary status:

(a) the individual shall receive written notice of the probationary status;

(b) the individual will have one subsequent grading period to regain or show significant progress toward a 2.0 GPA to continue in the program;

(c) upon completion of a satisfactory grading period, the participant will be notified that the probation period is over; or

(d) the participant that does not receive satisfactory grades while on probation will receive written notice of loss of eligibility for the Education and Training Voucher Program.

(7) An individual under age 26 years who has previously been denied acceptance to the program or who lost eligibility for the program due to not making satisfactory progress may reapply for the program at any time.

(8)(a) An individual may receive vouchers up to a maximum amount of \$5,000 per year through the Education and Training Voucher Program~~[- however, this requirement has been temporarily increased to \$12,000 per year until September 30, 2022~~

~~due to the Federal CARES Act].~~ Amounts are determined by the cost of tuition at specific educational institutions and enrollment status.

([a]b) The total amount awarded may not exceed the total cost of attendance, minus:

(i) expected contributions from the individual's family; and

(ii) estimated financial assistance from other state or federal grants or programs;

([b]c) Awards are subject to the availability of Child and Family Services Education and Training Voucher Program funds appropriated for this program.

([e]d) In accordance with the John H. Chafee Foster Care Independence Program of 2011, 42 U.S.C. 677, the amount of benefits received through the Education and Training Voucher Program may be disregarded in determining an individual's eligibility for, or amount of, any other ~~[F]~~ federal or federally supported assistance.

**KEY: out-of-home care, Transition to Adult Living**

**Date of Last Change:** ~~2023~~ March 11, 2023

**Notice of Continuation:** September 28, 2023

**Authorizing, and Implemented or Interpreted Law:** ~~[62A-4a-102; 62A-4a-105]~~ 63G-4-201; 80-2-301; 80-2-302

### NOTICE OF PROPOSED RULE

**TYPE OF FILING:** Amendment

<b>Rule or Section Number:</b>	<b>R512-308</b>	<b>Filing ID:</b> <b>55988</b>
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### Agency Information

<b>1. Department:</b>	Health and Human Services	
<b>Agency:</b>	Child and Family Services	
<b>Building:</b>	Multi-Agency State Office Building	
<b>Street address:</b>	120 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>
Carol Miller	801-557-1772	carolmiller@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:

R512-308. Out-of-Home Services, Guardianship Services and Placements

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

The purpose of this rule filing is to bring this rule in-line with H.B. 365 passed in the 2021 General Session, State

Agency Realignment of the Departments of Health and Human Services.

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

This rule has been updated to change references from the Department of Human Services to the Department of Health and Human Services, correct references to citations, and to bring this rule in-line with the Rulewriting Manual for Utah.

#### Fiscal Information

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

##### A) State budget:

The amendment to this rule is due to H.B. 365 (2021). It is technical in nature and does not reflect substantive changes to current practices or procedures.

It is not anticipated that this amendment would create a fiscal cost or savings to the state budget.

##### B) Local governments:

The amendment to this rule is due to H.B. 365 (2021). It is technical in nature and does not reflect substantive changes to current practices or procedures.

It is not anticipated that this amendment would create a fiscal cost or savings to local governments.

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

The amendment to this rule is due to H.B. 365 (2021). It is technical in nature and does not reflect substantive changes to current practices or procedures.

It is not anticipated that this amendment would create a fiscal cost or savings to small businesses.

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

The amendment to this rule is due to H.B. 365 (2021). It is technical in nature and does not reflect substantive changes to current practices or procedures.

It is not anticipated that this amendment would create a fiscal cost or savings to non-small businesses.

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

The amendment to this rule is due to H.B. 365 (2021). It is technical in nature and does not reflect substantive changes to current practices or procedures.

It is not anticipated that this amendment would create a fiscal cost or savings to persons other than small businesses, non-small businesses, state, or local government entities.

#### 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 associated with implementing this rule because these changes are not fiscal 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>

#### 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 80-1-102	Section 80-2-301	Section 80-2-302
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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>	12/15/2023
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**9. This rule change MAY become effective on:** 12/22/2023

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>	10/27/2023
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**R512. Health and Human Services, Child and Family Services.  
R512-308. Out-of-Home Services, Guardianship Services and Placements.**

**R512-308-1. Purpose and Authority.**

(1) This rule defines guardianship services and placements. Guardianship services and placements provide a permanent, safe living arrangement for a child [in the court ordered custody of Child and Family Services] when it is not appropriate for the child to return home, adoption has been ruled out as a permanency goal, and continuing agency custody is not in the child's best interest.

(2) Guardianship services are authorized by Section [62A-4a-105]80-2-301.

(3) This rule is authorized by Section [62A-4a-102]80-2-302.

**R512-308-2. Definitions.**

(1) "Child and Family Services" means the Division of Child and Family Services.

(2) "Child and Family Team" has the same meaning as defined in Rule R512-301.

(3) "Guardian" has the same meaning as defined in Section 80-1-102.

**R512-308-3. General Guardianship Qualifying Factors.**

(1)(a) Guardianship services refer to services provided to both relatives and non-relatives who are seeking legal guardianship. The following factors must be met to qualify for guardianship services.

([a]b) The child cannot safely return home. This requirement is met if the court determines that reunification with the child's parents is not possible or appropriate and the Child and Family Team and regional screening committee agree that adoption is not an appropriate plan for the child.

([b]c) The parent and child have a significant bond but the parent cannot provide ongoing care for the child, such as an emotional, mental, or physical disability, and the child's current caregiver has committed to raising the child to the age of majority and to facilitate visitation with the parent.

([e]d) The prospective guardian must:

(i) be able to maintain a stable relationship with the child;

(ii) have a strong commitment to providing a safe and stable home for the child on a long-term basis;

(iii) have a means of financial support;

(iv) have connections to community resources to assist with the care of the child; and

(v) be able to care for the child without Child and Family Services supervision.

([d]e) The child has no ongoing care or financial needs beyond basic maintenance and does not require the services of a case manager.

([e]f) There are compelling reasons why the child cannot be adopted, such as when the child's tribe has exclusive jurisdiction or the tribe has chosen to intervene in the adoption proceedings:

(i) under the Indian Child Welfare Act, 25 USC Section 1913, a tribe has the right to determine the child's permanency; and

(ii) for this reason, the tribe has the authority to approve guardianship with the current caregiver.

**R512-308-4. Non-Relative Qualifying Factors.**

In addition to general qualifying factors, the following factors apply to non-relatives who are seeking legal guardianship.

(1) The prospective guardian is a licensed out-of-home care provider.

(2) The child has lived for at least six months in the home of the prospective guardian. The region director or designee may waive the six-month placement requirement for sibling groups if at least one sibling has been in the home for six months and meets other eligibility criteria.

(3) A Child and Family Team has reviewed the home study and assessed the placement and found that continuation with the caregiver is in the child's best interest and supports the safety, permanency, and well-being of the child.

(4) Child and Family Services has no concerns with the care the child has received in the home.

(5) Child and Family Services has observed that the child has a stable and positive relationship with the prospective guardian.

**R512-308-5. Relative Qualifying Factors.**

In addition to general qualifying factors, the following factors apply for relatives to seek legal guardianship.

(1) The child's prospective guardian is a relative to the child who meets the relationship requirements of the Department of Workforce Services Specified Relative Program, as outlined in Section R986-200-214.

(2) The child's needs may be met without continued Child and Family Services funding.

**R512-308-6. Guardianship Subsidy Availability, Scope, Duration.**

(1) Guardianship subsidies are available to meet the needs for children in out-of-home care:

(a) for whom guardianship has been determined as the most appropriate primary goal;

(b) who do not otherwise have adequate resources available for the child's care and maintenance; and

(c) who meet the qualifying factors described in this rule.

(2) For prospective guardians who are also relatives of the child, the caseworker must be provided with a copy of a denial letter or other written proof obtained from the Department of Workforce Services verifying that the prospective guardian does not meet the requirements for the Specified Relative Grant. To be considered for a guardianship subsidy, the prospective guardian must be a licensed out-of-home care provider.

(3) ~~[The request for the guardianship subsidy shall be reviewed by the regional guardianship screening committee and regional administration.]~~ The regional guardianship subsidy screening committee and regional administration shall determine if the request is approved or denied.

(4) A prospective guardian ~~[shall]~~ may not receive both the Specified Relative Grant and the guardianship subsidy. If a prospective guardian is found to be receiving both a Specified Relative Grant and guardianship subsidy for the same child, the caseworker will notify the Department of Workforce Services and appropriate actions may be taken by the Department of Workforce Services for repayment.

(5) Guardianship subsidies are available through the month in which the child reaches age 18 years.

(6) Each region may establish a limit to the number of eligible children who may receive guardianship subsidies.

(7) Guardianship subsidies are subject to the availability of state funds designated for this purpose.

#### **R512-308-7. Regional Guardianship Subsidy Screening Committee.**

(1) Each region shall establish at least one regional guardianship subsidy screening committee. This committee may be combined with another appropriate committee, such as the adoption subsidy committee or placement committee.

(2) The regional guardianship subsidy screening committee shall be comprised of at least five members. A minimum of three members must be present for making decisions regarding a guardianship subsidy. Decisions shall be made by consensus.

(3) The regional guardianship subsidy screening committee is responsible to:

- (a) verify that a child qualifies for a guardianship subsidy;
- (b) approve the level of need and amount of monthly subsidy for initial requests, changes, and renewals;
- (c) document the committee's decisions; and
- (d) inform guardians of available supportive services to prevent disruptions and preserve permanency.

#### **R512-308-8. Determining Guardianship Subsidy Amounts.**

(1) The regional guardianship subsidy screening committee will determine the subsidy amount by considering the special needs of the child and the circumstances of the guardian family. The subsidy amount ~~[shall]~~ may not exceed the amounts specified in this section. The caseworker presents to the committee information regarding the special needs of the child, the guardian family's income and expenses, and the guardian family's special circumstances.

(2) The following factors must be considered when determining the amount of the monthly subsidy to be granted:

- (a) all sources of financial support for the child, including supplemental security income, Social Security benefits, and other benefits; and
- (b) the regional guardianship subsidy committee may require verification of financial support:

(i) if a child is receiving benefit income and the income can continue after guardianship is granted, this amount will be deducted from the guardianship subsidy amount; and

(ii) the guardianship subsidy should not replace other available income, such as supplemental security income or Social Security benefits.

(3)(a) A guardianship subsidy will not exceed the amounts indicated, and may be less based upon the ongoing needs of the child and the needs of the guardian family.

([a]b)(i) Guardianship I is for a child who may have mild to moderate medical needs, psychological, emotional, or behavioral problems, and who requires parental supervision and care.

([i]ii) The amount of guardianship subsidy for a child whose needs are within Guardianship I may be any amount up to the lowest Foster Care Level 1 (FC1) rate that was in effect when the child exited custody.

([i]iii) The age of the child is not considered when determining the amount of the guardianship subsidy.

([b]c)(i) Guardianship II is for a child who may be physically disabled, developmentally delayed, medically needy or medically fragile, or have a serious emotional disorder.

([i]ii) The amount of the Guardianship II subsidy may range from the lowest FC1 rate to the lowest Foster Care Level 2 (FC2) rate that was in effect when the child exited custody; and

([i]iii) The age of the child is not considered when determining the amount of the guardianship subsidy.

(4) Children who were placed in Foster Care Level II or higher, such as FC3, group homes, and residential facilities, at the time of exit are considered for the Guardianship II rate.

(5) Guardianship subsidies may not exceed the Guardianship II rate.

(6) Funds for guardianship subsidies are funded with state general funds. A region has the discretion to limit the number of guardianship subsidies or reduce guardianship subsidy rates based on the availability of funds.

(7)(a) The process for changing the amount of the guardianship subsidy is as follows.

([a]b) The amount of a guardianship subsidy awarded does not automatically increase when there is an out-of-home care rate change or as the child ages.

([b]c)(i) A guardian may request a guardianship subsidy review when seeking an increase in the guardianship subsidy amount, not to exceed the maximum amount allowable for the child's level of need.

([i]ii) The guardian must complete the form designated by Child and Family Services and provide documentation to justify the request.

([i]iii) The request must be reviewed and approved by the regional guardianship subsidy screening committee.

([i]iv) If approved, a new guardianship subsidy agreement will be completed.

([e]d) Child and Family Services may reduce a guardianship subsidy rate due to inadequate state general funds.

([e]e) Child and Family Services must provide a written Notice of Agency Action by certified mail at least 30 days in advance if a guardianship subsidy rate is going to be reduced.

#### **R512-308-9. Guardianship Subsidy Agreement.**

(1) A guardianship subsidy agreement specifies the terms for financial support for the child's basic needs and may be for a duration of no longer than three years.



## NOTICES OF PROPOSED RULES

(2) A guardianship subsidy worker will complete the guardianship subsidy agreement.

(3) The effective date of the initial agreement is the date of the court order granting guardianship.

(4) A guardianship subsidy agreement must:

- (a) be signed by the guardian and a Child and Family Services designee before any payments being made;
- (b) identify the reason a subsidy is needed;
- (c) list the amount of the monthly payment;
- (d) identify dates the agreement is in effect;
- (e) identify responsibilities of the guardian;
- (f) identify under what circumstances the agreement may be amended or terminated and the time period for reviews;

(g) include a provision for a reduction or termination in the amount of the guardianship subsidy in the event a legislative or executive branch action affects Child and Family Services' budget or expenditure authority, making it necessary for Child and Family Services to reduce or terminate guardianship subsidies, or if a regional office determines that reduction is necessary due to regional budget constraints;

(h) include a provision for assignment of benefits to the Office of Recovery Services in accordance with the Office of Recovery Services requirements; and

(i) include a provision for correction of any under or overpayment that was made in error or that was incorrectly paid to the guardian by the Department of Health and Human Services or Child and Family Services.

### **R512-308-10. Notification Regarding Changes.**

The guardianship subsidy agreement shall also include provisions for the guardian to notify Child and Family Services if:

- (1) There is no longer a need for a guardianship subsidy.
- (2) The guardian is no longer legally responsible for the support of the child.
- (3) The guardian is no longer providing any financial support for the child or is providing reduced financial support for the child.
- (4) The child no longer resides with the guardian.
- (5) The guardian has a change in address.
- (6) The child has run away.
- (7) The guardian is planning to move out of Utah.

### **R512-308-11. Reviews and Renewals.**

(1) A guardianship subsidy worker will review each guardianship subsidy agreement annually and will consider:

- (a) the family situation;
- (b) the child's needs; and
- (c) the amount of the guardianship subsidy payment;

(2) Before review, the guardian must complete the form designated by Child and Family Services for Guardianship Subsidy Recertification to verify that the guardian continues to support the child. If the form is not received after adequate notice, the guardianship subsidy may be delayed or terminated.

(3) For guardianship assistance payments to continue, this agreement shall be renewed at intervals of up to three years until the child's 18th birthday.

(4) Written notification of the need to renew the agreement shall be provided to the guardians no less than 60 days before the next renewal date. Child and Family Services shall supply the guardian with the appropriate forms for renewal.

(5) Child and Family Services and the guardian may negotiate the terms of a new agreement at any time. To be effective, new agreements shall be in writing, on a form designated by Child and Family Services, and signed by the parties. Oral modifications or agreements shall neither bind the Department of Health and Human Services or Child and Family Services nor the guardian.

### **R512-308-12. Appeals and Fair Hearings.**

(1) When a decision is made to deny, reduce, or terminate a guardianship subsidy, Child and Family Services shall send by certified mail a written Notice of Agency Action.

(2) The notice shall include information about how to request a fair hearing.

### **R512-308-13. Termination.**

(1) A guardianship subsidy agreement will be terminated if any of the following circumstances occur:

- (a) the terms of the agreement are concluded;
- (b) the guardian requests termination;
- (c) the child reaches age 18 years;
- (d) the child dies;
- (e) the guardian dies or, in a two-parent family, if both guardian parents die;
- (f) the guardians' legal responsibility for the child ceases;
- (g) Child and Family Services determines that the child is no longer receiving financial support from the guardian;
- (h) the child marries;
- (i) the child enters the military;
- (j) the child is adopted;[
- ~~(k) the child is placed in out-of-home care;]~~ or
- ~~(i)k~~ Child and Family Services determines that funding restrictions prevent continuation of subsidies for guardians.

(2) A guardianship subsidy agreement will be suspended and reviewed for possible termination if any of the following circumstances occur:

- (a) the child is incarcerated for more than 30 days;
- (b) the child is out of the home for more than a 30-day period or is no longer living in the home;
- (c) the guardian fails to complete the renewed guardianship subsidy agreement within five working days of the renewal date; or
- (d) there is a supported finding of child abuse or neglect against the guardian.

(3) The decision to terminate or suspend a guardianship subsidy payment shall be made by the regional guardianship subsidy screening committee.

### **KEY: out-of-home care, guardianship**

**Date of Last Change:** 2023~~[March 11, 2022]~~

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

**Authorizing, and Implemented or Interpreted Law:** ~~[62A-4a-102; 62A-4a-105]~~80-1-102; 80-2-301; 80-2-302

### **NOTICE OF PROPOSED RULE**

**TYPE OF FILING:** Repeal

**Rule or Section Number:**

**R515-1**

**Filing ID:**  
**56066**

**Agency Information**

<b>1. Department:</b>	Health and Human Services	
<b>Agency:</b>	Child Protection Ombudsman (Office of)	
<b>Room number:</b>	MASOB 1091	
<b>Building:</b>	Multi-Agency State Office Building	
<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>
Angie McCourt	385-505-3502	amccourt@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>
R515-1. Processing Complaints Regarding the Utah Division of Child and Family Services
<b>3. Purpose of the new rule or reason for the change:</b>
The purpose of this filing is to repeal this rule entirely and remove Title R515, Human Services, Ombudsman (Office of) from the Departments' administrative code.
This rule, R515-1 Processing Complaints Regarding the Utah Division of Child and Family Services, will now exist under Title R500, as R500-1 Processing Complaints Regarding the Utah Division of Child and Family Services.
The Department of Health and Human Services (Department) has simultaneously filed proposed Rule R500-1. This is in an effort to consolidate rule titles within the Department and allow all of the Office of Ombudsman's rules to exist under a single title.
<b>4. Summary of the new rule or change:</b>
This filing repeals Rule R515-1, as the Department has opted to propose the content of this rule as a new rule, under Title R500.
(EDITOR'S NOTE: The proposed new Rule R500-1 is under ID 56065 in this issue, November 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 the provisions of this rule are being moved and are not being changed in any way that would result in a fiscal impact.

**B) Local governments:**

There is no impact on local governments as the provisions of this rule are being moved and are not being changed in any way that would result in a fiscal impact.

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

There is no impact on small businesses as the provisions of this rule are being moved and are not being changed in any way that would result in a fiscal impact.

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

There is no impact on non-small businesses as the provisions of this rule are being moved and are not being changed in any way that would result in a fiscal impact.

**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 non-small businesses as the provisions of this rule are being moved and are not being changed in any way that would result in a fiscal impact.

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

There is no impact on affected persons as the provisions of this rule are being moved and are not being changed in any way that would result in compliance costs.

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

<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>



# NOTICES OF PROPOSED RULES

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 80-2-1104

## 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:** 12/15/2023

**9. This rule change MAY become effective on:** 12/22/2023

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>	10/30/2023
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**R515. Human Services, Child Protection Ombudsman (Office of).**

~~**R515-1. Processing Complaints Regarding the Utah Division of Child and Family Services.**~~

~~**R515-1-1. Purpose.**~~

~~(1) The purpose of this rule is to outline the processing of complaints regarding the Utah Division of Child and Family Services.~~

~~**R515-1-2. Statutory Authority.**~~

~~(1) Pursuant to Section 62A-4a-208, the Office of Child Protection Ombudsman is authorized to receive and investigate complaints regarding the Utah Division of Child and Family Services and develop rules relating to Office procedures.~~

~~**R515-1-3. Definitions.**~~

~~(1) "Ombudsman's Office" means the Office of Child Protection Ombudsman.~~

~~(2) "Complainant" means a person who files a complaint with the Ombudsman's Office.~~

~~(3) "Division" means the Utah Division of Child and Family Services.~~

~~(4) "Services Review Analyst" means an employee of the Ombudsman's Office assigned to conduct investigations of complaints.~~

~~(5) "Complaint" means a grievance filed with the Ombudsman's Office regarding the Division or its employees.~~

~~**R515-1-4. Receiving and Processing Complaints.**~~

~~(1) The complainant may file a written, oral, or electronic complaint with the Ombudsman's Office no later than 18 months from the date of the alleged circumstances giving rise to the complaint.~~

~~(2) The complaint shall include:~~

~~(a) a summary of the alleged circumstances giving rise to the complaint;~~

~~(b) the names of persons involved in the complaint;~~

~~(c) a summary of the actions taken by the complainant to resolve the complaint;~~

~~(d) the anticipated outcome the complainant is seeking; and~~

~~(e) the complainant may request that the Ombudsman's Office conduct an investigation of the complaint.~~

~~(3) If there has been no attempt to resolve the complaint with the Division, the Ombudsman's Office may refer the complaint to the Division for a response.~~

~~(4) If the complaint remains unresolved after referral back to the Division, the Ombudsman's Office may review the records and may contact the involved parties. The Ombudsman's Office shall make reasonable efforts to facilitate resolution with the Division and the complainant.~~

~~(5) If the complaint remains unresolved after efforts by the Ombudsman's Office to facilitate resolution, the Ombudsman's Office shall determine whether to investigate the complaint, and shall notify the complainant in writing of the decision made to accept or deny the investigation request.~~

~~(6) If an investigation request is accepted the Services Review Analyst shall:~~

~~(a) interview the complainant and gather information as necessary to determine the validity of the complaint;~~

~~(b) document the findings of the investigation; and~~

~~(c) make recommendations to the Division to address the complaints found to be valid as needed. The Division must respond in accordance with Section R512-75-4.~~

~~(7) The investigation will be completed within 180 days from the date of filing the complaint, taking into consideration extenuating circumstances such as the complexity of the case or workload.~~

~~(8) The Ombudsman's Office will notify the complainant in writing upon the completion of the investigation.~~

~~(9) If a complaint indicates there is an immediate risk to the safety of a child or children, the Ombudsman's Office will immediately notify the Division.~~

~~KEY: complaint, DCFS, ombudsman, investigation~~

~~Date of Last Change: June 1, 2020~~

~~Notice of Continuation: June 30, 2015~~

~~Authorizing, and Implemented or Interpreted Law: 62A-4a-208(4)~~

## NOTICE OF PROPOSED RULE

**TYPE OF FILING:** Repeal

<b>Rule or Section Number:</b>	<b>R523-1</b>	<b>Filing ID:</b> <b>56051</b>
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### Agency Information

<b>1. Department:</b>	Health and Human Services	
<b>Agency:</b>	Substance Use and Mental Health	
<b>Building:</b>	Cannon Health Building	
<b>Street address:</b>	288 N 1460 W, 3rd Floor	
<b>City, state and zip:</b>	Salt Lake City, UT 84116	
<b>Contact persons:</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Thomas Dunford	801-538-4181	tdunford@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>
R523-1. General Provisions
<b>3. Purpose of the new rule or reason for the change:</b>
This rule is now redundant because the provisions of this rule are already specified in statute, other rules, or are incorporated in the office directives and contracting process.
<b>4. Summary of the new rule or change:</b>
Rule R523-1 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>
Repeal of this rule does not change any of the services described within this rule, therefore, no cost savings or increases are expected.

### B) Local governments:

Local governments will still be required to meet all the programmatic service standards established in this rule, so no additional cost or savings will be realized from the repeal of this rule.

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

Repeal of this rule does not change any of the services described within this rule, therefore, no cost savings or increases to small businesses are expected.

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

Repeal of this rule does not change any of the services described within this rule, therefore, no cost savings or increases to non-small businesses are expected.

### 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**):

Repeal of this rule does not change any of the services described within this rule, therefore, no cost savings or increases to persons other than small businesses, non-small businesses, state, or local government entities are expected.

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

Repeal of this rule does not change any of the services described within this rule, therefore, no cost savings or increases are expected.

### 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 62A-15-105		
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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>	12/15/2023
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<b>9. This rule change MAY become effective on:</b>	12/22/2023
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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>	10/30/2023
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**R523. Human Services, Substance Abuse and Mental Health.**

**[R523-1. General Provisions.]**

**~~R523-1-1. Authority.~~**

~~This rule establishes procedures and standards for administration of substance use disorder and mental health services as granted by Section 62A-15-105.~~

**~~R523-1-2. Purpose.~~**

~~(1) The purpose of this rule is to:~~

~~(a) Define the continuum of substance use disorder services;~~

~~(b) Clarify funding for Medical detoxification programs; and~~

~~(c) Adopt the American Society of Addiction Medicine (ASAM) Patient Placement Criteria to determine the level of care provided to all individuals served by programs provided by or contracted with the Division or county local authorities.~~

**~~R523-1-3. Continuum of Services.~~**

~~(1) Prevention means a proactive comprehensive approach to reduce risk factors and promote protective factors of substance use disorders and mental illness. The comprehensive approach is to include services in universal, selective, and indicated settings across a broad array of activities, programs, and strategies.~~

~~(2) Substance Use Disorder Treatment means those services which target individuals or families who are functionally impaired psychologically, physically, or socially in association with the patterned misuse of or dependence on alcohol, tobacco, or other drugs. This includes only those individuals upon whom a written consumer record, as defined in licensing standards (Rule R501-2-5) as adopted by the Division of Substance Abuse and Mental Health, is maintained.~~

~~(3) Mental Health services means a broad array of activities directly or indirectly related to mental well-being and includes promotion of well-being, the prevention of mental disorders, and the treatment and rehabilitation of people affected by mental disorders.~~

~~(4) Recovery Support Services means those services or activities provided before, during or after completion of acute treatment services to enhance a person's ability to either attain or retain their recovery from either mental health or substance use disorders.~~

**~~R523-1-4. Funding of Medical Detoxification Programs.~~**

~~Medical detoxification programs shall not be funded by the Division on an ongoing basis.~~

**~~R523-1-5. Use of Standard Criteria.~~**

~~(1) All contractors and subcontractors shall conduct an assessment of each client to determine the degree of severity of any substance use disorder. This assessment shall evaluate the client's status in the following dimensions:~~

~~(a) Risk of acute psychosis, intoxication/withdrawal;~~

~~(b) Biomedical conditions or complications;~~

~~(c) Emotional, Behavioral Cognitive Conditions;~~

~~(d) Readiness to change;~~

~~(e) Relapse, continued use or continued problem potential;~~

~~and~~

- ~~(f) Recovery environment.~~  
~~(2) The assessment shall include relevant information on the client's:~~  
~~(a) Substance use history, and any treatment history;~~  
~~(b) Legal status; and~~  
~~(c) Criminogenic Risk and needs.~~  
~~(3) The placement decisions for all patients treated in programs funded by or contracting with the Division of Substance Abuse and Mental Health or subcontracted to any local authority shall be based upon the current placement criteria developed by the American Society of Addiction Medicine (ASAM).~~  
~~(4) Documentation of the use of ASAM placement criteria must be included in each patient's record.~~

~~KEY: substance disorder, financing of programs, service continuum, assessment instruments~~  
~~Date of Last Change: December 22, 2015~~  
~~Notice of Continuation: December 8, 2020~~  
~~Authorizing, and Implemented or Interpreted Law: 62A-15-105]~~

## NOTICE OF PROPOSED RULE

**TYPE OF FILING:** Repeal and Reenact

<b>Rule or Section Number:</b>	<b>R547-13</b>	<b>Filing ID:</b> <b>55914</b>
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### Agency Information

<b>1. Department:</b>	Health and Human Services	
<b>Agency:</b>	Juvenile Justice and Youth Services	
<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>
Reg Garff	801-602-6261	rgarff@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>
R547-13. Guidelines for Admission to Secure Youth Detention Facilities
<b>3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?):</b>
This rule aligns the standards and practices for admission to secure youth detention facilities with the current statute.
<b>4. Summary of the new rule or change (What does this filing do? If this is a repeal and reenact, explain the substantive differences between the repealed rule and the reenacted rule):</b>

This amendment will bring this rule up-to-date with current statute.

These changes also bring this rule in-line with the Rulewriting Manual for Utah.

### 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 because these changes will not impact existing operations.

This repeal and reenact will not substantively impact existing operations.

##### B) Local governments:

There are no anticipated costs or savings because these changes do not impact local governments.

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

There are no anticipated costs or savings because these changes do not impact small businesses.

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

There are no anticipated costs or savings because these changes do 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**):

There are no anticipated compliance costs for affected persons.

These changes will not substantively impact existing operations.

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

There are no anticipated compliance costs for affected persons.

These changes will not substantively impact existing operations.

##### 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 26B-1-202	Section 80-5-202	

**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>	12/15/2023

<b>9. This rule change MAY become effective on:</b>	12/22/2023
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>	10/22/2023
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~~**R547- Human Services, Juvenile Justice Services.**~~~~**R547-13. Guidelines for Admission to Secure Youth Detention Facilities.**~~~~**R547-13-1. Authority.**~~

~~Section 62A-1-111 authorizes the Department of Human Services to adopt administrative rules.~~

~~**R547-13-2. Purpose and Scope.**~~

~~(1) This rule establishes guidelines for admission to secure detention to meet the requirements of Section 62A-7-202.~~

~~(2) This rule shall be applied to youth candidates for placement in any secure detention facilities operated by the Division of Juvenile Justice Services.~~

~~**R547-13-3. Definitions.**~~

~~(1) Terms used in this rule are defined in Sections 62A-7-101 and 78A-6-105.~~

~~(2) "Status offense" means a violation of the law that would not be a violation but for the age of the offender.~~

~~(3) "Youth" means a person age 10 or over and under the age of 21.~~

~~**R547-13-4. General Rules.**~~

~~(1) A youth under the age of 12 may not be detained in a secure detention facility, unless the youth is arrested for any of the following state or federal equivalent criminal offenses:~~

~~(a) Section 76-5-103, aggravated assault resulting in serious bodily injury to another;~~

~~(b) Section 76-5-202, aggravated murder or attempted aggravated murder;~~

~~(c) Section 76-5-203, murder or attempted murder;~~

~~(d) Section 76-5-302, aggravated kidnapping;~~

~~(e) Section 76-5-405, aggravated sexual assault;~~

~~(f) Section 76-6-103, aggravated arson;~~

~~(g) Section 76-6-203, aggravated burglary;~~

~~(h) Section 76-6-302, aggravated robbery; or~~

~~(i) Section 76-10-508.1, felony discharge of a firearm.~~

~~(2) Notwithstanding subsection (1) of this rule, no youth under the age of 10 may be detained in a secure detention facility.~~

~~(3) A youth age 12 or over may be detained in a secure detention facility if:~~

~~(a) a youth is arrested for any of the following state or federal equivalent criminal offenses:~~

~~(i) any offense that would be a felony if committed by an adult;~~

~~(ii) any attempt, conspiracy, or solicitation to commit a felony offense;~~

- ~~\_\_\_\_\_ (iii) any class A misdemeanor violation of 76-5 Part 1, offense against the person; assault and related offenses;~~
- ~~\_\_\_\_\_ (iv) any class A or B misdemeanor violation of Section 76-10-5;~~
- ~~\_\_\_\_\_ (v) a class A misdemeanor violation of Section 76-5-206, negligent homicide;~~
- ~~\_\_\_\_\_ (vi) a class A misdemeanor violation of Section 58-37-8(1)(b)(iii), a controlled substance violation;~~
- ~~\_\_\_\_\_ (vii) any criminal offense defined as domestic violence (cohabitant) by Subsections 77-36-1(4), and 78B-7-102(2) and (3);~~
- ~~\_\_\_\_\_ (viii) a class A or B misdemeanor violation of Subsection 76-6-104(1)(a) or (b), reckless burning that endangers human life;~~
- ~~\_\_\_\_\_ (ix) a class A misdemeanor violation of Section 76-6-105, causing a catastrophe;~~
- ~~\_\_\_\_\_ (x) a class A misdemeanor violation of Subsection 76-6-106(2)(b)(i)(a), criminal mischief involving tampering with property that endangers human life;~~
- ~~\_\_\_\_\_ (xi) a class A misdemeanor violation of Section 76-6-406, theft by extortion;~~
- ~~\_\_\_\_\_ (xii) a class A misdemeanor violation of Section 76-9-702.1, sexual battery;~~
- ~~\_\_\_\_\_ (xiii) a class A misdemeanor violation of Subsection 76-5-401.3(2)(c) or (d), unlawful adolescent sexual activity;~~
- ~~\_\_\_\_\_ (xiv) a class A misdemeanor violation of Section 76-9-702.5, lewdness involving a child;~~
- ~~\_\_\_\_\_ (xv) a class A misdemeanor violation of Subsection 76-9-702.7(1), voyeurism with recording device;~~
- ~~\_\_\_\_\_ (xvi) a class A misdemeanor violation of Subsection 41-6A-401.3(2), leaving the scene of an accident involving injury; and~~
- ~~\_\_\_\_\_ (xvii) a class A misdemeanor violation of Subsection 41-6A-503(1)(b)(i) or (ii), driving under the influence involving injury; driving under the influence with a passenger under 16 years of age.~~
- ~~\_\_\_\_\_ (b) The youth is an escapee or absconder from a Juvenile Justice Services secure facility or community placement.~~
- ~~\_\_\_\_\_ (c) The youth has been verified as a fugitive, absconder from probation or parole, or a runaway from another state and a formal request has been received, such as a TWX/National Crime Information Center (NCIC) or a telephone call, FAX, or email from a law enforcement officer or a verified call, FAX, or email from the institution, to hold, pending return to the other jurisdiction, whether or not an offense is currently charged.~~
- ~~\_\_\_\_\_ (4) A youth not otherwise qualified for admission to a secure detention facility may not be detained for any of the following:~~
  - ~~\_\_\_\_\_ (a) ungovernable or runaway behavior;~~
  - ~~\_\_\_\_\_ (b) neglect, abuse, abandonment, dependency, or other status requiring protection for any other reason;~~
  - ~~\_\_\_\_\_ (c) status offenses such as curfew, possession/consumption of alcohol, tobacco, minor in a tavern, truancy; or~~
  - ~~\_\_\_\_\_ (d) attempted suicide.~~

#### **R547-13-5. Juvenile Court Warrants for Custody or Pickup Orders.**

~~\_\_\_\_\_ A youth shall be admitted to a secure detention facility when a juvenile court judge or commissioner has issued a warrant for custody.~~

#### **R547-13-6. Juvenile Justice Services' Cases.**

~~\_\_\_\_\_ A youth who is on parole or involved in a trial placement from a secure facility, and who is detained solely on a warrant from the Division of Juvenile Justice Services may be held in a secure detention facility up to 48 hours excluding weekends and legal holidays.~~

#### **R547-13-7. DCFS Cases.**

~~\_\_\_\_\_ A youth in the custody or under the supervision of the Division of Child and Family Services (DCFS) cannot be held in a secure detention facility unless the youth qualifies for detention under some section of this rule.~~

#### **R547-13-8. Traffic Cases.**

~~\_\_\_\_\_ A youth brought to detention for traffic a violation cannot be held in a secure detention facility unless the youth qualifies for detention under some section of this rule.~~

#### **R547-13-9. Interstate Cases.**

~~\_\_\_\_\_ (1) Out of state youth who are escapees, absconders, and runaways shall be detained in accordance with the provisions of Subsection R547-13-4(2)(c).~~

~~\_\_\_\_\_ (2) Youth who are out of state runaways who commit any non-status criminal offense may be admitted to a secure detention facility.~~

~~\_\_\_\_\_ (3) Out of state, non-runaway youth, when brought to a secure detention facility with an alleged criminal offense, may be detained or released based on the same criteria that applies to resident youth.~~

#### **R547-13-10. Immigration Cases.**

~~\_\_\_\_\_ A youth may be detained at a secure detention facility when a lawful detainer or order is presented by United States Immigration and Customs Enforcement (ICE).~~

#### **R547-13-11. AWOL Military Personnel.**

~~\_\_\_\_\_ Absent without leave (AWOL) military personnel who are minors shall be admitted to a secure detention facility.~~

#### **R547-13-12. Home Detention.**

~~\_\_\_\_\_ (1) In accordance with Section 62A-7-202, the division establishes the following guidelines for use of home detention:~~

~~\_\_\_\_\_ (2) Home detention, is a court ordered program that is an alternative to being placed into secure detention. The youth and parent or guardian shall sign the home detention rules and expectations prior to being released from secure detention.~~

~~\_\_\_\_\_ (3) JJS staff will monitor the youth's compliance to the home detention rules and expectations and additional "special conditions" ordered by the Juvenile Court.~~

~~\_\_\_\_\_ (4) JJS will provide probation weekly updates on the youth's behavior and compliance on home detention.~~

#### **R547-13-13. Home Detention Violations.**

~~\_\_\_\_\_ (1) If a home detention violation is alleged, the home detention counselor may cause the alleged violator to be brought to a secure detention facility, request a warrant for custody, or request an expedited detention hearing to review the violations.~~

~~\_\_\_\_\_ (2) If the case involves a violator who is a runaway where a warrant for custody or pickup order has not yet been issued, a law enforcement officer may bring the violator to a secure detention facility. The home detention counselor may then transfer the minor back to the status of home detention, if appropriate, or may authorize the youth to be held in secure detention for a re-hearing.~~

~~\_\_\_\_\_ (3) A youth placed on home detention who is arrested by a law enforcement officer for an alleged non-status criminal offense shall be admitted to a secure detention facility.~~



**R547-13-14. Probation Violation—Contempt of Court—Stayed Order for Detention.**

\_\_\_\_\_ A youth may be admitted to a secure detention facility for conditions such as: an alleged probation violation, contempt of court, or a stayed order for detention when it has been ordered by a judge. When it is not possible to get a written order, verbal authorization from a judge to detention is sufficient to hold a youth in a secure detention facility.

**R547-13-15. Other Court Orders for Detention.**

\_\_\_\_\_ A youth brought to a secure detention facility pursuant to either federal or out of state court orders shall be admitted unless otherwise directed by a juvenile court judge.

**R547-13-16. Detention Risk Assessment Tool.**

\_\_\_\_\_ (1) Youth who meet the detention admission guidelines shall receive the "Detention Risk Assessment Tool" (DRAT) to inform placement decisions. Youth that score below the cutoff on the DRAT will be "diverted" and not admitted to locked detention.

\_\_\_\_\_ (2) Youth and parent or guardian will sign an "Alternative to Detention Contract" (ADC) prior to leaving detention. If the parent or guardian is unavailable, the youth will sign the ADC and be transported to the local Youth Services Center.

\_\_\_\_\_ (3) JJS staff will create a supervision plan based on the youth's recent behavior in the community, school and home. The level of supervision may include the following based on the current needs:

- \_\_\_\_\_ (a) parent or guardian restrictions;
- \_\_\_\_\_ (b) JJS staff supervision; and
- \_\_\_\_\_ (c) youth services crisis residential.

\_\_\_\_\_ (4) Youth and parent or guardian will be given a commitment to appear at meetings with probation and the Juvenile Court, and the youth's behavior and compliance to the contract will be reported to the Juvenile Court.

**R547-13-17. Authority of the Division.**

\_\_\_\_\_ To the extent permitted by this Rule and by law, the Director has full authority to limit or adjust individual admissions to a secure detention facility.]

**R547. Health and Human Services, Juvenile Justice and Youth Services.**

**R547-13. Guidelines for Admission to Secure Youth Detention Facilities.**

**R547-13-1. Purpose and Authority.**

\_\_\_\_\_ (1) Section 26B-1-202 authorizes the Department of Health and Human Services to adopt administrative rules. Subsection 80-5-202(1)(a) authorizes the Division of Juvenile Justice and Youth Services to establish standards for the admission of minors to detention.

\_\_\_\_\_ (2) This rule establishes guidelines for admission to secure detention to meet the requirements of Section 80-5-202.

\_\_\_\_\_ (3) This rule shall be applied to minor candidates for placement in any secure detention facilities operated by the division.

\_\_\_\_\_ (4) Pursuant to Subsection 80-5-202(3)(b), the division shall prioritize the use of home detention for a minor who might otherwise be held in secure detention.

**R547-13-2. Definitions.**

\_\_\_\_\_ (1) Terms used in this rule are defined in Section 80-1-102.

\_\_\_\_\_ (2) "Division" means the Division of Juvenile Justice and Youth Services.

\_\_\_\_\_ (3) "Minor" means a person age ten or over and under the age of 25.

\_\_\_\_\_ (4) "Status offense" means a violation of the law that would not be a violation but for the age of the offender.

**R547-13-3. General Rules.**

\_\_\_\_\_ (1) A minor under the age of 12 may not be detained in a secure detention facility, unless the minor is arrested for any of the following state or federal equivalent criminal offenses:

\_\_\_\_\_ (a) Section 76-5-103, aggravated assault resulting in serious bodily injury to another;

\_\_\_\_\_ (b) Section 76-5-202, aggravated murder or attempted aggravated murder;

\_\_\_\_\_ (c) Section 76-5-203, murder or attempted murder;

\_\_\_\_\_ (d) Section 76-5-302, aggravated kidnapping;

\_\_\_\_\_ (e) Section 76-5-405, aggravated sexual assault;

\_\_\_\_\_ (f) Section 76-6-103, aggravated arson;

\_\_\_\_\_ (g) Section 76-6-203, aggravated burglary;

\_\_\_\_\_ (h) Section 76-6-302, aggravated robbery; or

\_\_\_\_\_ (i) Section 76-10-508.1, felony discharge of a firearm.

\_\_\_\_\_ (2) Except as established in Subsection R547-13-3(1), no minor under the age of 10 may be detained in a secure detention facility.

\_\_\_\_\_ (3) A minor age 12 or over may be detained in a secure detention facility if:

\_\_\_\_\_ (a) a minor is arrested for any of the following state or federal equivalent criminal offenses;

\_\_\_\_\_ (i) any offense that would be a felony if committed by an adult;

\_\_\_\_\_ (ii) any attempt, conspiracy, or solicitation to commit a felony offense;

\_\_\_\_\_ (iii) any class A misdemeanor violation of 76-5 Part 1, offense against the person; assault and related offenses;

\_\_\_\_\_ (iv) any class A or B misdemeanor violation of Section 76-10-5, use of a firearm or other dangerous weapon;

\_\_\_\_\_ (v) a class A misdemeanor violation of Section 76-5-206, negligent homicide;

\_\_\_\_\_ (vi) a class A misdemeanor violation of Subsection 58-37-8(1)(b)(iii), a controlled substance violation;

\_\_\_\_\_ (vii) any criminal offense defined as domestic violence by Subsections 77-36-1(4), 78B-7-102(5)(a) and (b);

\_\_\_\_\_ (viii) a class A or B misdemeanor violation of Subsection 76-6-104(1)(a) or (b), reckless burning that endangers human life;

\_\_\_\_\_ (ix) a class A misdemeanor violation of Section 76-6-105, causing a catastrophe;

\_\_\_\_\_ (x) a class A misdemeanor violation of Subsection 76-6-106(2)(b)(i)(a), criminal mischief involving tampering with property that endangers human life;

\_\_\_\_\_ (xi) a class A misdemeanor violation of Section 76-6-406, theft by extortion;

\_\_\_\_\_ (xii) a class A misdemeanor violation of Section 76-9-702.1, sexual battery;

\_\_\_\_\_ (xiii) a class A misdemeanor violation of Subsection 76-5-401.3(2)(c) or (d), unlawful adolescent sexual activity;

\_\_\_\_\_ (xiv) a class A misdemeanor violation of Section 76-9-702.5, lewdness involving a child;

\_\_\_\_\_ (xv) a class A misdemeanor violation of Subsection 76-9-702.7(1), voyeurism with recording device;

\_\_\_\_\_ (xvi) a class A misdemeanor violation of Subsection 41-6A-401.3(2), leaving the scene of an accident involving injury; and

(xvii) a class A misdemeanor violation of Subsection 41-6A-503(1)(b)(i) or (ii), driving under the influence involving injury, driving under the influence with a passenger under 16 years of age;

(b) the minor is an escapee or absconder from a Juvenile Justice and Youth Services secure facility or community placement; or

(c) the minor has been verified as a fugitive, absconder from probation or parole, or a runaway from another state and a formal request has been received, such as a National Crime Information Center verification, a telephone call, FAX, or email from a law enforcement officer or a verified call, FAX, or email from the institution, to hold, pending return to the other jurisdiction, whether or not an offense is currently charged.

(4) A minor not otherwise qualified for admission to a secure detention facility may not be detained for any of the following:

(a) ungovernable or runaway behavior;

(b) neglect, abuse, abandonment, dependency, or other status requiring protection for any other reason;

(c) status offenses such as curfew, possession or consumption of alcohol, tobacco, minor-in-a-tavern, truancy; or

(d) attempted suicide.

#### **R547-13-5. Juvenile Court Warrants for Custody or Pickup Orders.**

A minor shall be admitted to a secure detention facility when a juvenile court judge or commissioner has issued a warrant for custody pursuant to Section 80-2-202.

#### **R547-13-6. Juvenile Justice and Youth Services' Cases.**

A minor who is on parole or involved in a trial placement from a secure facility, and who is detained solely on a warrant from the division may be held in a secure detention facility up to 48 hours excluding weekends and legal holidays.

#### **R547-13-7. DCFS Cases.**

A minor in the custody or under the supervision of the Division of Child and Family Services (DCFS) cannot be held in a secure detention facility unless the minor qualifies for detention under a section of this rule.

#### **R547-13-8. Traffic Cases.**

A minor brought to detention for a traffic violation cannot be held in a secure detention facility unless the minor qualifies for detention under a section of this rule.

#### **R547-13-9. Interstate Cases.**

(1) Out-of-state minors who are escapees, absconders, and runaways shall be detained in accordance with Subsection R547-13-3(3)(c).

(2) Minors who are out-of-state runaways brought to a secure detention facility with an alleged non-status criminal offense may be admitted to a secure detention facility.

(3) Out-of-state, non-runaway minors, when brought to a secure detention facility with an alleged criminal offense, may be detained or released based on the same criteria that applies to resident minor.

#### **R547-13-10. Immigration Cases.**

A minor may be detained at a secure detention facility when a lawful detainer or order is presented to the division by United States Immigration and Customs Enforcement.

#### **R547-13-11. AWOL Military Personnel.**

Absent without leave (AWOL) military personnel who are minors shall be admitted to a secure detention facility.

#### **R547-13-12. Home Detention.**

(1) In accordance with Section 88-2-202, the division establishes the following guidelines for use of home detention:

(2) Home detention is a court-ordered program that is an alternative to being placed into secure detention. The minor and parent or guardian shall sign the home detention rules and expectations before being released from secure detention.

(3) Division staff will monitor the minor's compliance to the home detention rules and expectations and additional "special conditions" ordered by the Juvenile Court.

(4) Division will provide juvenile court probation weekly updates on the minor's behavior and compliance on home detention.

#### **R547-13-13. Home Detention Violations.**

(1) If a home detention violation is alleged, the home detention counselor may cause the alleged violator to be brought to a secure detention facility by filing an affidavit in support of a request for a warrant for custody or requesting an expedited hearing for the court to review allegations for a probable cause determination.

(2) If the case involves a violator who is a runaway where a warrant for custody or pickup order has not yet been issued, a law enforcement officer may bring the violator to a secure detention facility. The home detention counselor may then transfer the minor back to the status of home detention, if appropriate, or may authorize the minor to be held in secure detention for another detention hearing.

(3) A minor placed on home detention who is arrested by a law enforcement officer for an alleged non-status criminal offense shall be admitted to a secure detention facility.

#### **R547-13-14. Probation Violation - Contempt of Court - Stayed Order for Detention.**

A minor may be admitted to a secure detention facility for conditions such as: an alleged probation violation, contempt of court, or a stayed order for detention when it has been ordered by a judge. When it is not possible to get a written order, verbal authorization from a judge to detention is sufficient to hold a minor in a secure detention facility pursuant to Utah Rule of Juvenile Procedure 7a. A request for warrant, supported by an affidavit from the requesting authority, shall be the next business day.

#### **R547-13-15. Other Court Orders for Detention.**

A minor brought to a secure detention facility pursuant to either federal or out-of-state court orders shall be admitted unless otherwise directed by a juvenile court judge.

#### **R547-13-16. Detention Risk Assessment Tool.**

(1) Minors who meet the detention admission guidelines shall receive the "Detention Risk Assessment Tool" (DRAT) to inform placement decisions. Minors that score below the cutoff on the DRAT will be "diverted" and not admitted to locked detention.

(2) A minor and parent or guardian will sign an "Alternative to Detention Contract" (ADC) before leaving detention. If the parent or guardian is unavailable, the minor will sign the ADC and be transported to the local Youth Services Center.

## NOTICES OF PROPOSED RULES

(3) Division staff will create a supervision plan based on the minor's recent behavior in the community, school and home. The level of supervision may include the following based on the current needs:

- (a) parent or guardian restrictions;
- (b) division staff supervision; and
- (c) youth services crisis residential.

(4) A minor and parent or guardian will sign an agreement to appear at meetings with probation and the Juvenile Court, and the minor's behavior and compliance with the agreement will be reported to the Juvenile Court.

### **R547-13-17. Authority of the Division.**

To the extent permitted by this rule and by law, the Director has full authority to limit or adjust individual admissions to a secure detention facility.

**KEY:** juvenile corrections, juvenile detention, admission guidelines, juvenile justice and youth services

Date of Last Change: ~~2023~~ **July 28, 2020**

Notice of Continuation: March 23, 2022

Authorizing, and Implemented or Interpreted Law: ~~[62A-7-202; 78A-6-112; 78A-6-113]~~ **80-5-202; 80-5-203; 80-5-204; 80-5-205**

### **NOTICE OF PROPOSED RULE**

**TYPE OF FILING:** Repeal and Reenact

<b>Rule or Section Number:</b>	<b>R590-238</b>	<b>Filing ID:</b> <b>56020</b>
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### **Agency Information**

<b>1. Department:</b>	Insurance	
<b>Agency:</b>	Administration	
<b>Room number:</b>	Suite 2300	
<b>Building:</b>	Taylorsville State Office Building	
<b>Street address:</b>	4315 S 2700 W	
<b>City, state and zip:</b>	Taylorsville, UT 84129	
<b>Mailing address:</b>	PO Box 146901	
<b>City, state and zip:</b>	Salt Lake City, UT 84114-6901	
<b>Contact persons:</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Steve Gooch	801-957-9322	sgooch@utah.gov
<b>Please address questions regarding information on this notice to the persons listed above.</b>		

### **General Information**

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

R590-238. Captive Insurance Companies

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

This rule is being changed in compliance with Executive Order No. 2021-12.

During the review of this rule, the Department of Insurance (Department) discovered a number of minor issues that needed to be amended.

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

The majority of the changes are being done to fix style issues to bring this rule text more in line with the Rulewriting Manual for Utah standards.

Other changes make the language of this rule more clear, and update the Severability section (new R590-238-20) to use the Department's current language.

The changes do not add, remove, or change any regulations or requirements.

### **Fiscal Information**

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

##### **A) State budget:**

There is no anticipated cost or savings to the state budget.

The changes are largely clerical in nature, and will not change how the Department functions.

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

There is no anticipated cost or savings to local governments.

The changes are largely clerical in nature, and will not affect local governments.

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

There is no anticipated cost or savings to small businesses.

The changes are largely clerical in nature, and will not affect small businesses.

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

There is no anticipated cost or savings to non-small businesses.

The changes are largely clerical in nature, and will not affect 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**):

There is no anticipated cost or savings to any other persons.

The changes are largely clerical 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 for any affected persons.

The changes are largely clerical 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>

**H) Department head comments on fiscal impact and approval of regulatory impact analysis:**

The Commissioner of the Department of Insurance, Jonathan T. Pike, 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 31A-2-201	Section 31A-37-106	
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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:** 12/15/2023

**9. This rule change MAY become effective on:** 12/22/2023

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>	Steve Gooch, Public Information Officer	<b>Date:</b>	10/30/2023
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#### R590. Insurance, Administration.

##### R590-238. Captive Insurance Companies.

##### ~~R590-238-1. Authority.~~

~~This rule is promulgated pursuant to the general rulemaking authority granted the insurance commissioner by Subsection 31A-2-201(3)(a) and the specific authority granted by Section 31A-37-106.~~

##### ~~R590-238-2. Purpose and Scope.~~

~~The purpose of this rule is to set forth the financial, reporting, record keeping, and other requirements which the commissioner deems necessary for the regulation of captive insurance companies, under the Captive Insurance Companies Act (the Act), Chapter 37, Title 31A. This rule applies to all captive insurance companies licensed under the Act.~~

##### ~~R590-238-3. Definitions.~~

~~(1) The definitions in Sections 31A-1-301 and 31A-37-102 apply to this rule.~~

~~(2) "Company" means a captive insurance company as defined in Section 31A-1-301.~~

~~(3) "Work Papers" or "working papers" include, but are not necessarily limited to, schedules, analyses, reconciliations, abstracts, memoranda, narratives, flow charts, copies of company records or other documents prepared or obtained by the accountant and the accountant's employees in the conduct of their audit of the company.~~

~~(4) "Captive Insurance Manager" means a person that:~~

~~(a) is on the Utah Approved Captive Management Firms list;~~

~~(b) pursuant to a written contract with a captive insurance company, provides and coordinates services including but not limited to:~~

- ~~\_\_\_\_\_ (i) accounting;~~
- ~~\_\_\_\_\_ (ii) statutory filings;~~
- ~~\_\_\_\_\_ (iii) signed annual statements; and~~
- ~~\_\_\_\_\_ (iv) coordination of related services;~~
- ~~\_\_\_\_\_ (e) acts as an intermediary that facilitates and assists the captive in meeting its statutory requirements under Title 31A.~~

**R590-238-4. Annual Reporting Requirements.**

~~\_\_\_\_\_ (1) A captive insurance company authorized in this state shall file an annual report of its financial condition with the commissioner as required by Section 31A-37-501. The report shall be verified by oath of at least two individuals who are executive officers of the company and by the captive manager or a duly appointed representative. The report shall be prepared using generally accepted accounting principles ("GAAP") and shall be filed electronically consistent with directions from the commissioner.~~

~~\_\_\_\_\_ (2) A captive insurance company shall observe the requirements of Section 31A-4-113 when it files an annual report of its financial condition. In addition, an industrial insured group shall observe the requirements of Section 31A-4-113.5 when it files an annual report.~~

~~\_\_\_\_\_ (3) All captive insurance companies are to use the "Captive Insurance Company Annual Statement Form" except Risk Retention Group (RRG) insurers and special purpose financial captives which shall use the NAIC's Annual and Quarterly Statements.~~

~~\_\_\_\_\_ (4) The Captive Insurance Company Annual Statement shall include a statement of a qualified Actuary titled "Statement of Actuarial Opinion," setting forth his or her opinion relating to loss and loss adjustment expense reserves.~~

**R590-238-5. Risk Limitation.**

~~\_\_\_\_\_ (1) The commissioner may limit the net amount of risk a captive insurance company retains for a single risk after considering the impact of the retention on the captive insurance company's capital and surplus.~~

~~\_\_\_\_\_ (2) The commissioner may also prescribe and demand additional capital and surplus of any captive insurance company if he determines that the captive insurance company is not adequately capitalized for the type, volume and nature of the risk that is being covered by the captive insurance company.~~

**R590-238-6. Annual Audit.**

~~\_\_\_\_\_ (1) All companies shall have an annual audit by an independent certified public accountant, approved by the commissioner, and shall file such audited financial report with the commissioner on or before June 30 for the preceding year. Financial statements furnished under this section shall be prepared in accordance with generally accepted auditing standards as determined by the American Institute of Certified Public Accountants ("AICPA").~~

~~\_\_\_\_\_ (2) The annual audit report shall be considered part of the company's annual report of financial condition except with respect to the date by which it must be filed with the commissioner.~~

~~\_\_\_\_\_ (3) The annual audit shall consist of the following:~~

~~\_\_\_\_\_ (a) Opinion of Independent Certified Public Accountant~~  
~~\_\_\_\_\_ (i) Financial statements furnished pursuant to this section shall be examined by independent certified public accountants in accordance with generally accepted auditing standards as determined by the AICPA.~~

~~\_\_\_\_\_ (ii) The opinion of the independent certified public accountant shall cover all years presented.~~

~~\_\_\_\_\_ (iii) The opinion shall be addressed to the company on stationery of the accountant showing the address of issuance, shall bear original manual signatures and shall be dated.~~

~~\_\_\_\_\_ (b) Report of Evaluation of Internal Controls~~

~~\_\_\_\_\_ (i) This report shall include an evaluation of the internal controls of the company relating to the methods and procedures used in the securing of assets and the reliability of the financial records, including but not limited to, controls as the system of authorization and approval and the separation of duties.~~

~~\_\_\_\_\_ (ii) The review shall be conducted in accordance with generally accepted auditing standards and the report shall be filed with the commissioner.~~

~~\_\_\_\_\_ (c) Accountant's Letter~~

~~\_\_\_\_\_ The accountant shall furnish the company, for inclusion in the filing of the audited annual report, a letter stating:~~

~~\_\_\_\_\_ (i) that he is independent with respect to the company and conforms to the standards of his profession as contained in the Code of Professional Ethics and pronouncements of the AICPA and pronouncements of the Financial Accounting Standards Board;~~

~~\_\_\_\_\_ (ii) the general background and experience of the staff engaged in the audit, including their experience in auditing captive or other insurance companies;~~

~~\_\_\_\_\_ (iii) that the accountant understands that the audited annual report and his opinions thereon will be filed in compliance with this rule.~~

~~\_\_\_\_\_ (iv) that the accountant consents to the requirements of R590-238-10;~~

~~\_\_\_\_\_ (v) that the accountant consents and agrees to make the work papers as defined in R590-238-3(3) available for review by the commissioner, his designee or his appointed agent; and~~

~~\_\_\_\_\_ (vi) that the accountant is properly licensed by an appropriate state licensing authority.~~

~~\_\_\_\_\_ (d) Financial Statements~~

~~\_\_\_\_\_ (i) The financial statements required shall be as follows:~~

~~\_\_\_\_\_ (A) balance sheet;~~

~~\_\_\_\_\_ (B) statement of gain or loss from operations;~~

~~\_\_\_\_\_ (C) statement of changes in financial position;~~

~~\_\_\_\_\_ (D) statement of cash flow;~~

~~\_\_\_\_\_ (E) statement of changes in capital paid up, gross paid in and contributed surplus and unassigned funds (surplus); and~~

~~\_\_\_\_\_ (F) notes to financial statements.~~

~~\_\_\_\_\_ (ii) The notes to financial statements shall be those required by GAAP and shall include:~~

~~\_\_\_\_\_ (A) a reconciliation of differences, if any, between the audited financial report and the statement or form filed with the commissioner;~~

~~\_\_\_\_\_ (B) a summary of ownership and relationship of the company and all affiliated corporations or companies insured by the captive; and~~

~~\_\_\_\_\_ (C) a narrative explanation of all material transactions with the company. For purposes of this provision, no transaction shall be deemed material unless it involves 3% or more of a company's admitted assets as of the December 31 next preceding.~~

~~\_\_\_\_\_ (e) Certification of Loss Reserves and Loss Expense Reserves of the company's opining actuary~~

~~\_\_\_\_\_ (i) The annual audit shall include an actuarial opinion as to the reasonableness of the company's loss reserves and loss expense reserves, unless waived by the commissioner.~~

~~\_\_\_\_\_ (ii) The individual who certifies as to the reasonableness of reserves shall be approved by the Commissioner and shall be a Fellow or Associate of the Casualty Actuarial Society and a member in good standing of the American Academy of Actuaries, for property~~

and casualty companies or a Fellow or Associate of the Society of Actuaries and a member in good standing of the American Academy of Actuaries for life and health companies.

(4) Certification under Subsection R590-238-6(3)(c) shall be in such form as the commissioner deems appropriate.

**R590-238-7. Designation of Independent Certified Public Accountant.**

(1) A certified public accountant that is retained to conduct the independent annual audit may only be appointed from the list of approved certified public accounting firms or individual certified public accountants maintained by the commissioner.

(2) A company that terminates the appointment of an independent certified public accountant retained to conduct the annual audit required in this rule shall report the name and address of the certified public accountant in writing to the commissioner within ninety days after the appointment is terminated and shall within the same period report the name and address of the certified public accountant that is subsequently retained.

**R590-238-8. Notification of Adverse Financial Condition.**

A company shall require its certified public accountant to immediately notify an officer and all members of the board of directors of the company in writing of any determination by the independent certified public accountant that the company has materially misstated its financial condition in its report to the commissioner. The company shall furnish such notification to the commissioner within five working days of receipt thereof.

**R590-238-9. Additional Deposit Requirement.**

(1) Whenever the commissioner deems that the financial condition of a company warrants additional security, the commissioner may require the company to deposit, in trust for the company, cash, securities approved by the commissioner, or an irrevocable letter of credit issued by a bank chartered by the State of Utah or a member bank of the Federal Reserve System with the commissioner.

(2) The commissioner shall return the deposit or letter of credit of a company if the company ceases to do any business only after being satisfied that all obligations of the company have been discharged.

(3) A company may receive interest or dividends from the deposit or exchange the deposits for others of equal value with the approval of the commissioner.

**R590-238-10. Availability and Maintenance of Working Papers of the Independent Certified Public Accountant.**

(1) Each company shall require its independent certified public accountant to make all work papers prepared in the conduct of the audit of the company available for review by the commissioner or his appointed agent. The company shall require that the accountant retain the audit work papers for a period of not less than seven years after the period reported upon.

(2) The review by the commissioner shall be considered an official investigation by the commissioner and all working papers obtained during the course of such investigation shall be confidential business papers and shall be classified as business confidential protected records. The company shall require that the independent certified public accountant provide photocopies of any of the working papers that the department considers relevant. The department may retain any photocopies of working papers.

**R590-238-11. Documentation Required to be Held in Utah by Licensed Captives.**

(1) All companies licensed by the commissioner as a captive insurance company, shall maintain and make ready for inspection and examination by the commissioner, or the commissioner's agent, any and all documents pertaining to the formation, operation, management, finances, insurance, and reinsurance of each company.

(2) Original documents may be kept in the offices of the company's captive manager, the company's parent, or the company itself. Accurate and complete copies shall be held in an office located in Utah that is designated by the company and approved by the commissioner.

**R590-238-12. Reinsurance.**

(1) Any company authorized to do business in this state may take credit for reserves on risks ceded to a reinsurer subject to the following limitations:

(a) No credit shall be allowed for reinsurance where the reinsurance contract does not result in the transfer of the risk or liability to the reinsurer.

(b) No credit shall be allowed, as an asset or a deduction from liability, to any ceding insurer for reinsurance unless the reinsurance is payable by the assuming insurer on the basis of the liability of the ceding insurer under the contract reinsured without diminution because of the insolvency of the ceding insurer.

(2) Reinsurance under this section shall be effected through a written agreement of reinsurance setting forth the terms, provisions and conditions governing such reinsurance.

(3) The commissioner, in his discretion, may require that complete copies of all reinsurance treaties and contracts be filed and approved by him.

**R590-238-13. Service Providers.**

No person shall act, in or from this state, as a captive insurance manager, broker, agent, or salesman, or reinsurance intermediary for captive business without the authorization of the commissioner. Application for such authorization must be on a form prescribed by the commissioner.

**R590-238-14. Directors.**

(1) Every company shall report any change in its executive officers or directors to the commissioner within thirty days after a change is made, including, in its report, a biographical affidavit of any new executive officer or director.

(2) No director, officer, or employee of a company shall, except on behalf of the company, accept, or be the beneficiary of, any fee, brokerage, gift, or other emolument because of any investment, loan, deposit, purchase, sale, payment or exchange made by or for the company. Such person may receive reasonable compensation for necessary services rendered to the company in his or her usual private, professional or business capacity.

(3) Any profit or gain received by or on behalf of any person in violation of this section shall inure to and be recoverable by the company.

**R590-238-15. Conflict of Interest.**

(1) Each company licensed in Utah is required to adopt a conflict of interest statement for officers, directors and key employees. The statement shall disclose that the individual has no outside commitments, personal or otherwise, that would divert him from his duty to further the interests of the company he represents but



this shall not preclude a person from being a director or officer in more than one insurance company.

~~\_\_\_\_\_ (2) Each officer, director, and key employee shall file a yearly disclosure with the board of directors.~~

**R590-238-16. Acquisition of Control of or Merger with Domestic Company.**

~~\_\_\_\_\_ The acquisition of control of or merger of a domestic captive insurance company shall be regulated pursuant to Section 31A-16-103.~~

**R590-238-17. Suspension or Revocation.**

~~\_\_\_\_\_ (1) The commissioner may by order suspend or revoke the license of a company or place the same on probation on the following grounds:~~

~~\_\_\_\_\_ (a) the company has not commenced business according to its plan of operation within two years of being licensed;~~

~~\_\_\_\_\_ (b) the company has ceased to carry on insurance business in or from within Utah;~~

~~\_\_\_\_\_ (c) at the request of the company; or~~

~~\_\_\_\_\_ (d) any reason provided in Section 31A-37-505.~~

~~\_\_\_\_\_ (2) Before the commissioner takes any action set forth under R590-238-17(1) the commissioner shall give the company notice in writing of the grounds on which the commissioner proposes to act, and shall afford the company a hearing as to such proposed action in accordance with Title 63G, Chapter 4, Utah Administrative Procedures Act.~~

**R590-238-18. Change of Information in Initial Application.**

~~\_\_\_\_\_ (1) Any material change in a company's business plan that was filed with the commissioner at the time of initial application and any subsequent amendment of the plan requires prior approval of the commissioner.~~

~~\_\_\_\_\_ (2) Any change in any other information filed with the initial application must be filed with the commissioner within sixty days after the change, but does not require prior approval.~~

~~\_\_\_\_\_ (3) The company shall immediately notify the commissioner upon making changes in board members or officers of the company.~~

**R590-238-19. Application and Forms.**

~~\_\_\_\_\_ (1) Any person that wants to form a captive insurance company shall make application to the commissioner for authority to conduct a captive insurance company using the form, "Application to Form a Captive Insurance Company."~~

~~\_\_\_\_\_ (2) One complete copy of the application including forms, attachments, exhibits and all other papers and documents filed as a part thereof, shall be filed electronically with the commissioner through the department's captive website, <https://insurance.utah.gov/captive>. Accompanying payments may be filed by personal delivery or mail addressed to: Office of the Commissioner, Utah Insurance Department, State Office Building, Room 3110, Salt Lake City, Utah 84114-6901, Attention: Captive Insurance Administrator, or call and pay by credit card.~~

~~\_\_\_\_\_ (3) The application shall be signed in the manner prescribed in the application. If the signature of any person is affixed pursuant to a power of attorney or other similar authority, a copy of such power of attorney or other authority shall also be filed with the application.~~

~~\_\_\_\_\_ (4) A company must include with its application, a feasibility study demonstrating the feasibility of the business plan of the company. The department may test the feasibility of the study by~~

~~examining the company's corporate records, including: charter; bylaws and minute books; verification of capital and surplus; verification of principal place of business; determination of assets and liabilities; and other factors as the commissioner deems necessary.~~

**R590-238-20. Fee Schedule. Initial Application. Renewal.**

~~\_\_\_\_\_ (1) An applicant for a certificate of authority under the captive insurance code shall pay to the commissioner a nonrefundable fee established in the department's fee rule, Section R590-102-8, for examining, investigating, and processing its initial application for license at the time the application is filed.~~

~~\_\_\_\_\_ (2) In addition, each company that is licensed by the commissioner shall pay a license fee for the initial year of registration and a renewal fee for each succeeding year in the amount established in the department's fee rule, Section R590-102-8.~~

~~\_\_\_\_\_ (3) Each company, except a captive cell company, shall pay to the commissioner an annual nonrefundable e-commerce (internet technology services) fee in the amount established in the department's fee rule, Section R590-102-24.~~

~~\_\_\_\_\_ (4) Each captive insurance company shall pay to the commissioner a nonrefundable fee in the amount established in the department's fee rule, Rule R590-102, for photocopies of documents.~~

**R590-238-21. Authorized Forms.**

~~\_\_\_\_\_ (1) The following forms are to be used for any applicant applying for a certificate of authority for a new captive insurance company and may be obtained from the department's captive administrator at (801) 538-3800:~~

~~\_\_\_\_\_ (a) "Application to Form A Captive Insurance Company;"~~

~~\_\_\_\_\_ (b) "Biographical Affidavit For Captive Insurance Company;"~~

~~\_\_\_\_\_ (c) "Utah Insurance Department Captive Insurance Company Reinsurance Exhibit;"~~

~~\_\_\_\_\_ (e) "Utah Approved Irrevocable Letter of Credit;"~~

~~\_\_\_\_\_ (f) "Statement of Economic Benefit to the State of Utah;"~~

~~\_\_\_\_\_ and~~

~~\_\_\_\_\_ (g) "Appointment Of The Insurance Commissioner For The State Of Utah As Attorney To Accept Service of Process."~~

~~\_\_\_\_\_ (2) The following forms are to be used when applying to become an Approved captive insurance company provider and are available on the department's captive website:~~

~~\_\_\_\_\_ (a) "Application for Placement on Approved Captive Insurer Management Firm List;"~~

~~\_\_\_\_\_ (b) "Application To Certify Loss And Expense For Captive Insurance Companies Captive Actuary Application;" and~~

~~\_\_\_\_\_ (c) "Application For Authorization As An Independent Certified Public Accountant For Captive Insurance Companies."~~

~~\_\_\_\_\_ (3) All captive insurance companies, except those noted in R590-238-4(2), are to use the "Captive Insurance Company Annual Statement Form."~~

~~\_\_\_\_\_ (4) A company shall file a "Statement of Economic Benefit to the State of Utah" form with its initial application and for each of the 12 months ending December 31, of each applicable year.~~

~~\_\_\_\_\_ (5) The forms indicated in Sections (2), (3), and (4) are available on the department's captive website, <https://insurance.utah.gov/captive>.~~

**R590-238-22. Severability.**

~~\_\_\_\_\_ If any provision of this rule or its application to any person or circumstance is, for any reason, held to be invalid, the remainder~~

of this rule and its application to other persons and circumstances are not affected.]

**R590-238-1. Authority.**

This rule is promulgated by the commissioner pursuant to Sections 31A-2-201 and 31A-37-106.

**R590-238-2. Purpose and Scope.**

(1) The purpose of this rule is to set forth the financial, reporting, record-keeping, and other requirements for the regulation of captive insurance companies and special purpose financial captive insurance companies.

(2) This rule applies to:

(a) a captive insurance company licensed under Title 31A, Chapter 37, Captive Insurance companies Act; and

(b) a special purpose financial captive insurance company licensed under Title 31A, Chapter 37a, Special Purpose Financial Captive Insurance Company Act.

**R590-238-3. Definitions.**

Terms used in this rule are defined in Sections 31A-1-301, 31A-37-102, and 31A-37a-102. Additional terms are defined as follows:

(1) "AICPA" means the American Institute of Certified Public Accountants.

(2) "Captive insurance manager" means a person who:

(a) is on the Utah Approved Captive Management Firms list, available on the department's website, <https://insurance.utah.gov/captive>;

(b) pursuant to a written contract with a company, provides and coordinates services including:

(i) accounting;

(ii) statutory filings;

(iii) signed annual statements; and

(iv) coordination of related services; and

(c) acts as an intermediary that facilitates and assists the company in meeting its statutory requirements under Title 31A, Insurance Code.

(3) "Company" means:

(a) a captive insurance company as defined in Section 31A-1-301; and

(b) a special purpose financial captive insurance company as defined in Section 31A-37a-102.

(4) "GAAP" means generally accepted accounting procedures.

(5) "Work papers" or "working papers" include schedules, analyses, reconciliations, abstracts, memoranda, narratives, flow charts, copies of company records, or other documents prepared or obtained by the accountant and the accountant's employees in the conduct of their audit of the company.

**R590-238-4. Annual Reporting Requirements.**

(1) A company shall file an annual report of its financial condition with the commissioner as required by Section 31A-37-501.

(2) The report required in Subsection (1) shall be:

(a) verified by oath of at least two individuals who are executive officers of the company and by the captive manager or a appointed representative;

(b) prepared using GAAP; and

(c) filed electronically using the department's website, <https://insurance.utah.gov/captive>.

(3)(a) A company, except for a company under Subsection (3)(b), shall use the Captive Insurance Company Annual Statement Form.

(b) A risk retention group and a special purpose financial captive shall use the NAIC's Annual and Quarterly Statements.

(4) An annual report shall include a Statement of Actuarial Opinion setting forth the qualified actuary's opinion relating to loss and loss adjustment expense reserves.

**R590-238-5. Annual Audit.**

(1) A company shall have an annual audit by an independent certified public accountant, approved by the commissioner, and shall file the annual audit report with the commissioner on or before June 30 for the preceding year.

(2) The annual audit report is part of the company's annual report of financial condition except for the date by which it must be filed with the commissioner.

(3) The annual audit report shall include:

(a) an opinion of an independent certified public accountant that:

(i) includes financial statements examined by the independent certified public accountant in accordance with GAAP, as determined by the AICPA;

(ii) covers all years presented; and

(iii) is on the accountant's stationery showing the address of issuance, date of issuance, and bearing original signatures;

(b) a report of evaluation of internal controls, including:

(i) an evaluation of the methods and procedures used in the securing of assets and the reliability of the financial records, including controls of the system of authorization and approval, and the separation of duties; and

(ii) a review conducted in accordance with GAAP and filed with the commissioner;

(c) an accountant's letter furnished to the company, for inclusion in the filing of the audited annual report, stating:

(i) that the accountant is independent from the company and conforms to the standards of the accountant's profession as contained in the Code of Professional Ethics and pronouncements of the AICPA and pronouncements of the Financial Accounting Standards Board;

(ii) the general background and experience of the staff engaged in the audit, including their experience in auditing captive or other insurance companies;

(iii) that the accountant understands that the audited annual report and the accountant's opinions thereon will be filed in compliance with this rule;

(iv) that the accountant consents to the requirements of Section R590-238-9;

(v) that the accountant consents and agrees to make the work papers available for review by the commissioner, the commissioner's designee, or the commissioner's appointed agent; and

(vi) that the accountant is properly licensed by an appropriate state licensing authority;

(d) financial statements, including:

(i) a balance sheet;

(ii) a statement of gain or loss from operations;

(iii) a statement of changes in financial position;

(iv) a statement of cash flow;

(v) a statement of changes in capital paid up, gross paid in, and contributed surplus and unassigned funds; and

(vi) notes to financial statements required by GAAP, including:

(A) a reconciliation of any differences between the audited financial report and the statement or form filed with the commissioner;

(B) a summary of ownership and relationship of the company and all affiliated corporations or companies insured by the captive; and

(C) a narrative explanation of each material transaction with the company that involves 3% or more of a company's admitted assets as of the December 31 next preceding; and

(e) a certification of loss reserves and loss expense reserves of the company's opining actuary, including:

(i) an actuarial opinion of the reasonableness of the company's loss reserves and loss expense reserves, unless waived by the commissioner; and

(ii) a certification by the individual who certifies the reasonableness of reserves.

(4) The actuary who certifies the reasonableness of reserves under Subsection (3)(e) shall be:

(a) approved by the commissioner;

(b) a member in good standing of the American Academy of Actuaries; and

(c) a fellow or an associate of:

(i) the Casualty Actuarial Society, for property and casualty companies; or

(ii) the Society of Actuaries, for life and health companies.

(5) A certification under Subsection (3)(e) shall be in a form prescribed by the commissioner.

#### **R590-238-6. Designation of Independent Certified Public Accountant.**

(1) A company shall appoint an independent certified public accountant retained to conduct the independent annual audit from the list of approved certified public accounting firms or individual certified public accountants maintained by the commissioner.

(2) A company that terminates the appointment of an independent certified public accountant retained to conduct the annual audit required in this rule shall, within 90 days of termination, report to the commissioner in writing:

(a) the name and address of the certified public accountant that is terminated; and

(b) the name and address of the certified public accountant that is subsequently retained.

#### **R590-238-7. Notification of Adverse Financial Condition.**

(1) A company shall require an independent certified public accountant to immediately notify an officer and the board of directors, in writing, of any determination that the company has materially misstated its financial condition in its report to the commissioner.

(2) The company shall notify the commissioner of the adverse financial condition within five business days.

#### **R590-238-8. Additional Capital Requirement.**

(1) If the commissioner determines that the financial condition of a company warrants additional capital, the commissioner may require the company to deposit, in trust for the company:

(a) cash;

(b) a security approved by the commissioner; or

(c) an irrevocable letter of credit issued by a bank, as defined in Section 7-1-103.

(2) The commissioner shall return the deposit or letter of credit if the company ceases to do business, but only after being satisfied that the company has discharged all of its obligations.

(3) A company may receive interest or dividends from the deposit or exchange of the deposits for another deposit of equal value, upon approval of the commissioner.

#### **R590-238-9. Availability and Maintenance of Working Papers of the Independent Certified Public Accountant.**

(1) A company's independent certified public accountant shall:

(a) make available for review by the commissioner, or the commissioner's appointed agent, all work papers prepared in the conduct of the audit or examination of the company;

(b) retain the work audit papers for a period of not less than seven years after the period reported upon; and

(c) provide photocopies of any working papers that the department considers relevant to its audit or examination.

(2) The department may retain photocopies of any working papers.

#### **R590-238-10. Documentation Required to be Held in Utah by a Licensed Captive.**

(1)(a) A company shall maintain and make available for inspection by the commissioner, or the commissioner's appointed agent, all documents pertaining to the formation, operation, management, finances, insurance, and reinsurance of each company.

(b) A company shall keep the original documents in the offices of the company's captive manager, the company's parent, or the company itself.

(2) A company shall hold complete copies of the documents under Subsection (1)(a) in an office located in Utah that is designated by the company and approved by the commissioner.

#### **R590-238-11. Reinsurance.**

(1) A company may take credit for reserves on risks ceded to a reinsurer subject to the following limitations:

(a) credit may not be allowed for reinsurance when the reinsurance contract does not result in the transfer of the risk or liability to the reinsurer; and

(b) credit may not be allowed, as an asset or a deduction from liability, to a ceding insurer for reinsurance unless the reinsurance is payable by the assuming insurer based on the liability of the ceding insurer under the contract reinsured without diminution because of the insolvency of the ceding insurer.

(2) Reinsurance is effected through a written agreement of reinsurance setting forth the terms, provisions, and conditions governing the reinsurance.

(3) The commissioner may require that complete copies of all reinsurance treaties and contracts be filed and approved.

#### **R590-238-12. Service Providers.**

(1) A person may not act, in or from this state, as a captive insurance manager, broker, agent, salesperson, or reinsurance intermediary for captive business without the commissioner's authorization.

(2) An application for authorization shall be on a form prescribed by the commissioner.

**R590-238-13. Directors and Managers.**

(1) A company shall report any change in any executive officer, director, or manager to the commissioner within 30 days and shall include in its report a biographical affidavit of any new executive officer, director, or manager.

(2) An officer, director, manager, or employee of a company may not, except on behalf of the company, accept or be the beneficiary of any fee, brokerage, gift, or other emolument because of any investment, loan, deposit, purchase, sale, payment, or exchange made by or for the company.

(3) An officer, director, manager, or employee may receive reasonable compensation for necessary services provided to the company in their usual private, professional, or business capacity.

(4) Any profit or gain received by or on behalf of a person in violation of Subsection (2) shall inure to the company.

**R590-238-14. Conflict of Interest.**

(1)(a) A company shall adopt a conflict of interest statement for its directors, managers, and key employees.

(b) The conflict of interest statement shall disclose that the individual has no outside commitments, personal or otherwise, that would divert the individual from the individual's duty to further the interests of the company.

(c) The conflict of interest statement does not preclude an individual from being an officer, director, or manager in more than one insurance company.

(2) Each officer, director, manager, and key employee shall file a yearly disclosure with the board of directors.

**R590-238-15. Suspension or Revocation.**

(1) In addition to the grounds in Section 31A-37-505, the commissioner may suspend or revoke the license of a company or place a company on probation for the following reasons:

(a) the company has not commenced business according to its plan of operation within two years of being licensed;

(b) the company ceased to carry on insurance business in or from Utah; or

(c) at the request of the company.

(2) An action taken by the commissioner shall be in accordance with Title 63G, Chapter 4, Utah Administrative Procedures Act.

**R590-238-16. Change of Information in Initial Application.**

(1) A material change in a company's business plan, including changes to lines of coverage and limits filed with the commissioner at the time of initial application, requires prior approval of the commissioner.

(2) A change in any other information filed with the initial application shall be submitted to the commissioner within 60 days, but does not require prior approval.

**R590-238-17. Application.**

(1) An application to form a company shall be submitted to the commissioner on the Application to Form a Captive Insurance Company Form.

(2) A complete application including forms, attachments, exhibits, and all other papers and supporting documents shall be filed electronically with the commissioner through the department's website, <https://insurance.utah.gov/captive>.

(3)(a) The application shall be signed in the manner prescribed on the application form.

(b) If the signature of any person is affixed pursuant to a power of attorney or other similar authority, a copy of the power of attorney or other authority shall also be filed with the application.

(4)(a) A company shall include with its application a feasibility study of the company's business plan.

(b) The department may test the feasibility of the study by examining the company's corporate records, including:

(i) the charter;

(ii) the bylaws and minute books;

(iii) verification of capital and surplus;

(iv) verification of principal place of business;

(v) determination of assets and liabilities; and

(vi) other factors the commissioner considers necessary.

**R590-238-18. Fee Schedule; Initial Application; Renewal.**

(1) An applicant for a certificate of authority under Title 31A, Chapter 37, Captive Insurance Companies Act, or Title 31A, Chapter 37a, Special Purpose Financial Captive Insurance Company Act, shall pay to the department, at the time the application is filed, a nonrefundable fee established in Sections R590-102-8 and R590-102-9.

(2) An applicant may pay fees associated with the application:

(a) in person;

(b) online at <https://payment.uid.utah.gov/s/>;

(c) by mail, addressed to Office of the Commissioner, Utah Insurance Department, 4315 S. 2700 W., Suite 2300, Taylorsville, UT 84129, Attention: Captive Insurance Administrator; or

(d) by phone at 801-957-9200.

(3) A company shall pay an initial license fee for the initial year of registration and a renewal fee for each succeeding year in the amount established by Sections R590-102-8 and R590-102-9.

(4) A company, except for a captive cell company, shall pay the department an annual nonrefundable electronic commerce fee in the amount established by Section R590-102-23.

(5) A company shall pay the department other fees established by Section R590-102-24.

**R590-238-19. Authorized Forms.**

(1) An applicant shall use the following forms, available on the department's website, <https://insurance.utah.gov/captive>, when applying for a certificate of authority for a new company:

(a) Application to Form a Captive Insurance Company;

(b) Appointment of the Insurance Commissioner for the State of Utah as Attorney to Accept Service of Process;

(c) Bank Capitalization Confirmation Form;

(d) Biographical Affidavit for Captive Insurance Company;

(e) Captive Insurance Company Annual Statement Form;

(f) Statement of Economic Benefit to the State of Utah; and

(g) Utah Approved Irrevocable Letter of Credit.

(2) An applicant shall use the following forms, available on the department's website, <https://insurance.utah.gov/captive>, when applying to become an approved captive insurance company service provider:

(a) Application for Placement on Approved Captive Insurer Management Firm List;

(b) Application to Certify Loss and Expense for Captive Insurance Companies Captive Actuary Application; and

(c) Application for Authorization as an Independent Certified Public Accountant for Captive Insurance Companies.

## NOTICES OF PROPOSED RULES

(3) A company, except as provided under Subsection R590-238-4(2)(b), shall use the Captive Insurance Company Annual Statement Form.

(4) A company shall file a Statement of Economic Benefit to the State of Utah form with its initial application and for each year.

### **R590-238-20. Severability.**

If any provision of this rule, Rule R590-238, or its application to any person or situation is held invalid, such invalidity does not affect any other provision or application of this rule that can be given effect without the invalid provision or application. The remainder of this rule shall be given effect without the invalid provision or application.

**KEY:** captive insurance

**Date of Last Change:** 2023~~March 11, 2024~~

**Notice of Continuation:** May 2, 2022

**Authorizing, and Implemented or Interpreted Law:** 31A-2-201; 31A-37-106

### **NOTICE OF PROPOSED RULE**

**TYPE OF FILING:** Amendment

<b>Rule or Section Number:</b>	<b>R590-267</b>	<b>Filing ID:</b> <b>55862</b>
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### **Agency Information**

<b>1. Department:</b>	Insurance	
<b>Agency:</b>	Administration	
<b>Room number:</b>	Suite 2300	
<b>Building:</b>	Taylorsville State Office Building	
<b>Street address:</b>	4315 S 2700 W	
<b>City, state and zip:</b>	Taylorsville, UT 84129	
<b>Mailing address:</b>	PO Box 146901	
<b>City, state and zip:</b>	Salt Lake City, UT 84114-6901	
<b>Contact persons:</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Steve Gooch	801-957-9322	sgooch@utah.gov

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

### **General Information**

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

R590-267. Personal Injury Protection Relative Value Study Rule

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

This change updates the conversion factors and publications for use in 2024 and 2025.

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

The change adds conversion factors and publications for physicians, dentists, and chiropractors to use when determining the reasonable value of services provided to patients on or after 01/01/2024, and removes the factors and publications that were to be used through 2021.

### **Fiscal Information**

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

##### **A) State budget:**

The list price for the RVP 2023 is \$1,100 and for the 2023 RVD is \$600. The Department has arranged a 50% discount for purchasers with a Utah address.

The Department will be required to purchase two electronic copies of the RVP 2023 at \$550 each and two electronic copies of the RVD 2023 at \$300 each. These publications are incorporated by reference. One copy will be maintained by the Department and one copy will be maintained by the Office of Administrative Rules, per rulemaking requirements. The state budget includes an annual appropriation of \$119,000 per year for the Relative Value Study.

Estimated cost to State Government: \$119,000 for state budget appropriations + 2 purchases of RVP (\$550) + 2 purchases of RVD (\$300) = \$120,700.

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

There will be no cost or savings to local governments.

This rule covers the method by which providers determine the reasonable value of services they provide to consumers.

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

Medical, dental, and chiropractic offices that provide services for individuals insured in auto accidents may purchase the RVP 2023 or RVD 2023 publication that is incorporated by reference in this rule. The list price for the RVP 2023 is \$1,100 and for the 2023 RVD is \$600.

The Department has arranged a 50% discount for purchasers with a Utah address. The cost of the RVP 2023 is \$550 for an electronic copy. The cost of the RVD 2023 is \$300 for an electronic copy. Hard copies are no longer available.

By using the publication with the conversion factors in this rule, they will be able to determine the reasonable charges or services they provide to those injured in automobile accidents.

Estimated costs to small businesses: Purchases of RVP (\$550) x 2,703 Physician and Chiropractor Offices + Purchases of RVD (\$300) x 2,049 Dental Offices = \$2,101,350.

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

Medical, dental, and chiropractic offices that provide services for individuals insured in auto accidents may purchase the RVP 2023 or RVD 2023 publication that is incorporated by reference in this rule. The list price for the RVP 2023 is \$1,100 and for the 2023 RVD is \$600.

The Department has arranged a 50% discount for purchasers with a Utah address. The cost of the RVP 2023 is \$550 for an electronic copy. The cost of the RVD 2023 is \$300 for an electronic copy. Hard copies are no longer available.

By using the publication with the conversion factors in this rule, they will be able to determine the reasonable charges or services they provide to those injured in automobile accidents.

Estimated costs to non-small businesses: Purchases of RVP (\$550) x 115 Physician Offices + Purchases of RVD (\$300) x 6 Dental Offices = \$65,050.

**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**):

Auto insurers, or those they contract with to service their claims, and health care providers may purchase the RVP 2023 or RVD 2023 publication that is incorporated by reference in the rule. The list price for the RVP 2023 is \$1,100 and for the 2023 RVD is \$600.

The Department has arranged a 50% discount for purchasers with a Utah address. The cost of the RVP 2023 is \$550 for an electronic copy. The cost of the RVD 2023 is \$300 for an electronic copy. Hard copies are no longer available.

By using the publication with the conversion factors in this rule, they will be able to determine the reasonable charges of medical and dental services they are required to reimburse providers for treatment under personal injury protection coverage in Utah.

Estimated costs to Auto Insurers = Purchases of both RVP and RVD (\$850) x 172 Property and Casualty Insurers = \$146,200.

Optum, the company that sells the RVP 2023 and RVD 2023, will benefit from increased sales of these products.

Estimated sales to Optum: Purchases of RVP (\$550) x 2,992 Physician, Chiropractor, and Insurer businesses + Purchases of RVD (\$300) x 2,229 Dental and Insurer businesses = \$2,314,300.

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

Affected persons may purchase the RVP 2023 or RVD 2023 publication that is incorporated by reference in this rule.

The Department is sensitive to this compliance cost and has arranged a 50% discount for purchasers with a Utah address, as has been arranged in prior years, to help ameliorate any adverse costs on small businesses. The cost of the RVP 2023 is \$550 for an electronic copy, while the RVD 2023 is \$300 for an electronic copy. Hard copies are no longer available.

Additionally, as required by rulemaking guidelines, both publications will be available for review by affected persons at the Insurance Department or the Office of Administrative Rules at no charge.

Small businesses (physicians, dentists, chiropractors) are likely to purchase one publication or the other, depending on their specialization. The net one-time cost for small businesses as a whole may be \$2,101,350.

The net one-time cost for non-small businesses as a whole may be \$65,050.

Other persons (auto insurers) may purchase both publications. The net one-time cost for other persons may be \$146,200.

The net one-time cost for all affected persons (small businesses and non-small businesses and insurers) may be \$2,433,300.

It is also important to note that the Department makes its copies of the RVD and RVP available to any affected parties for free viewing in the Department's offices.

**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	\$120,700	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$2,101,350	\$0	\$0



## NOTICES OF PROPOSED RULES

Non-Small Businesses	\$65,050	\$0	\$0
Other Persons	\$146,200	\$0	\$0
<b>Total Fiscal Cost</b>	<b>\$2,433,300</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	\$2,314,300	\$0	\$0
<b>Total Fiscal Benefits</b>	<b>\$2,314,300</b>	<b>\$0</b>	<b>\$0</b>
<b>Net Fiscal Benefits</b>	<b>-\$119,000</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 Insurance, Jonathan T. Pike, 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 31A-2-201		

## Incorporations by Reference Information

<b>7. Incorporations by Reference:</b>	
<b>A) This rule adds, updates, or removes the following title of materials incorporated by references:</b>	
<b>Official Title of Materials Incorporated (from title page)</b>	Relative Values for Dentists
<b>Publisher</b>	Optum
<b>Issue or Version</b>	2023

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

<b>Official Title of Materials Incorporated (from title page)</b>	Relative Values for Dentists
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<b>Publisher</b>	Optum
<b>Issue or Version</b>	2021

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

<b>Official Title of Materials Incorporated (from title page)</b>	Relative Values for Physicians
<b>Publisher</b>	Optum
<b>Issue or Version</b>	2023

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

<b>Official Title of Materials Incorporated (from title page)</b>	Relative Values for Physicians
<b>Publisher</b>	Optum
<b>Issue or Version</b>	2021

## 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>	12/01/2023
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<b>9. This rule change MAY become effective on:</b>	12/08/2023
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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>	Steve Gooch, Public Information Officer	<b>Date:</b>	10/16/2023
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**R590. Insurance, Administration.****R590-267. Personal Injury Protection Relative Value Study Rule.****R590-267-1. Authority.**

This rule is promulgated by the commissioner pursuant to Section 31A-2-201.

**R590-267-2. Purpose and Scope.**

(1) The purpose of this rule is to establish a reasonable value of services and accommodations for the diagnosis, care, recovery, or rehabilitation of an injured person under automobile personal injury protection coverage under Subsection 31A-22-307(1)(a).

(2) This rule applies to services and accommodations provided under automobile personal injury protection coverage under Subsection 31A-22-307(1)(a) on or after January 1, 2014.

### R590-267-3. Definitions.

Terms used in this rule are defined in Section 31A-1-301. Additional terms are defined as follows:

(1) "Conversion [~~Factor~~]factor" means a multiplier used to convert the relative value unit or units of a service or a procedure to a reimbursement rate.

(2) "Relative [~~Value Unit~~]value unit" means a numerical value assigned to a medical or dental procedure as published in an edition of the RVP or RVD.

(3) "RVD [~~2021~~]2023" means [~~2021~~]2023 Edition of the Relative Values for Dentists published by Optum[~~360~~], website: [~~www.optum360coding.com~~]www.optumcoding.com, and incorporated by reference within this rule.

(4) "RVD [~~2019~~]2021" means [~~2019~~]2021 Edition of the Relative Values for Dentists published by Optum[~~360~~], website: [~~www.optum360coding.com~~]www.optumcoding.com, and incorporated by reference within this rule.

(5) "RVP [~~2021~~]2023" means [~~2021~~]2023 Edition of the Relative Values for Physicians published by Optum[~~360~~], website: [~~www.optum360coding.com~~]www.optumcoding.com, and incorporated by reference within this rule.

(6) "RVP [~~2019~~]2021" means [~~2019~~]2021 Edition of the Relative Values for Physicians published by Optum[~~360~~], website: [~~www.optum360coding.com~~]www.optumcoding.com, and incorporated by reference within this rule.

### R590-267-4. Conversion Factors.

(1)(a) The following conversion factors shall be used with RVP [~~2021~~]2023 to determine the reasonable value of each medical service or accommodation provided on or after January 1, [~~2022~~]2024:

(i) anesthesia, [~~109.20~~]116.11;

(ii) surgery, [~~232.50~~]248.75;

(iii) radiology, [~~36.76~~]37.50;

(iv) pathology, [~~24.00~~]25.00;

(v) medicine, [~~13.33~~]13.81;

(vi) evaluation and management, [~~16.07~~]16.81.

(b) The conversion factor used with RVD [~~2021~~]2023 to determine the reasonable value of each dental service or accommodation provided on or after January 1, [~~2022~~]2024 shall be [~~68.33~~]75.00.

(2)(a) The following conversion factors shall be used with RVP [~~2019~~]2021 to determine the reasonable value of each medical service or accommodation provided from January 1, [~~2020~~]2022 through December 31, [~~2021~~]2023:

(i) anesthesia, [~~108.00~~]109.20;

(ii) surgery, [~~225.88~~]232.50;

(iii) radiology, [~~35.60~~]36.76;

(iv) pathology, [~~24.29~~]24.00;

(v) medicine, [~~12.80~~]13.33; and

(vi) evaluation and management, [~~14.74~~]16.07.

(b) The conversion factor used with RVD [~~2019~~]2021 to determine the reasonable value of each dental service or accommodation provided from January 1, [~~2020~~]2022 through December 31, [~~2021~~]2023 shall be [~~66.67~~]68.33.

### R590-267-5. Fee Schedule.

The reasonable value of any service or accommodation shall be calculated by multiplying the relative value unit assigned to the service or accommodation by the applicable conversion factor prescribed in Section R590-267-4.

### R590-267-6. Severability.

If any provision of this rule, Rule R590-267, or its application to any person or situation is held invalid, such invalidity does not affect any other provision or application of this rule that can be given effect without the invalid provision or application. The remainder of this rule shall be given effect without the invalid provision or application.

**KEY: relative value study**

**Date of Last Change:** ~~2023~~January 1, 2022

**Notice of Continuation:** **October 24, 2018**

**Authorizing, and Implemented or Interpreted Law:** **31A-2-201(3); 31A-22-307(2)**

### NOTICE OF PROPOSED RULE

**TYPE OF FILING:** Amendment

<b>Rule or Section Number:</b>	<b>R612-200-6</b>	<b>Filing ID:</b> <b>56016</b>
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### Agency Information

<b>1. Department:</b>	Labor Commission	
<b>Agency:</b>	Industrial Accidents	
<b>Room number:</b>	3rd Floor	
<b>Building:</b>	Heber Wells Building	
<b>Street address:</b>	160 E 300 S, 3rd Floor	
<b>City, state and zip:</b>	Salt Lake City, UT 84111	
<b>Contact persons: Ronald Dressler</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Ronald Dressler	801-530-6844	rdressler@utah.gov
Chris Hill	801-530-6113	chill@utah.gov

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

### General Information

#### 2. Rule or section catchline:

R612-200-6. Burial Expenses

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

The Commission adopts this rule pursuant to authority granted by Section 34A-2-418 of the Utah Workers' Compensation Act.

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

If death results from a work injury, burial expenses up to \$12,500 shall be paid. The amended rule increases the paid amount from \$9,000 to \$12,500.

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

There may be minimal fiscal impact since burial benefits are an extremely small percentage of overall workers' compensation benefits which oftentimes may be passed along to the insured employer.

**B) Local governments:**

There may be minimal fiscal impact since burial benefits are an extremely small percentage of overall workers' compensation benefits which oftentimes may be passed along to the insured employer.

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

There may be minimal fiscal impact since burial benefits are an extremely small percentage of overall workers' compensation benefits which oftentimes may be passed along to the insured employer.

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

There may be minimal fiscal impact since burial benefits are an extremely small percentage of overall workers' compensation benefits which oftentimes may be passed along to the insured employer.

**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 fiscal impact since burial benefits are paid by insurance carriers and burial benefits are an extremely small percentage of overall workers' compensation benefits.

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

There may be minimal fiscal impact since burial benefits are an extremely small percentage of overall workers' compensation benefits which oftentimes may be passed along to the insured employer.

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

this table. Inestimable impacts will be included in narratives above.)

**Regulatory Impact Table**

<b>Fiscal Cost</b>	<b>FY2024</b>	<b>FY2025</b>	<b>FY2026</b>
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Cost</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Fiscal Benefits</b>	<b>FY2024</b>	<b>FY2025</b>	<b>FY2026</b>
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Net Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

**H) Department head comments on fiscal impact and approval of regulatory impact analysis:**

The Commissioner of the Utah Labor Commission, Jaceson Maughan, has reviewed and approved this regulatory impact analysis since burial benefits are an extremely small percentage of overall workers' compensation benefits which oftentimes may be passed along to the insured employer.

**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 34A-2-101 et seq.	Section 34A-3-101 et seq.	Section 34A-1-104
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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:** 12/15/2023

**9. This rule change MAY become effective on:** 12/22/2023

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>	Jacson R. Maughan, Commissioner	<b>Date:</b>	10/30/2023
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#### R612. Labor Commission, Industrial Accidents.

##### R612-200. Workers' Compensation Rules - Filing and Paying Claims.

##### R612-200-6. Burial Expenses.

1. The Commission adopts this rule pursuant to authority granted by Section 34A-2-418 of the Utah Workers' Compensation Act.

2.(a) If death results from a work injury, an insurance carrier or employer shall pay burial expenses up to \$~~9,000~~12,500 ~~shall be paid~~.

(b) Unusual circumstances may require an insurance carrier or employer to make an additional payment, either voluntarily or through Commission order.

3. During each even-numbered year the Commission shall review this rule and make such adjustments as are necessary so that payment of burial expense required by this rule remains equitable when compared to the average cost of burial in this state.

**KEY:** workers' compensation, filing deadlines, time, administrative proceedings

Date of Last Change: 2023~~January 1, 2021~~

Notice of Continuation: September 26, 2022

Authorizing, and Implemented or Interpreted Law: 34A-2-101 et seq.; 34A-3-101 et seq.; 34A-1-104

#### NOTICE OF PROPOSED RULE

**TYPE OF FILING:** Amendment

<b>Rule or Section Number:</b>	<b>R612-300-4</b>	<b>Filing ID:</b>	<b>56019</b>
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#### Agency Information

<b>1. Department:</b>	Labor Commission
<b>Agency:</b>	Industrial Accidents
<b>Room number:</b>	3rd Floor
<b>Building:</b>	Heber Wells Building
<b>Street address:</b>	160 E.300 S, 3rd Floor
<b>City, state and zip:</b>	Salt Lake City, UT 84111
<b>Mailing address:</b>	PO Box 146610

<b>City, state and zip:</b>	Salt Lake City, UT 84114-6610
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**Contact persons: Ronald Dressler**

<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Ronald Dressler	801-530-6841	rdressler@utah.gov

Chris Hill	801-530-6113	chill@utah.gov
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**Please address questions regarding information on this notice to the persons listed above.**

#### General Information

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

R612-300-4. General Method for Computing Medical Fees

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

The purpose of this amendment is to adopt, with modifications, the Optum 2023 Essential Resource-Based Relative Value Schedule (RBRVS), 2023 1st Quarter Update and to adjust procedures to increase conversion factors.

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

The amendment incorporates by reference current versions of the Resource-Based Relative Value Scale (RBRVS) and increases the conversion factors for Anesthesiology, Medicine, Pathology, radiology, restorative services and surgery.

#### Fiscal Information

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

##### A) State budget:

The National Council on Compensation Insurance projects that overall workers' compensation costs will increase by 0.7% as a result of adoption of the new conversion factors. This represents a \$3,300,000 increase to the system.

The Commission presumes that this increase will be passed on to the state budget in increased workers' compensation insurance premiums.

##### B) Local governments:

The National Council on Compensation Insurance projects that overall workers' compensation costs will increase by 0.7% as a result of adoption of the new conversion factors. This represents a \$3,300,000 increase to the system.

The Commission presumes that this increase will be passed on to the local governments in increased workers' compensation insurance premiums.

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

The National Council on Compensation Insurance projects that overall workers' compensation costs will increase by 0.7% as a result of adoption of the new conversion factors. This represents a \$3,300,000 increase to the system.

The Commission presumes that this increase will be passed on to small businesses in increased workers' compensation insurance premiums.

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

The National Council on Compensation Insurance projects that overall workers' compensation costs will increase by 0.7% as a result of adoption of the new conversion factors. This represents a \$3,300,000 increase to the system.

The Commission presumes that this increase will be passed on to non-small businesses in increased workers' compensation insurance premiums.

**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**):

Because persons other than small businesses, non-small businesses, state or local government entities is a small percentage of those impacted by this 0.7% increase, the cost to them is anticipated to be very small (almost none).

**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 since these charges will be incorporated into already existing systems.

**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 Commissioner of the Utah Labor Commission, Jackson Maughan, 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 34A-1-104	Section 34A-2-201	
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**Incorporations by Reference Information****7. Incorporations by Reference:****A) This rule adds, updates, or removes the following title of materials incorporated by references:**

<b>Official Title of Materials Incorporated (from title page)</b>	Current Procedural Coding Expert
<b>Publisher</b>	Optum
<b>Issue or Version</b>	2023

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

<b>Official Title of Materials Incorporated (from title page)</b>	The Essential RBRVS Data File User Guide
<b>Publisher</b>	Optum
<b>Issue or Version</b>	2022



**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:** 12/15/2023

**9. This rule change MAY become effective on:** 01/01/2024

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>	Jaceson R. Maughan, Commissioner	<b>Date:</b>	10/30/2023
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**R612. Labor Commission, Industrial Accidents.****R612-300. Workers' Compensation Rules - Medical Care.****R612-300-4. General Method For Computing Medical Fees.**

A. Adoption of "CPT" and "RBRVS." The Labor Commission incorporates by reference: Optum Essential RBRVS 2022 annual 1st Quarter Update," edition includes RBRC [24]23/1120 ("RBRVS" hereafter).

B. Medical fees calculated according to the RBRVS relative value unit assigned to each CPT code. Unless some other provision of Title R612 specifies a different method, the RBRVS is to be used in conjunction with the "conversion factors" established in Subsection (C) of this rule to calculate payments for medical care provided to injured workers.

C. Conversion Factors. Fees for medical care of injured workers shall be computed by determining the relative value unit ("RVU") assigned by the RBRVS to a CPT code and then multiplying that RVU by the following conversion factors for specific medical specialties:

1. Anesthesiology, 1 unit per 15 minutes of anesthesia: \$[68]75;
2. Medicine, Evaluation and Medicine codes 99203-99204 and 99213-99214: \$[56]62;
3. Medicine, all other Evaluation and Medicine codes: \$[55]58;
4. Pathology and Laboratory: \$[59]62;
5. Radiology: \$[64]64;
6. Restorative Services: \$[53]56;
7. Surgery, all 20000 codes, codes 49505 thru 49525, and all 60000 codes: \$[68]71;
8. Other Surgery: \$[68]71.

D. Fees for Medical care not addressed by CPT/RBRVS, or requiring unusual treatment.

1. The payor and medical provider may establish and agree to a reasonable fee for medical care of an injured worker if:

- a. neither the CPT/RBRVS or any other provision of Title R612 address the medical care in question; or
- b. application of CPT/RBRVS or other provisions of Title R612 would result in an inadequate fee due to extraordinary difficulty of treatment.

2. If the medical provider and payor cannot agree to a reasonable fee in such cases, the provider can request a hearing before the Commission's Adjudication Division to establish a reasonable fee.

**KEY: workers' compensation, fees, medical practitioners, nurse practitioners**

**Date of Last Change:** 2024[December 27, 2022]

**Notice of Continuation:** September 26, 2022

**Authorizing, and Implemented or Interpreted Law:** 34A-1-104; 34A-2-201

**NOTICE OF PROPOSED RULE**

**TYPE OF FILING:** Amendment

<b>Rule or Section Number:</b>	<b>R612-400-5</b>	<b>Filing ID:</b> <b>56017</b>
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**Agency Information**

<b>1. Department:</b>	Labor Commission	
<b>Agency:</b>	Industrial Accidents	
<b>Room number:</b>	3rd Floor	
<b>Building:</b>	Heber Wells Building	
<b>Street address:</b>	160 E 300 S, 3rd Floor	
<b>City, state and zip:</b>	Salt Lake City, UT 84111	
<b>Mailing address:</b>	PO Box 146610	
<b>City, state and zip:</b>	Salt Lake City, UT 84114-6610	
<b>Contact persons:</b>	<b>Ronald Dressler</b>	
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Ronald Dressler	801-530-6841	rdressler@utah.gov
Chris Hill	801-530-6113	chill@utah.gov

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

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

R612-400-5. Premium Rates for the Uninsured Employers' Fund and the Employers' Reinsurance Fund

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

This filing amends the effective date year from 2023 to 2024.

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

The effective date will be amended from 01/01/2023, to 01/01/2024.



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

There is no anticipated cost or savings to the state budget, as this rule is clerical in nature and will have no impact on how the Labor Commission Department (Department) functions or the parties this applies to.

**B) Local governments:**

This rule change is not expected to have a fiscal impact on local governments' revenues or expenditures as the rate is staying the same. This rule change only clarifies pre-existing requirements for districts.

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

This rule change will not have a fiscal impact on small businesses. This rule only affects the Department.

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

The proposed rule changes do not have a fiscal impact on non-small businesses, nor will a service be required of them to implement the amendments.

**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 because the rates have stayed the same for the next year.

**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 changes simply add clarification to requirements and policy with no fiscal 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>
<b>H) Department head comments on fiscal impact and approval of regulatory impact analysis:</b>			
The Commissioner of the Utah Labor Commission, Jackson Maughan, 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 59-9-101(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>	12/15/2023
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**9. This rule change MAY become effective on:**

01/01/2024
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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>	Jacson R. Maughan, Commissioner	<b>Date:</b>	10/30/2023
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**R612. Labor Commission, Industrial Accidents.****R612-400. Workers' Compensation Insurance, Self-Insurance and Waivers.****R612-400-5. Premium Rates for the Uninsured Employers' Fund and the Employers' Reinsurance Fund.**

A. Pursuant to Subsection 59-9-101(2), Sections 59-9-101.3 and 34A-2-202 the workers' compensation premium rates effective January 1, ~~2023~~2024, as established by the Labor Commission, shall be:

1. 0.50% for the Uninsured Employers' Fund; and
2. 0.0% for the Employers' Reinsurance Fund.

B. The premium rates are a percentage of the total workers' compensation insurance premium income as detailed in Subsection 59-9-101(2)(a).

**KEY:** workers' compensation, insurance, rates, waivers

**Date of Last Change:** ~~2024~~December 27, 2022

**Notice of Continuation:** September 26, 2022

**Authorizing, and Implemented or Interpreted Law:** 59-9-101(2)

**NOTICE OF PROPOSED RULE**

**TYPE OF FILING:** New

<b>Rule or Section Number:</b>	<b>R650-413</b>	<b>Filing ID:</b> <b>55864</b>
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**Agency Information**

<b>1. Department:</b>	Natural Resources	
<b>Agency:</b>	Outdoor Recreation	
<b>Street address:</b>	1594 W North Temple, Suite 100	
<b>City, state and zip:</b>	Salt Lake City, UT 84116	
<b>Contact persons:</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Chase Pili	801-707-5359	cpili@utah.gov
JC Bailey	801-538-7361	jcbaily@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>
R650-413. Display of OHV License Plate and Registration Decal

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

Section 41-22-5.1 provides that the Division of Outdoor Recreation (Division) shall make rules for the display of an off-highway license plate and registration decal on an off-highway vehicle in accordance with Section 41-22-3.

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

This rule governs the display of off-highway vehicle license plates and registration decals.

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

There is no anticipated cost or savings to the state budget, as this rule is instructional in nature and will have no impact on how the Division functions or the parties this applies to.

**B) Local governments:**

This rule change is not expected to have a fiscal impact on local governments' revenues or expenditures.

This rule change only sets out requirements for displays of OHV license plates and registration decals.

**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' revenues or expenditures.

This rule change only sets out requirements for displays of OHV license plates and registration decals.

**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' revenues or expenditures.

This rule change only sets out requirements for displays of OHV license plates and registration decals.

**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 persons other than small businesses', non-small businesses', state, or local government entities' revenues or expenditures.

This rule change only sets out requirements for displays of OHV license plates and registration decals.

**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 changes simply provide instructions on how to display OHV license plates and registration decals.

**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 41-22-5.1	Section 41-22-3	
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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:** 12/15/2023

**9. This rule change MAY become effective on:** 12/22/2023

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>	10/17/2023
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**R650. Natural Resources, Outdoor Recreation.**

**R650-413. Display of OHV License Plate and Registration Decal.**

**R650-413-1. Display of OHV License Plates and Registration Decals.**

(1) An off-highway vehicle license plate is to be displayed pursuant to the requirements of Subsections 41-22-3(4)(c)(ii) and (iii) and shall:

(a) be affixed to the furthest rear portion of the off-highway vehicle that allows the license plate to be displayed in a plainly visible, upright position;

(b) be securely affixed to the off-highway vehicle such that the license plate will not fall off the off-highway vehicle during travel over rough or unimproved terrain; and

(c) be affixed in such a manner that the license plate does not swing when the off-highway vehicle is in motion.

(2) An off-highway vehicle registration decal shall:

(a) be affixed to an off-highway vehicle license plate in the location provided pursuant to Subsection 41-22-3(4)(c)(v); and

(b) be clearly visible.

**KEY: off-highway vehicle, outdoor recreation**

**Date of Last Change: 2023**

**Authorizing, and Implemented or Interpreted Law: 41-22-5.1; 41-22-3**

**NOTICE OF PROPOSED RULE**

**TYPE OF FILING:** Repeal and Reenact

<b>Rule or Section Number:</b>	<b>R850-70</b>	<b>Filing ID:</b> <b>56114</b>
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**Agency Information**

<b>1. Department:</b>	School and Institutional Trust Lands
<b>Agency:</b>	Administration
<b>Room number:</b>	Suite 600

<b>Building:</b>	102 Tower	
<b>Street address:</b>	102 S 200 E	
<b>City, state and zip:</b>	Salt Lake City, UT 84111	
<b>Contact persons:</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Chris Fausett	801-538-5139	chrisfausett@utah.gov
Lisa Wells	801-538-5154	lisawells@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>
R850-70. Sale of Forest Products From Trust Lands Administration Lands
<b>3. Purpose of the new rule or reason for the change:</b>
<p>The current Sale of Forest Products From Trust Lands Administration Lands rule needs clarification and reorganization so that it is consistent with other agency administrative rules, particularly the new Sale of Plants and Wildland Seed (Rule R850-75) that is being considered under a separate rule filing.</p> <p>This revised rule provides additional options for the agency to market forest products, streamline contracting processing, and update outdated language to adapt to changing markets.</p> <p>The sale of wildland seed and wildland plants has also been separated from the Sales of Forest Products rules as those commodities are not typically considered forest products.</p>
<b>4. Summary of the new rule or change:</b>
<p>The repeal and reenact of Rule R850-70 removes the sales of plants and wildland seed from this rule into its own defined rule, updates the definitions for certain forest products, provides additional options for the sale of forest products, and streamlines contracting processes for stewardship contracts.</p> <p>The catchline name will change from "Sale of Forest Products From Trust Lands Administration Lands" to "Sales of Forest Products" for a more concise title.</p> <p>(EDITOR'S NOTE: The proposed new Rule R850-75 is under ID 56115 in this issue, November 15, 2023, of the Bulletin.)</p>

### Fiscal Information

<b>5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:</b>
<b>A) State budget:</b>
<p>The agency is not anticipating there would be additional cost or savings to the state budget as a result of the revised rules.</p> <p>Changes to this rule will only impact internal technical aspects regarding the processing of forest products sales and will have no impact on how the agency functions outside the agency.</p>
<b>B) Local governments:</b>
<p>This rule change is not expected to have a fiscal impact on local governments' revenue or expenditures.</p> <p>This rule change only impacts internal agency procedures regarding the sale of forest products.</p>
<b>C) Small businesses</b> ("small business" means a business employing 1-49 persons):
<p>This rule change will not have a fiscal impact on small businesses.</p> <p>This rule only affects internal agency processes for the sale of forest products and does not change any fees or prices charged by the agency for forest products.</p>
<b>D) Non-small businesses</b> ("non-small business" means a business employing 50 or more persons):
<p>The proposed rule changes do not have a fiscal impact on non-small businesses nor will any service be required of them to implement the revised rules.</p> <p>This rule only affects internal agency processes and procedures.</p>
<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> ):
<p>The proposed rule change only affects internal agency processes and procedures and will not have any fiscal impact on persons other than small businesses, non-small businesses, state, or local government entities.</p> <p>There are no additional fees or costs to outside entities resulting from this rule change.</p>
<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 for affected persons.

This rule does not impose any additional regulatory or compliance requirements upon any entity or person, it simply adds clarification to internal agency processes and procedures for the sale of forest products.

**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 Director of School and Institutional Trust Lands Administration, Michelle McConkie, 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:**

28 Stat. 107-112, Utah Enabling Act of 1894, Sections 6, 8, 10, and 12	Subsection 53C-1-302(1)(a)(ii)	Articles X, XVIII, and XX
Subsection 53C-2-201(1)(a)		

**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:** 12/15/2023

**9. This rule change MAY become effective on:** 01/01/2024

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>	Michelle McConkie, SITLA Director	<b>Date:</b>	11/01/2023
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**R850. School and Institutional Trust Lands, Administration.**

~~[R850 70. Sales of Forest Products From Trust Lands Administration Lands.~~

~~R850 70 100. Authorities.~~

This rule implements Sections 6, 8, 10, and 12 of the Utah Enabling Act, Articles X, XVIII, and XX of the Utah Constitution, and Section 53C-1-302(1)(a)(ii) which authorize the director of the School and Institutional Trust Lands Administration to provide for the sale of forest products, desert products, and other vegetative material from Trust Lands Administration lands.

~~R850 70 150. Planning.~~

1. Pursuant to Section 53C-2-201(1)(a), the Trust Lands Administration shall complete the following planning obligations for all competitive and non-competitive forest product sales, in addition to the rule-based analysis and approval processes required by this rule:

(a) To the extent required by the Memorandum of Understanding between the State Planning Coordinator and the School and Institutional Trust Lands Administration, submit the proposal for review by the Resource Development Coordinating Committee (RDCC);

(b) Evaluation of and response to comments received through the RDCC process; and

(c) Evaluate and respond to any comments received through the advertising and notice processes described in R850-70-600(1).

2. All other forest product sales within this category of activity carry no planning obligations by the agency beyond existing rule-based analysis and approval processes.

**R850-70-200. Definitions.**

1. Sawlogs: portions of a tree stem that exceed seven feet in length and are at least six inches in diameter inside bark at the small end.
2. Poles: portions of a tree stem that are at least ten feet in length and do not exceed six inches in diameter at four and one half feet above the ground.
3. Mine Props: portions of a tree stem that are between seven and ten feet in length, and six to nine inches diameter inside bark at the small end.
4. Posts: portions of a tree or tree stem, generally Utah juniper, which are no more than ten feet in length and are less than six inches in diameter at the top (small end).
5. Fuelwood: any portion of a tree, including those portions defined as sawlogs, poles, mine props, or posts that is harvested for use as fuel.
6. Christmas Tree: any coniferous tree, or part thereof, cut and removed from the place where grown without the foliage being removed.
7. Ornamental: any coniferous or deciduous tree, shrub, or bush less than 20' in height and no more than six inches diameter at four and one half feet above the ground, which is removed from a natural setting, generally with roots attached, for transplant elsewhere.
8. Desert Plants: include any member of the Cactaceae Family or the Agavaceae Family.
9. Other Forest Products: include boughs, branches, pinyon nuts, cones, and Juniper berries.

**R850-70-300. Proof of Ownership.**

Proof of ownership shall be issued with each sale of forest products in compliance with Section 78B-8-602.

**R850-70-400. Small Forest Product Permit Sales.**

1. The agency may make non-competitive sales of forest products with a Small Forest Products Permit.
2. The agency may not sell sawlogs under a Small Forest Product Permit.
3. The total sale value of a Small Forest Product Permit issued for the sale of forest products, excluding wildland seed, shall not exceed \$500.00.
4. The total sale value of a Small Forest Product Permit issued for the collection of wildland seed shall not exceed \$5,000.00.
5. Persons purchasing Small Forest Product Permits for the collection of wildland seed shall be restricted to a total value of \$5,000.00 per calendar year.
6. Persons purchasing Small Forest Product Permits for eligible forest products, excluding wildland seed, shall be restricted to a total value of \$500.00 per commodity per calendar year.
7. Small Forest Product Permits shall be issued on a form prescribed by the agency.
8. A Small Forest Product Permit does not grant exclusive use of the permitted lands or the resources contained thereon.

**R850-70-500. Noncompetitive Sales.**

If the director finds it to be in the best interests of the trust, the agency may sell forest products at not less than an agency-established minimum value without soliciting competitive bids.

**R850-70-600. Competitive Sales.**

1. Except for sales made under a Small Forest Product Permit pursuant to R850-70-400, sales of forest products, excluding

wildland seed, shall be initiated by the agency and shall follow the procedures below:

- (a) All competitive sales shall be advertised through publication at least once a week for at least two weeks in one or more newspapers of general circulation in the county in which the sale is located. The cost of the notice will be borne by the successful applicant. This notice shall contain, but is not limited to:
  - (i) the legal description of the affected lands;
  - (ii) the species and estimated quantity of forest products;
  - (iii) minimum sale price;
  - (iv) bond amounts;
  - (v) advertising and processing costs, as far as is known;
  - (vi) dates of bidding period;
  - (vii) date, time, and location of oral auction; and
  - (viii) bidder qualifications.
- (b) Notice shall also be given to potential purchasers and other interested parties, whose names are on an agency-maintained mailing list prior to any competitive sale.
- (c) Initial bidding shall be conducted through sealed bids. Each sealed bid must contain 10% of the bid amount and the application fee. The bidders submitting the three highest sealed bids shall be allowed to enter into an oral auction.
- (d) Sales shall be awarded to the highest qualified bidder unless a bidder has been previously disqualified, or is notified by the agency in writing within 10 business days of the auction that the bid will be disqualified, on the grounds of previous poor performance or other good cause shown. The agency shall declare the successful bidder within 10 business days of the bid opening. Failure of the successful bidder to execute a contract within 30 days of receipt may result in cancellation of the sale and forfeiture of all monies submitted.
2. The agency may withdraw, at its sole discretion any forest products sale prior to contract execution. All fees associated with a withdrawn sale shall be returned to the purchaser.

**R850-70-650. Sale of Wildland Seed.**

1. Sales of wildland seed, with the exception of sales made under a Small Forest Product Permit pursuant to R850-70-400, shall be initiated by the agency and shall follow the procedures below:
  - (a) All competitive sales shall be advertised by sending a notice of the sale to potential purchasers and other interested parties on an agency-maintained mailing list. This notice may be circulated through electronic means.
  - (b) The agency may advertise sales of wildland seed using any other methods the director has determined may increase the potential for additional interest in the sale.
  - (c) The cost of the notice shall be borne by the successful applicant.
  - (d) The notice shall contain, but is not limited to, the following:
    - (i) the legal description of the affected lands;
    - (ii) the species and estimated quantity of wildland seed;
    - (iii) the minimum sale price;
    - (iv) required bond amounts;
    - (v) advertising and processing costs, so far as is known;
    - (vi) dates of bidding period; and
    - (vii) bidder qualifications.
  - (e) Sales shall be awarded to the highest qualified bidder unless a bidder has been previously disqualified, or is notified by the agency in writing within five business days of the bid opening that the bid will be disqualified, on the grounds of previous poor performance or other good cause shown.



~~\_\_\_\_\_ (f) The agency shall declare the successful bidder within five business days of the bid opening.~~

~~\_\_\_\_\_ (g) Failure of the successful bidder to execute a contract within 30 days of the receipt may result in cancellation of the sale and forfeiture of all monies submitted.~~

~~\_\_\_\_\_ 2. The agency may withdraw, at its sole discretion, any wildland seed sale prior to contract execution. All fees associated with a withdrawn sale shall be returned to the purchaser.~~

~~\_\_\_\_\_ 3. Performance and payment bonds may be required prior the commencement of harvest operations for the collection of wildland seed at the sole discretion of the agency.~~

#### **R850-70-700. Timber Sale Contracts.**

~~\_\_\_\_\_ 1. Timber Sale Contracts must be used for all sales of sawlogs and any other forest product, excluding wildland seed, where the value exceeds \$500.00.~~

~~\_\_\_\_\_ 2. Timber Sale Contracts must be used for all sales of wildland seed where the value exceeds \$5,000.00.~~

~~\_\_\_\_\_ 3. Each Timber Sale Contract shall contain the provisions necessary to ensure the responsible harvest of forest products, including the applicable provisions of 53C-4-202.~~

#### **R850-70-800. Timber Harvesting.**

~~\_\_\_\_\_ 1. Prior to commencement of harvest operations, excluding the collection of wildland seed, the purchaser shall submit a timber harvest plan for agency review. Harvesting operations shall not commence until the purchaser is notified, in writing, that the timber harvest plan has been approved by the agency.~~

~~\_\_\_\_\_ 2. Prior to commencement of harvest operations, excluding the collection of wildland seed, the purchaser shall post with the agency bonds in the form and amounts as may be determined by the agency to assure compliance with all terms and conditions of the sale contract. Such bonds shall include the following:~~

~~\_\_\_\_\_ (a) A performance bond shall be submitted in an amount at least twice the estimated cost of rehabilitation.~~

~~\_\_\_\_\_ (b) A payment bond shall be submitted in an amount equal to the full purchase price of the sale unless the sale has been paid for in advance, or, at the discretion of the agency, the full price of the largest cutting unit of the sale.~~

~~\_\_\_\_\_ 3. All bonds posted may be used for payment of all monies due to the Trust Lands Administration on the total purchase price, and also for the costs of compliance with all other performance terms and conditions of the sale as specified in the contract.~~

~~\_\_\_\_\_ 4. The purchaser's bonds shall be maintained in effect even if the purchaser conveys all or part of the sale interest to an assignee or subsequent purchaser until such time as the purchaser fully satisfies sale contract obligations, or until such time as the bond is replaced with a new bond posted by the assignee.~~

~~\_\_\_\_\_ 5. Bonds may be increased in reasonable amounts, at any time as the agency may order, provided the agency first gives the purchaser 30 days written notice stating the increase and the reason(s) for the increase.~~

~~\_\_\_\_\_ 6. Bonds may be accepted in any of the following forms at the discretion of the agency:~~

~~\_\_\_\_\_ (a) Surety bond with an approved corporate surety registered in Utah.~~

~~\_\_\_\_\_ (b) Cash deposit. The Trust Lands Administration will not be responsible for any investment returns on cash deposits.~~

~~\_\_\_\_\_ (c) an irrevocable letter of credit for a period longer than the term of the sale.~~

~~\_\_\_\_\_ 7. Bonds shall remain in force until such time as all contract payments and performance provisions have been satisfied by the purchaser and so documented by the agency in writing.~~

#### **R850-70-900. Assignments.**

~~\_\_\_\_\_ 1. Competitively let sales may be assigned, in accordance with procedures established by the agency, to any person, firm, association, or corporation qualified to execute the terms and conditions of the sale contract, with prior written approval from the agency, provided that the assignee agrees to be bound by the terms and conditions of the sale and to accept the obligations of the assignor.~~

~~\_\_\_\_\_ 2. Small Forest Product Permits and other non-competitive sales may not be assigned.~~

#### **R850-70-1000. Extensions of Time.**

~~\_\_\_\_\_ Extensions of time to complete the harvesting operations authorized by a timber contract may be granted if the director finds it to be in the best interests of the trust. Prior to the approval of a request for an extension of time, the agency may require amendments to the contract, including, but not limited to:~~

~~\_\_\_\_\_ 1. Increasing the amounts and extending the effective dates of bonds; and,~~

~~\_\_\_\_\_ 2. Increasing the price of the forest products authorized by the contract.~~

#### **R850-70-1100. Forest Product Valuation.**

~~\_\_\_\_\_ Forest products shall be offered for sale based on a methodology or price schedule to be determined by the agency pursuant to board policy.~~

#### **R850-70-1200. Long-Term Agreements.**

~~\_\_\_\_\_ 1. Long-term agreements (LTA) are those sales where the harvest of specified forest products will take place over a period of time exceeding two years. Upon approval of the director, the agency may enter into an LTA with a purchaser for a period not to exceed ten years provided that:~~

~~\_\_\_\_\_ (a) Resource or other benefits can be demonstrated by the LTA.~~

~~\_\_\_\_\_ (b) The LTA is advertised and competitively bid.~~

~~\_\_\_\_\_ (c) The area included in the LTA is defined by legal or other tangible description.~~

~~\_\_\_\_\_ (d) The LTA includes provisions for periodic reappraisal and adjustment of prices.~~

~~\_\_\_\_\_ (e) The LTA may not preclude or prohibit forest product sales to other purchasers on trust lands adjacent to or within the area designated by the LTA.~~

~~\_\_\_\_\_ (f) The LTA provides for amendment and cancellation during the term of the LTA.~~

~~\_\_\_\_\_ (g) The LTA does not preclude or prohibit other concurrent resource management activities and uses adjacent to or within the area designated by the LTA.~~

~~\_\_\_\_\_ (h) Each LTA states that access granted by the LTA is not exclusive.~~

~~\_\_\_\_\_ (i) A due diligence provision is included in each LTA.~~

#### **R850-70-1300. Fees and Procedures.**

~~\_\_\_\_\_ The agency may establish fees and develop procedures necessary to provide for the administration and sale of forest products pursuant to Section 53C-1-302(1)(b).]~~

**R850-70. Sale of Forest Products.****R850-70-100. Authorities.**

This rule implements Sections 6, 8, 10, and 12 of the Utah Enabling Act, Articles X, XVIII, and XX of the Utah Constitution, and Subsection 53C-1-302(1)(a)(ii) and authorizes the director to sell forest products from trust land.

**R850-70-150. Planning.**

In addition to those other planning responsibilities described in this Rule R850-70, the agency shall.

1. submit proposals for the sale of forest products to the Resource Development Coordinating Committee (RDCC) unless the proposal is exempt from such review;

2. evaluate comments received through the RDCC process; and

3. evaluate comments received through the advertising and notice processes described in Section R850-70-610.

**R850-70-200. Definitions.**

In addition to the terms defined in Rule R850-1:

1. "Forest products" means saw timber, saw logs, and POLs.

2. "POLs" means wood products that do not meet the definition of saw logs, such as firewood, post and poles, chips, and pulpwood.

3. "Qualified bidder" or "qualified applicant" means a bidder or applicant that meets the requirements of Section R850-3-200, has submitted a statement of qualifications pursuant to Section R850-70-310, and, if applicable, meets the qualification requirements set forth in the notice of request for referral, pursuant to Subsection R850-70-610(2)(b), or the notice of auction, pursuant to Subsection R850-70-620(2)(b).

4. "Saw log" means a roundwood product with two cuts ends that is usually eight feet in length or longer and is suitable to be sawn into lumber such as dimensional lumber, cants, or blocks.

5. "Saw timber" means standing trees that are large enough and of suitable quality to be sawn into lumber with a minimum diameter at breast height of ten inches.

6. "Stewardship contract" means a contract that is primarily a procurement contract for specified forest management services, but which may also include, as part of the contract, the sale of forest products to the contractor.

7. "Timber harvest plan" means a plan of operations for timber harvesting that includes timing of the harvesting, location, necessary equipment, anticipated surface disturbance, road construction, and reclamation activities.

**R850-70-310. Statement of Qualifications.**

1. The agency may request forest operators to submit a statement of qualifications containing information that the agency considers relevant to the operator's ability to perform under a sales contract or stewardship contract. The agency may prescribe a form for the statement of qualifications and make the form available to forest operators on its website. The agency may advertise its intent to accept statements of qualifications.

2. Forest operators may submit a statement of qualifications at any time.

3. The purpose of the statement of qualifications is to provide the agency with basic information regarding forest operators for the agency's convenience. The agency is not required to solicit from or advertise to any forest operator that submits a statement of

qualifications when it sells forest products or enters into a stewardship contract.

**R850-70-410. POLs Permits.**

1. The agency may issue non-competitive permits for the sale of POLs worth less than \$500 per commodity each calendar year.

2. A POLs permit:

(a) cannot exceed a term of one year;

(b) must be non-exclusive; and

(c) must prohibit surface disturbing activities, other than transient overland foot traffic.

3. POLs permits are exempt from Sections R850-70-510 and R850-70-700.

**R850-70-510. Sale of Forest Products.**

1. The agency shall sell forest products worth more than \$50,000 on a competitive basis unless otherwise approved by the director. The agency may hold a competitive sale of forest products by issuing a request for proposals pursuant to Section R850-70-610 or holding a public auction pursuant to Section R850-70-620.

2. The agency may sell forest products worth \$50,000 or less on a non-competitive basis to a forest operator that has submitted a statement of qualifications pursuant to Section R850-70-310.

3. Except for those sales authorized under Sections R850-70-410 and R850-70-1210, the agency shall enter into a sales contract pursuant to Section R850-70-700 for the sale of forest products.

**R850-70-610. Requests for Proposals.**

1. At least 14 days before a response to a request for proposal (RFP) is due, the agency shall give notice of the RFP on the agency's website.

2. The notice of RFP must include:

(a) the deadline for submitting a response;

(b) bidder qualifications that are in addition to those qualifications in Section R850-3-200;

(c) instructions for submitting a response;

(d) a general description of the affected parcel;

(e) the species and estimated quantity of forest products; and

(f) the contact information of the agency office where interested parties can obtain more information.

3. The agency may advertise an RFP by any method determined by the agency to increase exposure of the forest products to qualified bidders.

4. The agency shall evaluate responses to an RFP using the following criteria:

(a) income potential;

(b) potential enhancement of trust lands;

(c) harvesting timeline;

(d) applicant qualifications; and

(e) any other criterion considered appropriate by the agency.

5. The agency may charge non-refundable application and review fees, as specified in the RFP.

6. The agency may withdraw an RFP at any time before execution of a sales contract.

**R850-70-620. Public Auction.**

1. At least 14 days before a public auction of forest products, the agency shall give notice of the public auction on the agency's website.

2. The notice of public auction must include:

- (a) the date and time of the sale;
- (b) bidder qualifications that are in addition to those qualifications in Section R850-3-200;
- (c) whether the sale will be held virtually or in person;
- (d) if the sale is held in person, the location of the sale;
- (e) if the sale is held virtually, the ways in which a potential bidder may participate;
- (f) a general description of the affected parcel;
- (g) the species and estimated quantity of forest products; and
- (h) the contact information of the agency office where interested parties can obtain more information.

3. The agency may advertise a public auction by any method determined by the agency to increase exposure of the forest products to qualified bidders.

4. Auction Procedures.

- (a) The agency may conduct a public auction in person or virtually.
- (b) The agency shall publish the bidding procedures at the agency's website, which procedures must include:
  - (i) information required to register for the auction, if applicable; and
  - (ii) payments required at the auction by the successful bidder, including the down payment and costs and fees assessed by the agency pursuant to Subsection R850-70-620(4)(g).
- (c) Only qualified bidders may participate in an auction of forest products. The agency may require letters of recommendation and other conditions to ensure bidders have the technical capability to complete the harvest within the contract term.
- (d) A bid constitutes a valid offer to purchase.
- (e) The agency shall award the sale to the highest qualified bidder.
- (f) The agency may withdraw, in its sole discretion, any forest products before execution of a sales contract. The agency shall return all fees paid by the successful bidder for the withdrawn sale.
- (g) The agency may require the successful bidder to reimburse the agency for costs incurred by the agency in preparing the forest products for sale, including the costs of advertising, appraisal, cultural resource investigations, and environmental assessments. The agency may also charge a processing fee.
- (h) At the conclusion of the auction, the successful bidder shall pay the agency the down payment and the costs and fees published pursuant to Subsection R850-70-620(4)(g).
- (i) For forest products purchased at an auction, the successful bidder must execute the sales contract within 30 days of receipt from the agency. If the successful bidder fails to execute the contract within the 30-day period, the agency is not required to finalize the sale and may retain the down payment and costs paid by the successful bidder at the sale. The agency may offer the contract to the next highest qualified bidder.

#### **R850-70-700. Forest Product Sales Contracts.**

- 1. The sales contract must include:
  - (a) a legal description of the affected lands;
  - (b) the purchase price and any pre-paid amounts;
  - (c) dates on which obligations must be met;
  - (d) requirements for financial guaranties;
  - (e) requirements for a harvest operations plan to be submitted and approved by the agency before commencing activities; and

- (f) any other terms, covenants, or conditions to ensure the responsible harvest of forest products and compliance with the agency's rules.

- 2. The term of a sales contract should generally be no longer than three years, unless otherwise approved by the director.

- 3. The sales contract is not final until the purchaser and the director execute the contract.

#### **R850-70-810. Financial Guaranties.**

- 1. The agency may require a purchaser to provide a financial guaranty to the agency to ensure compliance with the sales contract including performance, payment, and reclamation. The financial guaranty must be in a form and in an amount acceptable to the agency.

- 2. The agency may seek payment under the financial guaranty if the purchaser fails to harvest the amount of forest products sold under a sales contract.

- 3. If a purchaser assigns a contract, the agency is not obligated to release the financial guaranty of the assignor until the assignee submits an equivalent replacement financial guaranty or all lease obligations, including reclamation, have been satisfied.

#### **R850-70-900. Assignments.**

- 1. Permittee may not assign a POLs permit. A purchaser may not assign a sales contract without the prior written consent of the agency. Any assignment made without the agency's consent is void.

- 2. As a condition of the approval of an assignment, the agency may require:

- (a) the assignee to accept the most current applicable permit or contract form; and

- (b) premiums on the total estimate of the sale.

- 3. The assignee must be a qualified applicant.

#### **R850-70-1000. Extensions to Sales Contracts.**

The agency may approve extensions to sales contracts in the agency's sole discretion if the agency determines it is in the beneficiaries' best interest.

#### **R850-70-1100. Forest Product Purchase Price.**

The agency may not sell or dispose of forest products at less than market value unless removing the forest products is essential to the management of trust lands.

#### **R850-70-1200. Long-Term Agreements.**

The agency may enter into a long-term agreement (LTA) that guarantees a purchaser an annual quantity of forest products over a set period. An LTA must meet the following criteria:

- 1. it must be competitively offered pursuant to Section R850-70-610 or R850-70-620;

- 2. it cannot be longer than ten years;

- 3. it cannot prohibit the agency from offering the same forest products on the same lands to other purchasers;

- 4. it must require reappraisal and adjustment of the sales price;

- 5. it cannot prohibit concurrent resource management activities and uses on the covered lands;

- 6. it must allow for early termination; and

- 7. it must require the purchaser to sign a forest products sales contract pursuant to Section R850-70-700 for each sale offered under the LTA.

**R850-70-1210. Stewardship Contracts.**

1. The agency may sell forest products to a forest operator that has submitted a statement of qualifications pursuant to Section R850-70-310 as part of a stewardship contract to reduce fuels and manage its forest assets.

2. A proposal for a stewardship contract must separate the costs and fees charged by the bidder or applicant for the services provided from the amount paid for the forest products.

3. The agency may set a minimum sales price for forest products sold as part of a stewardship contract.

4. Stewardship contracts are subject to Rule R850-11. Stewardship contracts are exempt from Sections R850-70-510, R850-70-700, and R850-70-1100.

**R850-70-1300. Fees and Procedures.**

The agency may establish fees and develop procedures necessary to provide for the administration and sale of forest products pursuant to Subsection 53C-1-302(1)(b).

**KEY:** forest products, administrative procedures, timber

**Date of Last Change:** ~~2024~~ August 7, 2019

**Notice of Continuation:** November 22, 2022

**Authorizing, and Implemented or Interpreted Law:** 53C-1-302(1); 53C-2-201(1)(a)

**NOTICE OF PROPOSED RULE**

**TYPE OF FILING:** New

<b>Rule or Section Number:</b>	<b>R850-75</b>	<b>Filing ID:</b> <b>56115</b>
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**Agency Information**

<b>1. Department:</b>	School and Institutional Trust Lands	
<b>Agency:</b>	Administration	
<b>Room number:</b>	Suite 600	
<b>Building:</b>	102 Tower	
<b>Street address:</b>	102 S 200 E	
<b>City, state and zip:</b>	Salt Lake City, UT 84111	
<b>Contact persons:</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Chris Fausett	801-538-5139	chrisfausett@utah.gov
Lisa Wells	801-538-5154	lisawells@utah.gov
<b>Please address questions regarding information on this notice to the persons listed above.</b>		

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

R850-75. Sale of Plants and Wildland Seed

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

The purpose of the new Rule R850-75 is to differentiate from the repeal and reenact of Rule R850-70, as these commodities are not typically considered forest products.

Separating these two commodities into their own separate rules will better align and clarify the sale of the products procedures benefiting the agency, as well as the public.

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

This new rule defines the sale of plants and wildland seed separate from the sale of forest products as listed in the current Rule R850-70. Wildland plants and seed are not typically considered forest products, so this new rule will reduce confusion between commodity types.

This new rule also clarifies processes and procedures for the sale of these commodities.

(EDITOR'S NOTE: The proposed repeal and reenact of Rule R850-70 is under ID 56114 in this issue, November 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 costs or savings to the state budget as this new rule is largely clerical in nature and will have no impact on how the agency functions.

**B) Local governments:**

This rule is not expected to have a fiscal impact on local governments' revenues or expenditures.

The rule change is only technical in nature and is intended to reduce confusion between commodity types offered for sale on state trust lands and clarify internal processes and procedures.

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

This rule change will not have a fiscal impact on small businesses.

This rule change is technical in nature and only affects internal agency processes. There are no additional fees or costs associated with this new rule.

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

The proposed rule change does not have a fiscal impact on non-small businesses, nor will any service be required of them to implement this new 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**):

The proposed rule change is technical in nature and only affects internal agency processes and will not have any fiscal impact on persons other than small businesses, non-small businesses, state, or local government entities.

There are no additional fees or costs to outside entities resulting from this new 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 compliance costs for affected persons.

This new rule does not create any additional regulatory or compliance requirements. This rule simply separates the rules governing the sale of wildland plants and seed from the rules governing the sale of forest products and clarifies certain internal procedures relating to the sale of these commodities.

**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 Director of School and Institutional Trust Lands Administration, Michelle McConkie, 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:**

28 Stat. 107-112, Utah Enabling Act of 1894, Sections 6, 8, 10, and 12	Subsection 53C-1-302(1)(a)(ii)	Articles X, XVIII, and XX
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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:** 12/15/2023

**9. This rule change MAY become effective on:** 01/01/2024

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>	Michelle McConkie, SITLA Director	<b>Date:</b>	11/01/2023
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**R850. School and Institutional Trust Lands, Administration.**

**R850-75. Sale of Plants and Wildland Seed.**

**R850-75-100. Authorities.**

This rule implements Sections 6, 8, 10, and 12 of the Utah Enabling Act, Articles X, XVIII, and XX of the Utah Constitution, and Subsection 53C-1-302(1)(a)(ii) and authorizes the director to sell plants and wildland seeds from trust land.

**R850-75-150. Planning.**

In addition to those other planning responsibilities described in this Rule R850-75, the agency shall.

1. submit proposals for the sale of plants and wildland seeds to the Resource Development Coordinating Committee (RDCC) unless the proposal is exempt from such review;

2. evaluate comments received through the RDCC process; and
3. evaluate comments received through the advertising and notice processes described in Subsection R850-75-600(1).

#### **R850-75-200. Definitions.**

In addition to the terms defined in Rule R850-1:

1. "Wildland plant" means any portion of a plant that includes the root and that grows without the aid of irrigation or other practices associated with farming.
2. "Wildland seeds" means seeds or fruiting parts of a plant that grows without the aid of irrigation or other practices associated with farming.

#### **R850-75-300. Sale of Plants and Wildland Seed.**

1. The agency may sell wildland plants and seeds on a non-competitive basis or pursuant to Section R850-75-400, as determined in the agency's sole discretion.
2. The agency shall enter sales contract pursuant to Section R850-75-500 for the sale of wildland plants and seeds.

#### **R850-75-400. Requests for Proposals.**

1. At least five days before a response to a request for proposal (RFP) is due, the agency shall give notice of the RFP on the agency's website.
2. The notice of RFP must include:
- (a) the deadline for submitting a response;
  - (b) instructions for submitting a response;
  - (c) a general description of the affected parcel;
  - (d) the species of plants and wildland seeds; and
  - (e) the contact information of the agency office where interested parties can get more information.
3. The agency may advertise an RFP by any method.
4. The agency shall evaluate responses to an RFP using the following criteria:
- (a) income potential;
  - (b) potential enhancement of trust lands;
  - (c) harvesting timeline; and
  - (d) any other criterion deemed appropriate by the agency.
5. The agency may charge non-refundable application and review fees, as specified in the RFP.
6. The agency may withdraw an RFP at any time before execution of a sales contract.

#### **R850-75-500. Sales Contracts.**

1. The sales contract must include:
- (a) a legal description of the affected lands;
  - (b) the purchase price and any pre-paid amounts;
  - (c) the method of harvesting;
  - (d) dates on which obligations must be met; and
  - (e) any other terms, covenants, or conditions to ensure the responsible harvest of wildland plants and seeds and compliance with the agency's rules.
2. The term of a sales contract should generally be no longer than one year, unless otherwise approved by the director.
3. The sales contract is not final until the purchaser and the director execute the contract.

#### **R850-75-600. Financial Guaranties.**

1. The agency may require a purchaser to provide a financial guaranty to the agency to ensure compliance with the sales contract including performance, payment, and reclamation. The

financial guaranty must be in a form and in an amount acceptable to the agency.

2. The agency may seek payment under the financial guaranty if the purchaser fails to harvest the amount of wildland plants and seeds sold under a sales contract.

3. If a purchaser assigns a contract, the agency is not obligated to release the financial guaranty of the assignor until the assignee submits an equivalent replacement financial guaranty or all lease obligations, including reclamation, have been satisfied.

#### **R850-75-700. Assignments.**

1. A purchaser may not assign a sales contract without the prior written consent of the agency. Any assignment made without the agency's consent is void.
2. As a condition of the approval of an assignment, the agency may require:
- (a) the assignee to accept the most current applicable permit or contract form; and
  - (b) premiums on the total estimate of the sale.

#### **R850-75-800. Purchase Price.**

The agency may not sell or dispose of wildland plants and seeds at less than market value unless removing the plants and wildland seeds is essential to the management of trust lands.

#### **R850-75-900. Fees and Procedures.**

The agency may establish fees and develop procedures necessary to provide for the administration and sale of wildland plants and seeds pursuant to Subsection 53C-1-302(1)(b).

#### **KEY: wildland plant, wildland seed**

**Date of Last Change: 2024**

**Authorizing, and Implemented or Interpreted Law: 53C-1-302(1)(a)(ii)**

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

**TYPE OF FILING:** Amendment

<b>Rule or Section Number:</b>	<b>R884-24P-53</b>	<b>Filing ID:</b> <b>55866</b>
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#### **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****2. Rule or section catchline:**

R884-24P-53. 2023 Guides for Valuation of Land Subject to the Farmland Assessment Act Pursuant to Utah Code Ann. Section 59-2-515

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

Section 59-2-515 authorizes the State Tax Commission to make rules necessary to effectuate the Farmland Assessment Act.

Section 59-2-514 creates the State Farmland Advisory Committee and requires a person appointed by the Commission to serve as chair. This committee reviews several classifications of land in agricultural use in the various areas of the state and recommends a range of values for each of the classifications based upon productive capabilities of the land when devoted to agricultural use. The recommendations are then submitted to the commission for approval and publication in rule.

This proposed rule represents the committee's recommendations.

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

The amendment provides 2024 updates for a range of values for classifications of agricultural land throughout the state based upon productive capabilities of the land when devoted to agricultural use.

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

The aggregate anticipated cost or savings to the state budget is undetermined. However, based on available information, the overall aggregate anticipated cost or savings to the state budget is expected to be minimal as a result of this amendment.

The Education Fund receives revenue based on increased or decreased real and personal property valuation, including property assessed under the FAA.

Property valuation changes have been recommended by class and by county.

No total cost or savings can be calculated without an exhaustive study of farmland acreage in each county by class and a listing of property newly qualifying or no longer qualifying for FAA assessment in the coming year.

**B) Local governments:**

The aggregate anticipated cost or savings to local governments is undetermined. However, based on

available information, the overall aggregate anticipated cost or savings to local governments is expected to be minimal.

Local governmental entities receive tax revenue based on increased or decreased property valuation, including property assessed under FAA.

Property valuation changes have been recommended by class and by county.

No total cost or savings can be calculated without an exhaustive study of farmland acreage in each county by class and a listing of property newly qualifying or no longer qualifying for FAA assessment in the coming year.

Additionally, county assessors' offices statewide will be required to input the new value indicators into their systems to be applied against the acreage for individual properties. This input process is easily accomplished on an annual basis and represents no significant cost in time or money to the assessors' offices.

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

The aggregate anticipated costs or savings to small businesses is undetermined. However, based on available information, the aggregate costs or savings to small businesses as a cohort is expected to be minimal.

Each individual small business with property eligible for assessment under the FAA may see a change in value which may result in costs or savings. The extent of these costs or savings are subject to the specific small businesses' unique mix of property class and situs county.

No total cost or savings can be calculated without an exhaustive study of farmland acreage in each county by class and a listing of property newly qualifying or no longer qualifying for FAA assessment in the coming year.

Additionally, any cost or savings estimate will be further altered by changes to local property tax rates.

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

The aggregate anticipated costs or savings to non-small businesses is undetermined. However, based on available information, the aggregate costs or savings to non-small businesses as a cohort is expected to be minimal.

Each individual non-small business with property eligible for assessment under the FAA may see a change in value which may result in costs or savings. The extent of costs or savings are subject to the specific non-small businesses' unique mix of property class and situs county.

No total cost or savings can be calculated without an exhaustive study of farmland acreage in each county by

class and a listing of property newly qualifying or no longer qualifying for FAA assessment in the coming year.

Additionally, any cost or savings estimate will be further altered by changes to local property tax rates.

**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 aggregate anticipated costs or savings to persons other than small businesses, non-small businesses, state, or local government entities ("persons") is undetermined. However, based on available information, the aggregate costs or savings to persons as a cohort is expected to be minimal.

Each person with property eligible for assessment under the FAA may see a change in value which may result in costs or savings. The extent of costs or savings are subject to the specific person's unique mix of property class and situs county.

No total cost or savings can be calculated without an exhaustive study of farmland acreage in each county by class and a listing of property newly qualifying or no longer qualifying for FAA assessment in the coming year.

Additionally, any cost or savings estimate will be further altered by changes to local property tax rates.

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

County assessors' offices statewide will be required to input the new value indicators into their systems to be applied against the acreage for individual properties. This input process is easily accomplished on an annual basis and represents no significant compliance cost in time or money to the assessors' offices.

**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:**

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 59-2-515		
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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:** 12/15/2023

**9. This rule change MAY become effective on:** 12/22/2023

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 L. Rockwell, Commissioner	<b>Date:</b>	10/19/2023
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**R884. Tax Commission, Property Tax.****R884-24P. Property Tax.****R884-24P-53. ~~[2023]~~2024 Guides for Valuation of Land Subject to the Farmland Assessment Act Pursuant to Utah Code Ann. Section 59-2-515.**

(1) Each year the Property Tax Division shall update and publish schedules to determine the taxable value for land subject to the Farmland Assessment Act on a per acre basis.

(a) The schedules shall be based on the productivity of the various types of agricultural land as determined through crop budgets and net rents.

(b) Proposed schedules shall be transmitted by the Property Tax Division to county assessors for comment before adoption.

(c) County assessors may not deviate from the schedules.

(d) Not all types of agricultural land exist in every county. If no taxable value is shown for a particular county in one of the tables, that classification of agricultural land does not exist in that county.

(2) Property qualifying for agricultural use assessment pursuant to Section 59-2-503 shall be assessed on a per acre basis as follows:

(a) Irrigated farmland shall be assessed under the following classifications.

(i) Irrigated I. The following counties shall assess Irrigated I property based upon the per acre values listed in TABLE 1, Irrigated I:

TABLE 1 Irrigated I	
County	Per Acre Value
Box Elder	<del>[\$680]</del> \$722
Cache	<del>[\$588]</del> \$642
Carbon	<del>[\$453]</del> \$498
Davis	<del>[\$724]</del> \$793
Emery	<del>[\$429]</del> \$472
Iron	<del>[\$688]</del> \$756
Kane	<del>[\$358]</del> \$393
Millard	<del>[\$681]</del> \$750
Salt Lake	<del>[\$618]</del> \$656
Utah	<del>[\$649]</del> \$707
Washington	<del>[\$559]</del> \$615
Weber	<del>[\$705]</del> \$785

(ii) Irrigated II. The following counties shall assess Irrigated II property based upon the per acre values listed in TABLE 2, Irrigated II:

TABLE 2 Irrigated II	
County	Per Acre Value
Beaver	<del>[\$515]</del> \$533
Box Elder	<del>[\$598]</del> \$635
Cache	<del>[\$502]</del> \$548
Carbon	<del>[\$359]</del> \$395

Davis	<del>[\$637]</del> \$698
Duchesne	<del>[\$418]</del> \$461
Emery	<del>[\$345]</del> \$380
Grand	<del>[\$332]</del> \$365
Iron	<del>[\$604]</del> \$664
Juab	<del>[\$383]</del> \$418
Kane	<del>[\$277]</del> \$304
Millard	<del>[\$598]</del> \$658
Salt Lake	<del>[\$531]</del> \$563
Sanpete	<del>[\$465]</del> \$512
Sevier	<del>[\$490]</del> \$543
Summit	<del>[\$394]</del> \$433
Tooele	<del>[\$383]</del> \$419
Utah	<del>[\$560]</del> \$610
Wasatch	<del>[\$418]</del> \$459
Washington	<del>[\$476]</del> \$524
Weber	<del>[\$618]</del> \$688

(iii) Irrigated III. The following counties shall assess Irrigated III property based upon the per acre values listed in TABLE 3, Irrigated III:

TABLE 3 Irrigated III	
County	Per Acre Value
Beaver	<del>[\$425]</del> \$439
Box Elder	<del>[\$469]</del> \$498
Cache	<del>[\$380]</del> \$415
Carbon	<del>[\$241]</del> \$265
Davis	<del>[\$513]</del> \$562
Duchesne	<del>[\$294]</del> \$324
Emery	<del>[\$216]</del> \$238
Garfield	<del>[\$181]</del> \$199
Grand	<del>[\$211]</del> \$232
Iron	<del>[\$479]</del> \$526
Juab	<del>[\$259]</del> \$283
Kane	<del>[\$153]</del> \$168
Millard	<del>[\$473]</del> \$521
Morgan	<del>[\$333]</del> \$369
Piute	<del>[\$287]</del> \$315
Rich	<del>[\$153]</del> \$168
Salt Lake	<del>[\$405]</del> \$430
San Juan	<del>[\$146]</del> \$149
Sanpete	<del>[\$342]</del> \$377
Sevier	<del>[\$364]</del> \$403

Summit	<del>[\$270]</del> <u>\$297</u>
Tooele	<del>[\$257]</del> <u>\$281</u>
Uintah	<del>[\$317]</del> <u>\$349</u>
Utah	<del>[\$431]</del> <u>\$470</u>
Wasatch	<del>[\$290]</del> <u>\$319</u>
Washington	<del>[\$350]</del> <u>\$385</u>
Wayne	<del>[\$282]</del> <u>\$310</u>
Weber	<del>[\$491]</del> <u>\$547</u>

(iv) Irrigated IV. The following counties shall assess Irrigated IV property based upon the per acre values listed in TABLE 4, Irrigated IV:

TABLE 4 Irrigated IV	
County	Per Acre Value
Beaver	<del>[\$351]</del> <u>\$363</u>
Box Elder	<del>[\$389]</del> <u>\$413</u>
Cache	<del>[\$295]</del> <u>\$322</u>
Carbon	<del>[\$154]</del> <u>\$169</u>
Daggett	<del>[\$163]</del> <u>\$179</u>
Davis	<del>[\$427]</del> <u>\$468</u>
Duchesne	<del>[\$206]</del> <u>\$227</u>
Emery	<del>[\$135]</del> <u>\$149</u>
Garfield	<del>[\$97]</del> <u>\$107</u>
Grand	<del>[\$128]</del> <u>\$141</u>
Iron	<del>[\$392]</del> <u>\$431</u>
Juab	<del>[\$171]</del> <u>\$187</u>
Kane	<del>[\$68]</del> <u>\$75</u>
Millard	<del>[\$384]</del> <u>\$423</u>
Morgan	<del>[\$247]</del> <u>\$274</u>
Piute	<del>[\$200]</del> <u>\$219</u>
Rich	<del>[\$70]</del> <u>\$77</u>
Salt Lake	<del>[\$313]</del> <u>\$332</u>
San Juan	<del>[\$66]</del> <u>\$67</u>
Sanpete	<del>[\$256]</del> <u>\$282</u>
Sevier	<del>[\$279]</del> <u>\$309</u>
Summit	<del>[\$185]</del> <u>\$203</u>
Tooele	<del>[\$175]</del> <u>\$192</u>
Uintah	<del>[\$235]</del> <u>\$259</u>
Utah	<del>[\$345]</del> <u>\$376</u>
Wasatch	<del>[\$206]</del> <u>\$226</u>
Washington	<del>[\$264]</del> <u>\$291</u>
Wayne	<del>[\$199]</del> <u>\$219</u>
Weber	<del>[\$401]</del> <u>\$447</u>

(b) Fruit orchards. The following counties shall assess fruit orchards based upon the per acre values listed in TABLE 5, Fruit Orchards:

TABLE 5 Fruit Orchards	
County	Per Acre Value
Beaver	<del>[\$311]</del> <u>\$291</u>
Box Elder	<del>[\$338]</del> <u>\$317</u>
Cache	<del>[\$311]</del> <u>\$291</u>
Carbon	<del>[\$311]</del> <u>\$291</u>
Davis	<del>[\$340]</del> <u>\$318</u>
Duchesne	<del>[\$311]</del> <u>\$291</u>
Emery	<del>[\$311]</del> <u>\$291</u>
Garfield	<del>[\$311]</del> <u>\$291</u>
Grand	<del>[\$311]</del> <u>\$291</u>
Iron	<del>[\$311]</del> <u>\$291</u>
Juab	<del>[\$311]</del> <u>\$291</u>
Kane	<del>[\$311]</del> <u>\$291</u>
Millard	<del>[\$311]</del> <u>\$291</u>
Morgan	<del>[\$311]</del> <u>\$291</u>
Piute	<del>[\$311]</del> <u>\$291</u>
Salt Lake	<del>[\$311]</del> <u>\$291</u>
San Juan	<del>[\$311]</del> <u>\$291</u>
Sanpete	<del>[\$311]</del> <u>\$291</u>
Sevier	<del>[\$311]</del> <u>\$291</u>
Summit	<del>[\$311]</del> <u>\$291</u>
Tooele	<del>[\$311]</del> <u>\$291</u>
Uintah	<del>[\$311]</del> <u>\$291</u>
Utah	<del>[\$343]</del> <u>\$321</u>
Wasatch	<del>[\$311]</del> <u>\$291</u>
Washington	<del>[\$369]</del> <u>\$346</u>
Wayne	<del>[\$311]</del> <u>\$291</u>
Weber	<del>[\$340]</del> <u>\$318</u>

(c) Meadow IV. The following counties shall assess Meadow IV property based upon per acre values listed in TABLE 6, Meadow IV:

TABLE 6 Meadow IV	
County	Per Acre Value
Beaver	<del>[\$218]</del> <u>\$225</u>
Box Elder	<del>[\$218]</del> <u>\$232</u>
Cache	<del>[\$225]</del> <u>\$246</u>
Carbon	<del>[\$144]</del> <u>\$125</u>
Daggett	<del>[\$134]</del> <u>\$147</u>

## NOTICES OF PROPOSED RULES

Davis	<del>[\$229]</del> <u>\$251</u>
Duchesne	<del>[\$144]</del> <u>\$159</u>
Emery	<del>[\$119]</del> <u>\$131</u>
Garfield	<del>[\$90]</del> <u>\$99</u>
Grand	<del>[\$116]</del> <u>\$127</u>
Iron	<del>[\$227]</del> <u>\$249</u>
Juab	<del>[\$132]</del> <u>\$144</u>
Kane	<del>[\$93]</del> <u>\$102</u>
Millard	<del>[\$167]</del> <u>\$184</u>
Morgan	<del>[\$171]</del> <u>\$189</u>
Piute	<del>[\$164]</del> <u>\$180</u>
Rich	<del>[\$91]</del> <u>\$100</u>
Salt Lake	<del>[\$198]</del> <u>\$210</u>
Sanpete	<del>[\$168]</del> <u>\$185</u>
Sevier	<del>[\$174]</del> <u>\$193</u>
Summit	<del>[\$173]</del> <u>\$190</u>
Tooele	<del>[\$159]</del> <u>\$174</u>
Uintah	<del>[\$178]</del> <u>\$196</u>
Utah	<del>[\$216]</del> <u>\$235</u>
Wasatch	<del>[\$180]</del> <u>\$198</u>
Washington	<del>[\$196]</del> <u>\$216</u>
Wayne	<del>[\$148]</del> <u>\$163</u>
Weber	<del>[\$263]</del> <u>\$293</u>

(d) Dry land shall be classified as one of the following two categories and shall be assessed on a per acre basis as follows:

(i) Dry III. The following counties shall assess Dry III property based upon the per acre values listed in TABLE 7, Dry III:

TABLE 7 Dry III	
County	Per Acre Value
Beaver	<del>[\$47]</del> <u>\$49</u>
Box Elder	<del>[\$79]</del> <u>\$84</u>
Cache	<del>[\$101]</del> <u>\$110</u>
Carbon	<del>[\$42]</del> <u>\$46</u>
Davis	<del>[\$44]</del> <u>\$48</u>
Duchesne	<del>[\$47]</del> <u>\$52</u>
Garfield	<del>[\$41]</del> <u>\$45</u>
Grand	<del>[\$42]</del> <u>\$46</u>
Iron	<del>[\$42]</del> <u>\$46</u>
Juab	<del>[\$45]</del> <u>\$49</u>
Kane	<del>[\$41]</del> <u>\$45</u>
Millard	<del>[\$40]</del> <u>\$44</u>
Morgan	<del>[\$57]</del> <u>\$63</u>
Rich	<del>[\$41]</del> <u>\$45</u>

Salt Lake	<del>[\$48]</del> <u>\$51</u>
San Juan	<del>[\$45]</del> <u>\$46</u>
Sanpete	<del>[\$47]</del> <u>\$52</u>
Summit	<del>[\$41]</del> <u>\$45</u>
Tooele	<del>[\$45]</del> <u>\$49</u>
Uintah	<del>[\$47]</del> <u>\$52</u>
Utah	<del>[\$44]</del> <u>\$48</u>
Wasatch	<del>[\$41]</del> <u>\$45</u>
Washington	<del>[\$41]</del> <u>\$45</u>
Weber	<del>[\$70]</del> <u>\$78</u>

(ii) Dry IV. The following counties shall assess Dry IV property based upon the per acre values listed in TABLE 8, Dry IV:

TABLE 8 Dry IV	
County	Per Acre Value
Beaver	\$14
Box Elder	<del>[\$50]</del> <u>\$53</u>
Cache	<del>[\$70]</del> <u>\$76</u>
Carbon	<del>[\$13]</del> <u>\$14</u>
Davis	<del>[\$13]</del> <u>\$14</u>
Duchesne	<del>[\$16]</del> <u>\$18</u>
Garfield	<del>[\$13]</del> <u>\$14</u>
Grand	<del>[\$13]</del> <u>\$14</u>
Iron	<del>[\$13]</del> <u>\$14</u>
Juab	<del>[\$13]</del> <u>\$14</u>
Kane	<del>[\$13]</del> <u>\$14</u>
Millard	<del>[\$12]</del> <u>\$13</u>
Morgan	<del>[\$23]</del> <u>\$25</u>
Rich	<del>[\$13]</del> <u>\$14</u>
Salt Lake	<del>[\$15]</del> <u>\$16</u>
San Juan	\$17
Sanpete	<del>[\$16]</del> <u>\$18</u>
Summit	<del>[\$13]</del> <u>\$14</u>
Tooele	<del>[\$13]</del> <u>\$14</u>
Uintah	<del>[\$16]</del> <u>\$18</u>
Utah	<del>[\$13]</del> <u>\$14</u>
Wasatch	<del>[\$13]</del> <u>\$14</u>
Washington	<del>[\$12]</del> <u>\$13</u>
Weber	<del>[\$38]</del> <u>\$42</u>

(e) Grazing land shall be classified as one of the following four categories and shall be assessed on a per acre basis as follows:

(i) Graze 1. The following counties shall assess Graze I property based upon the per acre values listed in TABLE 9, Graze I:

TABLE 9

## Graze I

County	Per Acre Value
Beaver	<del>[\$65]</del> <u>\$67</u>
Box Elder	<del>[\$63]</del> <u>\$67</u>
Cache	<del>[\$60]</del> <u>\$66</u>
Carbon	<del>[\$45]</del> <u>\$49</u>
Daggett	<del>[\$45]</del> <u>\$49</u>
Davis	<del>[\$52]</del> <u>\$57</u>
Duchesne	<del>[\$59]</del> <u>\$65</u>
Emery	<del>[\$60]</del> <u>\$66</u>
Garfield	<del>[\$66]</del> <u>\$73</u>
Grand	<del>[\$67]</del> <u>\$74</u>
Iron	<del>[\$65]</del> <u>\$71</u>
Juab	<del>[\$56]</del> <u>\$61</u>
Kane	<del>[\$65]</del> <u>\$71</u>
Millard	<del>[\$65]</del> <u>\$72</u>
Morgan	<del>[\$59]</del> <u>\$65</u>
Piute	<del>[\$78]</del> <u>\$85</u>
Rich	<del>[\$55]</del> <u>\$60</u>
Salt Lake	<del>[\$64]</del> <u>\$65</u>
San Juan	<del>[\$63]</del> <u>\$64</u>
Sanpete	<del>[\$54]</del> <u>\$59</u>
Sevier	<del>[\$56]</del> <u>\$62</u>
Summit	<del>[\$62]</del> <u>\$68</u>
Tooele	<del>[\$62]</del> <u>\$68</u>
Uintah	<del>[\$69]</del> <u>\$76</u>
Utah	<del>[\$56]</del> <u>\$61</u>
Wasatch	<del>[\$45]</del> <u>\$49</u>
Washington	<del>[\$55]</del> <u>\$61</u>
Wayne	<del>[\$76]</del> <u>\$83</u>
Weber	<del>[\$64]</del> <u>\$68</u>

(ii) Graze II. The following counties shall assess Graze II property based upon the per acre values listed in TABLE 10, Graze II:

TABLE 10

## Graze II

County	Per Acre Value
Beaver	<del>[\$20]</del> <u>\$21</u>
Box Elder	<del>[\$20]</del> <u>\$21</u>
Cache	<del>[\$19]</del> <u>\$21</u>
Carbon	<del>[\$13]</del> <u>\$14</u>
Daggett	<del>[\$12]</del> <u>\$13</u>
Davis	<del>[\$16]</del> <u>\$18</u>

Duchesne	<del>[\$16]</del> <u>\$18</u>
Emery	<del>[\$18]</del> <u>\$20</u>
Garfield	<del>[\$19]</del> <u>\$21</u>
Grand	<del>[\$19]</del> <u>\$21</u>
Iron	<del>[\$19]</del> <u>\$21</u>
Juab	<del>[\$16]</del> <u>\$17</u>
Kane	<del>[\$21]</del> <u>\$23</u>
Millard	<del>[\$21]</del> <u>\$23</u>
Morgan	<del>[\$19]</del> <u>\$21</u>
Piute	<del>[\$22]</del> <u>\$24</u>
Rich	<del>[\$17]</del> <u>\$19</u>
Salt Lake	<del>[\$17]</del> <u>\$18</u>
San Juan	\$21
Sanpete	<del>[\$15]</del> <u>\$17</u>
Sevier	<del>[\$15]</del> <u>\$17</u>
Summit	<del>[\$17]</del> <u>\$19</u>
Tooele	<del>[\$17]</del> <u>\$19</u>
Uintah	<del>[\$24]</del> <u>\$26</u>
Utah	<del>[\$20]</del> <u>\$22</u>
Wasatch	<del>[\$14]</del> <u>\$15</u>
Washington	<del>[\$18]</del> <u>\$20</u>
Wayne	<del>[\$24]</del> <u>\$26</u>
Weber	<del>[\$17]</del> <u>\$19</u>

(iii) Graze III. The following counties shall assess Graze III property based upon the per acre values in TABLE 11, Graze III:

TABLE 11

## Graze III

County	Per Acre Value
Beaver	<del>[\$15]</del> <u>\$16</u>
Box Elder	<del>[\$14]</del> <u>\$15</u>
Cache	<del>[\$12]</del> <u>\$13</u>
Carbon	<del>[\$11]</del> <u>\$12</u>
Daggett	<del>[\$10]</del> <u>\$11</u>
Davis	<del>[\$11]</del> <u>\$12</u>
Duchesne	<del>[\$12]</del> <u>\$13</u>
Emery	<del>[\$12]</del> <u>\$13</u>
Garfield	<del>[\$13]</del> <u>\$14</u>
Grand	<del>[\$13]</del> <u>\$14</u>
Iron	<del>[\$13]</del> <u>\$14</u>
Juab	<del>[\$12]</del> <u>\$13</u>
Kane	<del>[\$13]</del> <u>\$14</u>
Millard	<del>[\$13]</del> <u>\$14</u>
Morgan	<del>[\$11]</del> <u>\$12</u>



## NOTICES OF PROPOSED RULES

Piute	<del>[\$15]</del> \$16
Rich	<del>[\$14]</del> \$12
Salt Lake	<del>[\$13]</del> \$14
San Juan	\$13
Sanpete	<del>[\$12]</del> \$13
Sevier	<del>[\$12]</del> \$13
Summit	<del>[\$12]</del> \$13
Tooele	<del>[\$12]</del> \$13
Uintah	<del>[\$16]</del> \$18
Utah	<del>[\$12]</del> \$13
Wasatch	<del>[\$14]</del> \$12
Washington	<del>[\$14]</del> \$12
Wayne	<del>[\$15]</del> \$16
Weber	<del>[\$12]</del> \$13

(iv) Graze IV. The following counties shall assess Graze IV property based upon the per acre values listed in TABLE 12, Graze IV:

TABLE 12 Graze IV	
County	Per Acre Value
Beaver	\$5
Box Elder	\$5
Cache	\$5
Carbon	\$5
Daggett	\$5
Davis	\$5
Duchesne	<del>[\$5]</del> \$6
Emery	<del>[\$5]</del> \$6
Garfield	\$5
Grand	\$5
Iron	\$5
Juab	\$5
Kane	\$5
Millard	<del>[\$5]</del> \$6
Morgan	<del>[\$5]</del> \$6
Piute	\$5
Rich	\$5
Salt Lake	\$5
San Juan	\$5
Sanpete	<del>[\$5]</del> \$6
Sevier	<del>[\$5]</del> \$6
Summit	\$5
Tooele	\$5

Uintah	<del>[\$5]</del> \$6
Utah	\$5
Wasatch	\$5
Washington	<del>[\$5]</del> \$6
Wayne	\$5
Weber	<del>[\$5]</del> \$6

(f) Nonproductive Land. The following counties shall assess property classified as Nonproductive Land based upon the per acre value listed in TABLE 13, Nonproductive Land:

TABLE 13 Nonproductive Land	
County	Per Acre Value
Beaver	\$5
Box Elder	\$5
Cache	\$5
Carbon	\$5
Daggett	\$5
Davis	\$5
Duchesne	\$5
Emery	\$5
Garfield	\$5
Grand	\$5
Iron	\$5
Juab	\$5
Kane	\$5
Millard	\$5
Morgan	\$5
Piute	\$5
Rich	\$5
Salt Lake	\$5
San Juan	\$5
Sanpete	\$5
Sevier	\$5
Summit	\$5
Tooele	\$5
Uintah	\$5
Utah	\$5
Wasatch	\$5
Washington	\$5
Wayne	\$5
Weber	\$5

(3) This rule shall be implemented and become binding 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:** New

<b>Rule or Section Number:</b>	<b>R982-111</b>	<b>Filing ID:</b> <b>56034</b>
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#### Agency Information

<b>1. Department:</b>	Workforce Services	
<b>Agency:</b>	Administration	
<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	ampeck@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>
R982-111. Adoption Tax Credit
<b>3. Purpose of the new rule or reason for the change:</b>
H.B. 130, Adoption Tax Credit, passed during the 2023 General Session, requires the Department of Workforce Services (Department) to issue certifications related to the adoption tax credit.
This new rule clarifies the certification process established in Section 35A-1-111 and describes the adjudicative proceedings process.

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

This new rule:

- 1) lists the information an applicant must submit to apply for certification;
- 2) details the application review and certification process;
- 3) sets forth the right to appeal a denial of certification;
- 4) describes the formal adjudicative hearing procedure for considering such an appeal; and
- 5) describes the procedures for reconsideration and judicial review.

#### Fiscal Information

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

###### A) State budget:

This new rule is not expected to have any fiscal impact on state government revenues or expenditures beyond any impact addressed in the fiscal note of H.B. 130 (2023).

There are no additional state employees or resources needed to oversee the certification process or anticipated appeals. This new rule will not increase the Department's workload and can be carried out with existing budget.

###### B) Local governments:

There are no anticipated costs or savings to local governments.

This new rule requires no action or expenditure by local governments.

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

There are no anticipated costs or savings to small businesses.

This new rule requires no action or expenditure by small businesses.

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

There are no anticipated costs or savings to non-small businesses.

This new rule requires no action or expenditure by 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**):

There are no anticipated costs to other persons as this new rule requires no action or expenditure by any person.

**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 as there are no fees associated with this new rule.

The application for certification will be available to the public on the Department's website. The application only requires applicants to provide their identification information and upload a copy of the certified finalized adoption decree.

The Department believes applicants are likely to have a copy of the decree or can readily obtain the decree as adoptive parents.

**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 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-1-111

**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:** 12/15/2023

**9. This rule change MAY become effective on:** 12/22/2023

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>	10/30/2023
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**R982. Workforce Services, Administration.****R982-111. Adoption Tax Credit.****R982-111-101. Authority.**

This rule is authorized by Section 35A-1-111.

**R982-111-102. Definitions.**

In addition to the definitions found in Sections 59-10-1046 and 59-10-1114, the following definitions apply to this rule:

(1) "ALJ" means an administrative law judge or other presiding officer pursuant to Subsection 35A-1-301(1).

(2) "Applicant" means an individual requesting certification under Section 35A-1-111.

(3) "Certification" means the certification described in Section 35A-1-111.

(4) "Deliver" means to send through the United States Postal Service, email, or facsimile, or to submit in person to a department office.

(5) "Department" means the Department of Workforce Services.

(6) "Division" means the Department of Workforce Services, Division of Adjudications and Appeals.

(7) "Executive director" means the chief administrative officer of the department appointed by the governor pursuant to Subsection 35A-1-201(1)(a) or the executive director's designee.

(8) "Hearsay" means information provided by a source whose credibility cannot be tested through cross-examination.

(9) "Preponderance of the evidence" means evidence that is of greater weight or more convincing than the evidence offered in opposition to it; that is, evidence that shows the fact sought to be proved is more probable than not.

(10) "UAPA" means Title 63G, Chapter 4, Utah Administrative Procedures Act.

#### **R982-111-200. Application for Certification.**

(1) An applicant may apply for certification beginning January 1 after the taxable year for which the applicant requests certification.

(2) Applications for certification are available on the department's website.

(3) An applicant shall provide:

(a) the applicant's:

(i) name;

(ii) address;

(iii) birthdate;

(iv) phone number;

(v) email address; and

(vi) social security number or other relevant identification number;

(b) if the applicant is married, the applicant's spouse's:

(i) name;

(ii) birthdate; and

(iii) social security number or other relevant identification number;

(c) the adopted child's:

(i) name;

(ii) birthdate; and

(iii) social security number, if available;

(d) a certified finalized adoption decree; and

(e) any other information required by the Department to issue a certification.

#### **R982-111-201. Department Certification Determination.**

(1) The department shall review each application for certification to determine if the applicant provided the information required by Subsection R982-111-200(3).

(2) If the applicant has provided the information required by Subsection R982-111-200(3), the department shall:

(a) search department records to determine if the applicant, or the applicant's spouse, received state or federal assistance pursuant to Subsection 35A-1-111(1)(a); and

(b) examine the certified finalized adoption decree to determine the decree's authenticity.

(3) After reviewing an application pursuant to Subsections (1) and (2), the department shall issue:

(a) a certification; or

(b) written notice of a denial of certification.

(4) A certification determination made by the department under this section is exempt from UAPA.

#### **R982-111-300. Right to Appeal a Denial of Certification.**

(1) An applicant may appeal a denial of certification under Section R982-111-201 by delivering a written appeal to the division.

(2) An applicant's appeal under Subsection (1) shall:

(a) be signed by the applicant unless:

(i) it can be shown the applicant has conveyed, in writing, the authority to another person; or

(ii) the applicant is physically or mentally incapable of acting on the applicant's own behalf; and

(b) contain the following information:

(i) the name, email address, and mailing address of the applicant;

(ii) the applicant's social security number or other relevant identification number; and

(iii) if applicable, the mailing address, facsimile number, or email address of the applicant's representative.

(3) If an applicant provides the correct UtahID username and password when filing the appeal through the department's website, the division shall consider that appeal a signed appeal.

(4) An applicant may include in the appeal a statement of the reason for the appeal and any information supporting the appeal.

(5)(a) An applicant may:

(i) pursue an appeal without the assistance of legal counsel or other representation; or

(ii) be represented by legal counsel or another representative at every stage of adjudication.

(b) An applicant's failure to obtain legal representation may not be grounds for reconsideration of an order of an ALJ.

(6) An attorney licensed in a jurisdiction outside Utah may represent an applicant without being admitted pro hac vice in Utah.

(7) If an applicant has a representative, the division shall deliver documents to the representative as directed by the applicant or representative.

(8) The division may not reject an appeal because of nonconformance in form or content but may require an amended or substitute appeal meeting the requirements of this section. An applicant must file an amended or substitute appeal within 15 days after notice of the defect from the division.

(9) Upon receipt of an appeal, the division shall schedule a hearing before an ALJ and send notice of the hearing as provided in Section R982-111-305.

#### **R982-111-301. Time Limits for Filing an Appeal.**

(1) The division must receive an appeal no later than 30 days from the date on the notice of a denial of certification issued under Section R982-111-201.

(2) An appeal is filed timely under Subsection (1) if:

(a) in the case of an appeal delivered by mail or submitted in person:

(i) the appeal is received by the division on or before the close of business of the last day of the 30-day period;

(ii) the date of the postmark on the envelope indicates the appeal was mailed on or before the last day of the 30-day period;

(iii) the department's date stamp on the appeal shows the appeal was received on or before the close of business of the last day of the 30-day period; or

(iv) the ALJ finds there is other competent evidence showing the appeal was mailed or received on or before the last day of the 30-day period; or

(b) in the case of an electronically delivered appeal, the appeal is received no later than midnight of the last day of the 30-day period.

(3)(a) In computing the 30-day period under Subsection (1), the date as it appears in the notice of denial is not included.

(b) If the 30th day falls on a weekend or holiday, the deadline is the next working day.

**R982-111-302. Untimely Appeal.**

(1) If an applicant's appeal appears to be filed untimely pursuant to Section R982-111-301, the division shall notify the applicant and give the applicant an opportunity to show the appeal was filed timely or was delayed for good cause pursuant to Section R982-111-303.

(2) If the ALJ finds an appeal was not filed timely pursuant to Section R982-111-301 and the delay was without good cause pursuant to Section R982-111-303, the ALJ may not consider the merits of the appeal.

**R982-111-303. Good Cause.**

Good cause for an untimely appeal under Section R982-111-302 is limited to circumstances where it is shown that:

(1) the applicant received a denial notice under Section R982-111-201 after the 30-day period in Section R982-111-301, the appeal was filed within ten days of receipt of the denial notice, and the delay was not the result of willful neglect; or

(2) the applicant's delay in filing was due to circumstances:

(a) beyond the applicant's control; or

(b) that are compelling and reasonable.

**R982-111-304. Response to an Appeal.**

The department is not required to file a written response to an appeal. The department may file a response if it does not delay the proceedings.

**R982-111-305. Notice of the Hearing.**

(1) At least ten days before the hearing, the division shall notify the parties of:

(a) the day and time of the hearing;

(b) the right to be represented at the hearing;

(c) the procedure for submitting written documents;

(d) the consequences of not participating;

(e) the procedures and limitations for requesting a continuance or rescheduling;

(f) the procedure for requesting an interpreter; and

(g) the procedure for requesting accommodation for the hearing.

(2) It is the responsibility of a party to notify and plan for the participation of the party's representative and witnesses.

**R982-111-306. Department to Provide Documents.**

The division shall obtain the information the department used to make its determination and send the department's relevant documentary information to the parties with the notice of hearing.

**R982-111-307. Discovery.**

(1) A party may request that the ALJ compel the production of information through a verbal or written order or issuance of a subpoena to secure the attendance of witnesses or the production of evidence.

(2) In considering a request in Subsection (1), the ALJ shall balance the need for the information with the burden the request places upon the source of the information.

(3) Formal discovery includes requests for admissions, interrogatories, and other methods of discovery as provided by the Utah Rules of Civil Procedure. The ALJ may allow formal discovery if each of the following elements is present:

(a) informal discovery is inadequate to obtain the information required;

(b) there is no other available alternative that would be less costly;

(c) formal discovery is not unduly burdensome;

(d) formal discovery is necessary for the parties to properly prepare for the hearing; and

(e) formal discovery does not cause unreasonable delays.

(4) The division may require the party requesting information or documents to pay in advance the costs of obtaining or reproducing such information or documents.

**R982-111-308. Hearing Procedure.**

(1) An appeal hearing is a formal adjudicative proceeding under UAPA.

(2) The division shall record the hearing.

(3) The ALJ shall:

(a) conduct the hearing in a way that affords due process and protects the rights of each party;

(b) regulate the course of the hearing to obtain full disclosure of relevant facts and afford each party a reasonable opportunity to present their positions;

(c) direct the order of testimony and rule on the admissibility of evidence;

(d) take testimony of each witness under oath or affirmation; and

(e) give each party the opportunity to:

(i) provide testimony;

(ii) present relevant evidence that has probative value;

(iii) cross-examine witnesses;

(iv) examine or be provided with a copy of each exhibit;

(v) submit rebuttal evidence;

(vi) provide statements orally or in writing; and

(vii) respond, argue, and comment on the issues.

(4) The ALJ has the discretion to do any of the following:

(a) accept any relevant evidence whether oral or written, real or demonstrative, direct or circumstantial;

(b) exclude evidence that is irrelevant, immaterial, or unduly repetitious;

(c) take additional evidence as the ALJ finds necessary; and

(d) consider official department records at any time in the appeals process including after the hearing.

(5) Anyone testifying falsely under oath may be subject to prosecution for perjury in accordance with Sections 76-8-502 and 76-8-503.

(6) If a party attempts to introduce evidence into a hearing and the ALJ excludes the evidence, the party may proffer the excluded testimony or evidence to allow a reviewing judicial authority to review the correctness of the ruling of exclusion on appeal.

(7)(a) Parties are encouraged to file documentary evidence at least three days in advance of the hearing.

(b) If a party submits documentation during the hearing, the ALJ may admit the documents after provisions are made to ensure due process is satisfied.

(c) To ensure due process is satisfied, the ALJ may:

(i) reschedule the hearing to another time;

(ii) allow the parties time to review the documents during the hearing; or

(iii) read the material into the record.

(8) A party is responsible for presenting any relevant evidence in its possession. When a party is in possession of evidence

but fails to introduce the evidence, the ALJ may presume the evidence does not support the party's position.

(9) The ALJ shall base the decision solely on the testimony and evidence presented at the hearing.

(10) The evidentiary standard is a preponderance of the evidence.

#### **R982-111-309. Telephone Hearings.**

(1) Hearings are telephonic unless an in-person hearing request is granted pursuant to this section.

(2)(a) Each party wishing to participate in the telephone hearing must call the division before the hearing and provide a telephone number where the party may be reached for the hearing.

(b) If the applicant fails to call in advance as required by the notice of hearing, the division shall dismiss the appeal and issue an order of default in accordance with Section R982-111-316.

(3)(a) If a party requires an in-person hearing, the party must contact the division and request an in-person hearing at least five business days before the hearing.

(b) If the division grants the request, the division shall inform each party that the ALJ will conduct the hearing in person.

(c) The division shall grant a request if an in-person hearing is necessary to:

(i) accommodate a disability or similar need; or

(ii) ensure an orderly and fair hearing that meets due process requirements.

(d) Any party may elect to participate by telephone in an in-person hearing.

(e) An ALJ shall hold an in-person hearing in the office of the division unless the ALJ determines that another location is more appropriate.

(f) The department is not responsible for any travel costs incurred by attending an in-person hearing.

(4) The division shall provide a toll-free telephone number for individuals to confirm and participate in a telephone hearing.

#### **R982-111-310. Hearsay Evidence.**

(1)(a) An ALJ may not exclude evidence solely because it is hearsay.

(b) An ALJ may give greater weight to credible sworn testimony from a party or a witness with personal knowledge of the facts.

(2) An ALJ may not base a finding of fact exclusively on hearsay evidence unless that evidence is admissible under the Utah Rules of Evidence.

#### **R982-111-311. Procedure For Use of an Interpreter at the Hearing.**

(1) If a party notifies the division that an interpreter is needed, the division shall arrange for an interpreter at no cost to the party.

(2) The ALJ shall question the interpreter to determine if the interpreter understands the English language and understands the language of the person for whom the interpreter will interpret.

(3) The ALJ shall instruct the interpreter to interpret word for word and not summarize, add, change, or delete any of the testimony or questions.

(4) The interpreter shall swear to truthfully and accurately translate each statement made, each question asked, and each answer given, to the best of the interpreter's ability.

#### **R982-111-312. Department a Party to Hearings.**

(1) As a party to the hearing, the department has the right to present evidence, bring witnesses, cross-examine witnesses, give rebuttal evidence, and appeal decisions.

(2) The ALJ may not act as the agent for the department.

(3)(a) The ALJ may call witnesses for the department when the testimony is necessary and the need for such witnesses or evidence could not have been reasonably anticipated by the department before the hearing.

(b) If a witness is not available, the ALJ may continue the hearing until the witness is available.

#### **R982-111-313. Ex Parte Communications.**

(1) A party may not discuss the merits or facts of any pending case with the ALJ assigned to that case before the issuance of the decision unless every other party to the case has been given notice and opportunity to be present.

(2) The ALJ shall report any ex parte discussion between a party and the ALJ to all parties at the hearing and make the report part of the record.

(3) A discussion with a department employee who is not designated to represent the department in the hearing and is not expected to participate in the hearing is not an ex parte communication.

#### **R982-111-314. Requests for Removal of an ALJ from a Case.**

(1) A party may request that an ALJ be removed from a case based on partiality, interest, or prejudice.

(2) A party requesting removal of an ALJ under Subsection (1) shall:

(a) make the request before the hearing unless the reason for the request was not or could not have been known before the hearing; and

(b) state specific facts establishing cause for removal.

(3) If the division finds removal of the ALJ is appropriate, the division shall reassign the case to a different ALJ.

(4) If the division finds no legitimate grounds for removal of the ALJ, the division shall deny the request and the ALJ shall explain the reasons for the denial during the hearing.

(5) A party may file an appeal pertaining to the partiality, interest, or prejudice of an ALJ within the time limitations for appealing any other decision.

#### **R982-111-315. Rescheduling or Continuance of Hearing.**

(1) An ALJ may adjourn, reschedule, continue, or reopen a hearing on the ALJ's own motion or on the motion of a party.

(2)(a) If a party knows in advance of the hearing that the party cannot proceed with or participate in the hearing on the date or time scheduled, the party must request that the hearing be rescheduled or continued to another day or time.

(b) If a party submits a request for rescheduling under Subsection (2)(a) after the hearing begins, the party must show cause for failing to make a timely request.

(c) A party must call the division to request rescheduling under Subsection (2)(a).

(d) A party making a request for rescheduling or a continuance under Subsection (2)(a) must provide evidence of good cause for the request.

(3) An ALJ may not grant a party more than one request for a continuance under Subsection (2)(a) absent compelling circumstances.



**R982-111-316. Failure to Participate in the Hearing and Reopening the Hearing After the Hearing Has Been Concluded.**

(1) If a party fails to appear for or participate in the hearing, either personally or through a representative, the ALJ may:

(a) take evidence from participating parties and issue a decision based on the best available evidence; or

(b) enter an order of default against a party in accordance with Section 63G-4-209.

(2)(a) The ALJ shall include a statement of the grounds for default in an order of default under Subsection (1)(b).

(b) The division shall deliver an order of default to each party.

(3) Any defaulted party or party failing to appear may request to reopen the hearing by delivering a written request to the division.

(4) A party's request for reopening under Subsection (3) shall conform with the requirements of Subsection R982-111-300(2). In addition:

(a) the party shall explain the reason for the request; and

(b) the division must receive the party's request no later than 30 days from the date on the decision or order of default issued under Subsection (1).

(5) The division shall treat a party's request for reopening received by the division more than 30 days after the date on the decision or order of default issued under Subsection (1) as an untimely appeal under Section R982-111-302.

**R982-111-317. What Constitutes Grounds to Reopen a Hearing.**

(1) An ALJ shall grant a request to reopen a hearing if the requesting party was prevented from appearing at the hearing due to circumstances beyond the party's control.

(2) An ALJ may grant a request to reopen for any of the following reasons: mistake, inadvertence, surprise, excusable neglect, or any other reason justifying relief from the operation of the decision. The ALJ shall further consider:

(a) the danger that the party not requesting reopening may be harmed by reopening;

(b) the length of the delay caused by the party's failure to participate including the length of time to request reopening;

(c) the reason for the request including whether it was within the reasonable control of the party requesting reopening;

(d) whether the party requesting reopening acted in good faith; and

(e) whether based on the evidence of record and the parties' arguments or statements, taking additional evidence might affect the outcome of the case.

(3) A request to reopen is remedial in nature and the ALJ shall liberally construe the provisions of Subsection (2) in favor of providing parties with an opportunity to be heard and present their case.

(4) An ALJ has the discretion to schedule a hearing to determine if a party requesting reopening satisfied the requirements of this section or may, after giving the other parties an opportunity to respond to the request, grant or deny the request based on the record in the case.

**R982-111-318. Withdrawal of Appeal.**

(1) An applicant may request to withdraw an appeal.

(2) The applicant must explain the reason for the request to withdraw.

(3) The ALJ may deny a request if withdrawal of the appeal would jeopardize the due process rights of any interested person.

(4) If the ALJ grants a request to withdraw:

(a) the ALJ shall issue a written decision dismissing the appeal; and

(b) the department determination shall remain in effect.

(5) A decision under Subsection (4) shall inform the parties of the right to reinstate the appeal and the procedure for reinstating the appeal.

(6) An applicant may request to reinstate an appeal after the applicant's request to withdraw has been granted under Subsection (4) by delivering a written request to the division.

(7) An applicant's request to reinstate an appeal under Subsection (6) shall conform with the requirements of Subsection R982-111-300(2). In addition:

(a) the applicant shall explain the reason for the request; and

(b) the division must receive the applicant's request no later than ten days from the date on the decision issued under Subsection (4).

(8) The division shall treat an applicant's request to reinstate the applicant's appeal received by the division more than ten days after the date on the decision issued under Subsection (4) as an untimely appeal under Section R982-111-302.

**R982-111-319. Prompt Notification of Decision.**

(1) An ALJ shall issue a written decision that includes:

(a) a complete statement of the findings of fact;

(b) the ALJ's reasoning and conclusions of law; and

(c) a notice specifying the further appeal rights of the parties that clearly states the place, manner, and timeframe for filing a request for reconsideration pursuant to Section R982-111-400 and judicial review pursuant to Section R982-111-500.

(2) The division shall deliver the ALJ decision to the last known address of the parties.

**R982-111-400. Request for Reconsideration.**

(1) Within 20 days after an ALJ decision is issued, a party may request reconsideration pursuant to Section 63G-4-302 by delivering to the division a written request for reconsideration alleging mistake of law or fact, or discovery of new evidence.

(2) A request for reconsideration under Subsection (1) is timely if:

(a) in the case of a request delivered by mail or submitted in person:

(i) the request is received by the division on or before the close of business of the last day of the 20-day period; or

(ii) the date of the postmark on the envelope indicates the request was mailed on or before the last day of the 20-day period; or

(b) in the case of an electronically delivered request, the request is received no later than midnight of the last day of the 20-day period.

(3)(a) In computing the 20-day period allowed for filing a timely request under Subsection (1), the date as it appears in the ALJ's decision is not included.

(b) If the 20th day falls on a weekend or holiday, the deadline is the next working day.

(4) A request for reconsideration under Subsection (1) shall include:

(a) the name and signature of the party filing the request;

(b) the social security number of the applicant; and

(c) the grounds for request.

**R982-111-401. Decision on Request Reconsideration.**

(1) The executive director shall review a request for reconsideration.

(2) The executive director has the discretion to do any of the following:

(a) request additional information or evidence;

(b) consider and decide any issue in the case even if it was not presented at the hearing or raised in the request for reconsideration;

(c) remand the case to the department or the ALJ; and

(d) summarily dismiss;

(i) a request submitted untimely under Subsection R982-111-400(2); or

(ii) a request that does not state adequate grounds or specify alleged errors in the decision of the ALJ under Subsections R982-111-400(1) and R982-111-400(4)(c).

(3)(a) The executive director shall respond to a request for reconsideration within 20 days after the date the request was received by the division and shall:

(i) issue a final written order granting, denying, or summarily dismissing the request; or

(ii) send a written notice to the parties that the matter is under review.

(b) If the executive director notifies the parties that the request is under review under Subsection (3)(a)(ii), the executive director shall issue a final order within 90 days of the notice.

(c) If the executive director fails to issue a notice within the 20-day period in Subsection (3)(a) or a final order within the 90-day period in Subsection (3)(b), the lack of action on the request is the same as a denial.

(4) The executive director's final order shall include an explanation of the right to judicial review under Section R982-111-500.

(5) The division shall deliver a final order to the parties.

**R982-111-402. Withdrawal of Request for Reconsideration.**

(1) A party who has filed a reconsideration request may withdraw the request.

(2) The executive director may deny a request to withdraw if withdrawal jeopardizes the due process rights of any party.

(3) The executive director shall issue a written order granting or denying a request to withdraw.

(4) If the executive director grants a request to withdraw:

(a) the executive director shall issue a final order dismissing the request for reconsideration; and

(b) the ALJ decision shall remain in effect.

(5) The decision under Subsection (4) shall inform the parties of the right to reinstate the request for reconsideration and the procedure for reinstating the request.

(6) A party may request to reinstate a reconsideration request after the party's request to withdraw has been granted under Subsection (4) by delivering a written request to the division.

(7) A party's request to reinstate a request for reconsideration under Subsection (6) shall conform with the requirements of Subsection R982-111-400(4). In addition:

(a) the party shall explain the reason for the request; and

(b) the division must receive the party's request no later than ten days from the date on the final order issued under Subsection (4).

(8) The division shall treat a party's request to reinstate the party's request for reconsideration received by the division more than ten days after the date on the final order issued under Subsection (4) as an untimely appeal under Section R982-111-302.

**R982-111-500. Judicial Review.**

When calculating the 30-day period for pursuing judicial review under Subsection 63G-4-401(3), the date of final agency action is:

(1) the date of the ALJ decision if no petition for reconsideration is made; or

(2) if a request for reconsideration is made:

(a) the date of the executive director's final order;

(b) the 20th day after the request is filed if the executive director fails to respond to the request in accordance with Subsection R982-111-401(3)(a); or

(c) the 90th day after a notice under Subsection R982-111-401(3)(a)(ii) is issued if the executive director fails to issue a final order in accordance with Subsection R982-111-401(3)(b).

**KEY: adoption tax credit, appeal procedures****Date of Enactment: 2023****Authorizing, and Implemented or Interpreted Law: 35A-1-111****NOTICE OF PROPOSED RULE**

**TYPE OF FILING:** New

**Rule or Section Number:**

**R982-302**

**Filing ID:**  
**56033**

**Agency Information**

<b>1. Department:</b>	Workforce Services	
<b>Agency:</b>	Administration	
<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	ampeck@utah.gov

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

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

R982-302. Intergenerational Poverty Solution, Education Saving Incentive Program

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

This new rule implements a new incentive program providing matching funds for eligible families to invest in 529 Educational Savings accounts, H.B. 116 passed in the 2023 General Session.

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

This new rule implements Section 35A-9-603, Education Savings Incentive Program, which provides matching funds for eligible families experiencing intergenerational poverty to invest in 529 Education Savings Accounts.

**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 have any fiscal impact on state government revenues or expenditures beyond any impact addressed in the fiscal note for H.B. 116 (2023).

**B) Local governments:**

This new rule 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):

There are no anticipated costs or savings to non-small businesses.

This new rule requires no action or expenditure by non-small businesses

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

There are no anticipated costs or savings to non-small businesses.

This new rule requires no action or expenditure by 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 new rule does not impose additional costs or expenditures on other persons.

Qualifying families may receive up to \$300 to match funds invested in a 529 Educational Savings Account. The savings accounts may be used for a child's educational expenses, in an effort to improve their earning capacity and so lift themselves from poverty.

This new rule is not expected to have any fiscal impact on other persons beyond any impact addressed in the fiscal note for H.B. 116 (2023).

**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 families who qualify to receive the matching funds.

**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:**

Subsection 35A-9-603(4)		
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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>	12/15/2023
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<b>9. This rule change MAY become effective on:</b>	12/22/2023
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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>	Casey Cameron, Executive Director	<b>Date:</b>	10/30/2023
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**R982. Workforce Services, Administration.****R982-302. Intergenerational Poverty Solution, Education Savings Incentive Program.****R982-302-101. Purpose and Authority for Education Savings Incentive Program and Statement of the Rules.**

(1) The purpose of the Education Savings Incentive (ESI) Program, Title 35A, Chapter 9, Part 6 is to provide an incentive to individuals and families experiencing intergenerational poverty to save for higher education through the establishment of a match program for eligible 529 educational savings accounts.

(2) The Department of Workforce Services is responsible to determine eligibility of individuals and families for participation in the ESI Program and for administering the Program in coordination with Utah Education Savings Plan and the State Tax Commission.

(3) The legal authority for this rule is found in Section 35A-9-603.

(4) This rule only applies to the ESI program.

**R982-302-102. Definitions and Acronyms.**

In addition to the definitions in Section 35A-9-601, the following definitions apply to this rule:

(1) "529 Account Beneficiary" means the individual designated:

(a) in a 529 savings account agreement between a person, an estate, or a trust and the plan; and

(b) to benefit from the amount saved in the 529 savings account.

(2) "529 Account Owner" means a qualifying individual who the Department identifies as experiencing intergenerational poverty, who has established a 529 savings account for a minor

dependent, and who has not been disqualified from participating in the program for overclaiming a match the previous year.

(3) "Application" means the electronic application provided by the Department to be completed by the 529 Account Owner.

(4) "Family" means a 529 Account Owner and legally recognized beneficiaries that have been claimed on the account owner's federal income tax return for the specified taxable year.

(5) "Department" means the Department of Workforce Services, the funding authority administering the restricted account established for the ESI program.

(6) "EITC" means the federal earned income tax credit, described in Section 32, Internal Revenue Code, and that a qualifying individual claims and is eligible to claim on their federal income tax return for the specified taxable year.

(7) "Match" means the monetary amount of funding provided by the Department, matching dollar-to-dollar verified deposits in each claimed beneficiary account, not to exceed \$300 per family.

**R982-302-103. Application.**

(1) One application may be completed per 529 Account Owner per year.

(2) The application shall include the following information.

(a) 529 Account Owner Information:

(i) first and last name;

(ii) social security number;

(iii) date of birth;

(iv) mailing address;

(v) email address; and

(vi) phone number.

(b) 529 Individual Account Beneficiary Information:

(i) first and last name;

(ii) date of birth;

(iii) 529 account number; and

(iv) account Balance on the of date of application.

(c) Filed Federal Income Tax Return for specified taxable year.

(d) Signed statement attesting eligibility for the ESI Program.

(e) Authorization for release of information.

(3) The Department may request additional information from the applicant to confirm or explain the information in the application.

**R982-302-104. Timeline of Application.**

(1) Applications are time-limited in release and review.

(2) Application window will be for 60 days, starting January 1 of each calendar year.

(3) After 60 days, the application window closes, with no new applications being taken until the next calendar year.

(4) Submitted applications will be reviewed, following the application closure.

(a) Applications shall be reviewed within 45 days of the window closure.

(b) Applicants may be contacted to review submitted information to ensure information is correct.

(5) A reviewed and approved application will receive a cash-match deposit to the identified 529 savings account, up to \$300 per family per calendar year.

**R982-302-105. Determining Eligibility for State Match.**

(1) The Department is responsible for determining eligibility to participate in the ESI Program on an annual basis.

(2) A family must meet each of the following criteria to be eligible for participation in the ESI Program.

(a) Have at least one 529 Account Owner who:

(i) participates in a public benefit program in the identified tax year; and

(ii) participated in a public benefit program for at least 12 consecutive months while as a child.

(b) Claim and receive an EITC in their federal tax form for the identified tax year.

(c) Have an established my529 Savings Plan for at least one beneficiary and has made a deposit into a plan within the identified tax year.

(d) Reside in Utah for both the identified tax year and at the time of application.

(3) Federal Income Tax returns shall be for the previous tax year as that is also the year of the cohort list provided by the Department.

**R982-302-106. Disqualification of an Application.**

(1) An application shall be disqualified for any of the following reasons.

(a) The applicant does not meet the criteria specified in this rule.

(b) The applicant does not allow for the release of information to the Tax Commission and my529 for determination of eligibility.

(c) The application is not complete.

(d) The applicant does not currently reside in Utah.

(e) The application is fraudulent.

(2)(a) An applicant may not appeal the Department's determination that the applicant is not a qualifying individual.

(b) An applicant may reapply if the Department later identifies that the applicant is a qualifying individual.

**R982-302-107. Depositing Match Funds.**

(1) The Department will work with State Finance and my529 to transfer funds to each eligible account by May 31st of each year until the termination of the program.

(2) My529 shall receive a request from State Finance for deposit to each qualifying account through secure file transfer and verify when deposits have been made.

(3) The Match rate for each family shall be determined as provided in Subsection 35A-9-603(2).

**R982-302-108. Anticipated Plan Repeal and Final Year.**

(1) This rule shall be repealed July 1, 2028

(2) Final applications must be received no later than 60 days after January 2028.

**KEY:** education savings incentive, intergenerational poverty

**Date of Last Change:** 2023

**Authorizing, and Implemented or Interpreted Law:** 35A-9-603(4)

**NOTICE OF PROPOSED RULE**

**TYPE OF FILING:** Amendment

**Rule or Section Number:**

**R988-400**

**Filing ID:**  
**56031**

**Agency Information**

<b>1. Department:</b>	Workforce Services	
<b>Agency:</b>	Homeless Services	
<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	ampeck@utah.gov

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

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

R988-400. Homeless Shelter Cities Mitigation Restricted Account

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

The passage of H.B. 499 in the 2023 General Session requires the Office of Homeless Services to define "full capacity" related to determining an eligible municipality's need for access to the mitigation restricted account.

There is also a need to clarify application requirements for funds.

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

This rule change defines full capacity, clarifies application requirements, and makes other clerical changes necessitated by amendments made to Title 35A, Chapter 16, Office of Homeless Services, in H.B. 499 (2023).

**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 government revenues or expenditures beyond any impact addressed in the fiscal note of H.B. 499 (2023). There are no additional state employees or resources needed to oversee this rule change.



This rule change will not increase the Department's workload and can be carried out with existing budget.

**B) Local governments:**

This rule change is not expected to have any fiscal impact on local governments' revenues or expenditures beyond any impact addressed in the fiscal note of H.B. 499 (2023).

The rule change does not affect the amount of mitigation funds available to local governments and does not alter the requirements for eligible municipalities.

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

There are no anticipated costs or savings to small businesses.

This amendment requires no action or expenditure by small businesses.

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

There are no anticipated costs or savings to non-small businesses.

This amendment requires no action or expenditure by 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**):

There are no anticipated costs to other persons as the amendment requires no action or expenditure by any person.

**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 changes add clarification to requirements and policy with no fiscal impact beyond any impact addressed in the fiscal note of H.B. 499 (2023).

**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 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-16-401	Section 35A-16-403	
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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>	12/15/2023
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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>	Casey Cameron, Executive Director	<b>Date:</b>	10/30/2023
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**R988. Workforce Services, Homeless Services.****R988-400. Homeless Shelter Cities Mitigation Restricted Account.****R988-400-1. Authority.**

This rule is authorized under Subsection 35A-16-401(4)(3) which directs the office to provide additional detail to the definition of "eligible services" and Subsection 35A-16-403(3)(4) which requires the office to make rules governing the process for calculating the amount of funds that an eligible municipality may receive under Subsection 35A-16-402(4). ~~Additionally, Subsection 35A-16-402(4)(a) requires that Section R988-400-6, pertaining to disbursement of funds to third-tier eligible municipalities, receive council approval.]~~

**R988-400-2. Definitions.**

Terms used in this rule have the meanings given them in Title 35A, Chapter 16, Office of Homeless Services. In addition:

(1) "Eligible services" includes social services, public sanitation services, and community or neighborhood programs that, in the office's judgment, mitigate the impacts of the location of an eligible shelter. Such services may include:

- (a) client services for persons experiencing homelessness;
- (b) medical staff to serve clients of the eligible shelter;
- (c) provision of public toilets;
- (d) garbage collection services; or
- (e) managing relationships with local businesses or neighborhood associations.

(2) "Full capacity" means that an eligible shelter has assigned or filled 95% of beds on average, as determined by the office, unless:

(a) the shelter is dedicated to a specific population or type of household; and

(b) the majority of the unsheltered individuals in the municipality where the shelter is located are not the type of population or household served by the shelter.

(2)(3) "HIC" means Housing Inventory Count, which is defined as a point-in-time inventory of provider programs that provide beds for people experiencing homelessness.

(3) "HMIS" means the Utah Homeless Management System.

(4) "Point-in-time count" means a count of sheltered and unsheltered people experiencing homelessness on a single night in January, as defined by the U.S. Department of Housing and Urban Development.

**R988-400-7. Application for Funds.**

To apply for funds under Subsection 35A-16-402(4)(a)(iii), an eligible municipality shall submit a request that outlines the impact of the location of the eligible shelter on eligible services and demonstrates the need for funding to mitigate that impact.

**R988-400-8. Enforcement of Camping Ordinance.**

The failure of a municipality to enforce its camping ordinance may not preclude the municipality from receiving mitigation funds if the number of unsheltered persons according to the point-in-time count exceeds the number of first-tier eligible beds according to the HIC by 15%.

**KEY:** grants, Homeless Shelter Cities Mitigation Restricted Account

**Date of Last Change:** ~~August 22, 2022~~ 2023

**Authorizing, and Implemented or Interpreted Law:** 35A-16-401; 35A-16-403

**NOTICE OF PROPOSED RULE**

**TYPE OF FILING:** Amendment

<b>Rule or Section Number:</b>	<b>R988-500</b>	<b>Filing ID:</b> <b>56032</b>
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**Agency Information**

<b>1. Department:</b>	Workforce Services	
<b>Agency:</b>	Homeless Services	
<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	ampeck@utah.gov

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

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

R988-500. Overflow Plan Requirements

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

Section 35A-16-502 requires county task forces to submit a winter response plan (overflow plan) to the office.

This rule change clarifies the process for submitting an overflow plan.

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

This rule change clarifies the overflow plan review process and updates references to the Utah code.

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

There is no anticipated cost or savings to the state budget, as this rule change is clerical in nature and only clarifies existing processes and procedures.



**B) Local governments:**

This rule change is not expected to have any fiscal impact on local governments' revenues or expenditures because it simply clarifies the process for councils of governments to submit an overflow plan to the office.

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

There are no anticipated costs or savings to small businesses.

This rule change requires no action or expenditure by small businesses.

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

There are no anticipated costs or savings to non-small businesses.

This rule change requires no action or expenditure by 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**):

There are no anticipated costs to other persons as the rule change requires no action or expenditure by any person.

**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 or requirements 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**

<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 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-16-503		
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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:** 12/15/2023

**9. This rule change MAY become effective on:** 12/22/2023

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>	10/30/2023
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## NOTICES OF PROPOSED RULES

### **R988. Workforce Services, Homeless Services.**

#### **R988-500. Overflow Plan Requirements.**

##### **R988-500-3. Submission of Overflow Plan.**

Councils of governments shall submit the overflow plan via email to the office's assistant director and at least one additional member of office staff on or before August 1.

##### **R988-500-4. Review of Overflow Plan.**

~~The [O]office [staff]shall review the overflow plan[;] and make [an initial]a determination of compliance with statutory requirements by August 15.[; and notify the office's assistant director and the state homelessness coordinator of the initial determination. The office's assistant director and the state homelessness coordinator shall then review the overflow plan and determine whether to approve or reject office staff's determination.]~~

##### **R988-500-6. Location, Establishment, and Operation of Temporary Overflow Shelter.**

(1) When contracting with an entity for the operation of a temporary overflow shelter as permitted by S[ub]section 35A-16-502.5[~~(6)(e)~~], the office shall first try to contract with a non-profit entity. If the office cannot contract with a non-profit entity, the office

shall contract with a local government entity associated with the municipality or county in which the temporary overflow shelter is located. If the office cannot contract with either a non-profit entity or a local government entity, other qualified entities shall be considered.

(2) When determining the location of a temporary overflow shelter, the office shall consult with the Utah Homeless Network steering committee and the local homeless council ("LHC") with jurisdiction over the applicable municipality or county. The office shall give preference to sites with adequate access to transportation, food, and services, as determined in the office's sole discretion. The office shall also, in conjunction with the LHC, determine an overflow shelter's capacity. All other factors being equal in the office's sole discretion, the office shall give preference to the shelter with the most capacity.

**KEY: overflow shelter, homelessness**

**Date of Last Change: [August 22, 2022]2023**

**Authorizing, and Implemented or Interpreted Law: 35A-16-503**

**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:	R356-7	Filing ID: 56027
Effective Date:	10/30/2023	

### Agency Information

1. Department:	Governor	
Agency:	Criminal and Juvenile Justice (State Commission on)	
Room number:	E330	
Building:	Senate Building (Capitol Complex)	
Street address:	350 N State Street	
City, state and zip:	Salt Lake City, UT 84114	
Mailing address:	350 N State Street	
City, state and zip:	Salt Lake City, UT 84114	
Contact persons:		
Name:	Phone:	Email:
Angelo Perillo	801-538-1047	aperillo@utah.gov

Ken Matthews	801-538-1058	kmatthews@utah.gov
Please address questions regarding information on this notice to the persons listed above.		

### General Information

2. Rule or section catchline:
R356-7. Appointing a Designee, Representative, or Proxy
3. Purpose of the new rule or reason for the change:
This proposed rule is to establish procedures for appointing a designee, representative, or proxy to serve on a public body established in Title 63M, Chapter 7.
The purpose of this rule is to enact appointing a designee, representative, or proxy to serve on a public body to make it compliant with new requirements.
4. Summary of the new rule or change:
If a statute creating a public body allows a member to appoint a designee, the member may appoint a designee to represent the member when the member cannot appear at meetings by sending an email to the staff.

(EDITOR'S NOTE: A corresponding proposed new Rule R356-7 is under ID 56026 in this issue, November 15, 2023, of the Bulletin.)

**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:**

Without this rule, which allows the members of a public body under Commission on Criminal and Juvenile Justice (CCJJ) to appoint a designee or proxy to attend a meeting on their behalf, these public bodies will be unable to meet the requirement that they have a quorum present at their meeting and will be unable to fulfill their statutory duties, see Subsection 52-4-201(2) and Section 52-4-207.

**Fiscal Information**

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

**A) State budget:**

This program will create no cost burden or savings for the state.

This new rule will not change the way electronic meetings are being conducted today. It will not add any additional time or tasks that could lead to new costs.

**B) Local governments:**

This program will create no cost burden or savings for local governments.

This new rule will not change the way electronic meetings are being conducted today. It will not add any additional time or tasks that could lead to new costs.

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

This program will create no cost burden or savings for small businesses.

This new rule will not change the way electronic meetings are being conducted today. It will not add any additional time or tasks that could lead to new costs.

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

There should be no costs or saving for other persons as a result of this rule.

This new rule will not change the way electronic meetings are being conducted today. It will not add any additional time or tasks that could lead to new costs.

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

There should be no costs or saving for any affected persons as a result of this rule.

This new rule will not change the way electronic meetings are being conducted today. It will not add any additional time or tasks that could lead to new costs.

**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):

This program will create no cost burden or savings for businesses.

This new rule will not change the way electronic meetings are being conducted today. It will not add any additional time or tasks that could lead to new costs. Tom Ross, Executive Director

**Citation Information**

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

Subsection 52-4-201(2)	Section 52-4-207	
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**Agency Authorization Information**

<b>Agency head or designee and title:</b>	Tom Ross, Executive Director	<b>Date:</b>	10/30/2023
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**R356. Governor, Criminal and Juvenile Justice (State Commission on).**

**R356-7. Appointing a Designee, Representative, or Proxy.**

**R356-7-1. Authority.**

This rule is authorized by Subsection 52-4-207(2)(a) regarding electronic meetings and Section 63G-3-201 which requires an agency to make rules in certain circumstances.

**R356-7-2. Purpose.**

The purpose of this rule is to establish procedures for appointing a designee, representative, or proxy to serve on a public body established in:

- (1) Section 36-29-111;
- (2) Title 63M, Chapter 7, Criminal Justice and Substance Abuse;
- (3) Section 64-13e-105;
- (4) Section 77-37-5;
- (5) Section 78A-10a-302;
- (6) Section 78A-10a-402;
- (7) Section 78A-12-201; and
- (8) Section 78B-22-401.

**R356-7-3. Definitions.**

- (1) Terms used in this rule are found in Section 52-4-103.
- (2) In addition:
  - (a) "designee" means an individual appointed by a member to represent the member when the member cannot appear at meetings of a public body;
  - (b) "electronically" means to attend a meeting through the use of:
    - (i) an online medium that allows for audio and video interactions; or
    - (ii) a telecommunications medium that allows for audio interactions;
  - (c) "member" means an individual designated by statute to serve on a public body;
  - (d) "representative" means an individual appointed by an entity to represent that entity on a public body;
  - (e) "proxy" means an individual who is appointed by a member to appear in person on the member's behalf at a specific meeting of a public body; and
  - (f) "staff" means an individual who is responsible for ensuring that a public body complies with the requirements of Title 52, Chapter 4, the Open and Public Meetings Act, and includes the director of a public body or a staff member assigned to assist with the administrative duties of the public body.

**R356-7-4. Appointing a designee.**

- (1) If a statute creating a public body allows a member to appoint a designee, the member may appoint a designee to represent the member when the member cannot appear at meetings by sending an email to the staff.
- (2) The email shall state the name and title of the member's designee.
- (3) After an individual has been appointed as a member's designee, the designee:
  - (a) may attend a meeting in person or electronically;
  - (b) shall be counted as a member for purposes of determining a quorum;
  - (c) may participate in a meeting as any other member; and
  - (d) may vote their conscience on matters before the public body.
- (4) Once a designee has been appointed, the designee may continue to represent the member at meetings until the member notifies the staff, in writing, that:
  - (a) the member has appointed a new designee; or
  - (b) the individual previously appointed may no longer represent the member at meetings.
- (5) If the member and their designee both appear at a meeting, only the member may vote on a matter.
- (6) A designee may not appoint a designee or proxy to appear on their behalf at a meeting.

**R356-7-5. Appointing a representative.**

- (1) If a statute creating a public body allows an entity to appoint a representative to serve on a public body, the entity may

appoint their representative by having the head of the entity send an email to the staff.

- (2) The email shall state the name and title of the representative of the entity.
- (3) The entity's representative:
  - (a) may attend a meeting either in person or electronically;
  - (b) shall be counted as a member for purposes of determining a quorum;
  - (c) may participate in a meeting as any other member; and
  - (d) may vote their conscience on matters before the public body.
- (4) Once a representative of an entity has been appointed, the representative shall continue to represent the entity until the head of the entity notifies the staff, in writing, that:
  - (a) the entity has appointed a new representative; or
  - (b) the individual previously appointed may no longer represent the entity at meetings.

**R356-7-6. Appointing a proxy.**

- (1) A member or representative of an entity may appoint a proxy to appear at a specific meeting on their behalf by sending an email to the staff.
- (2) The email shall:
  - (a) be sent before the meeting; and
  - (b) contain the name and title of the proxy who will stand in for the member or representative at the meeting.
- (3) The proxy shall attend the meeting in person and may not attend electronically.
- (4) Once an individual has been appointed as a proxy for a member or representative, the proxy:
  - (a) shall be counted as a member for purposes of determining a quorum;
  - (b) may participate in the meeting as any other member; and
  - (c) may only vote on matters before the public body as directed by the member or the representative and may not vote their conscience.
- (5) A proxy shall have no authority to act on behalf of the member or representative after the meeting has concluded.

**R356-7-7. Failure to comply.**

An individual who appears at a meeting and represents themselves to be a designee of a member, a representative of an entity, or a proxy for a member or representative may not be counted for purposes of determining a quorum and may not vote on matters unless the requirements of this rule have been met.

**KEY: Public bodies, designees, representatives, proxies**

**Date of Last Change: October 30, 2023**

**Authorizing, and Implemented or Interpreted Law: 52-4**

**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:	R58-20	Filing ID: 55321
Effective Date:	10/20/2023	

### Agency Information

1. Department:	Agriculture and Food	
Agency:	Animal Industry	
Building:	TSOB South Bldg, Floor 2	
Street address:	4315 S 2700 W	
City, state and zip:	Taylorsville, UT 84129-2128	
Mailing address:	PO Box 146500	
City, state and zip:	Salt Lake City, UT 84114-6500	
Contact persons:		
Name:	Phone:	Email:
Kelly Pehrson	801-982-2200	kwpehrson@utah.gov
Amber Brown	385-245-5222	ambermbrown@utah.gov
Leann Hunting	385-977-2158	leannhunting@utah.gov
Please address questions regarding information on this notice to the persons listed above.		

### General Information

2. Rule catchline:
R58-20. Elk Ranches

### 3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:

Per Section 4-39-106, the Department of Agriculture and Food (Department) is authorized to make rules that specify procedures for applications and renewal of licenses for domesticated elk facilities; governing the disposal of a domesticated elk; set standards and requirements for operating a facility; set health requirements and standards for health inspections; and govern the possession, transportation, and accompanying documents of a domesticated elk carcass.

### 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 on this rule.

Rule R58-20 was heavily revised in June 2023 because of H.B. 45 passed in the 2023 General Session and subsequent changes to Title 4, Chapter 39, Domesticated Elk Act.

The revised rule was presented to the Utah Elk Breeders Association, as well as the Domesticated Elk Advisory Council. The verbal comments and suggestions provided by the elk breeders and the Domesticated Elk Advisory Council were incorporated into this rule on 06/13/2023.

### 5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:

Since no comments were received the Department does not agree or disagree with comments.



## FIVE-YEAR NOTICES OF REVIEW AND STATEMENTS OF CONTINUATION

This rule needs to remain active because it provides procedures for current practices and establishes health requirements and standards for operating on Elk ranches and domesticated elk facilities in the state. Therefore, this rule should be continued.

## Agency Authorization Information

<b>Agency head or designee and title:</b>	Craig Butters, Commissioner	<b>Date:</b>	10/17/2023
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## FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

<b>Rule Number:</b>	<b>R70-630</b>	<b>Filing ID:</b>	<b>50173</b>
<b>Effective Date:</b>	<b>10/17/2023</b>		

## Agency Information

<b>1. Department:</b>	Agriculture and Food	
<b>Agency:</b>	Regulatory Services	
<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>
Travis Waller	801-982-2250	twaller@utah.gov
Kelly Pehrson	801-982-2200	kwpehrson@utah.gov
Amber Brown	385-245-5222	ambermbrown@utah.gov
<b>Please address questions regarding information on this notice to the persons listed above.</b>		

## General Information

<b>2. Rule catchline:</b>
R70-630. Water Vending Machine
<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>
Per Title 4, Chapter 5, Utah Wholesome Act, the Department of Agriculture and Food (Department) has the authority to implement rules pertaining to water vending machines to ensure machines are delivering the amount

of water; the quality of water; and the equipment is installed, operated, and maintained to protect the health, safety, and welfare of the consuming public.

## 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 public comments were received during the last five years about 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 this rule is necessary to regulate water vending machines in Utah and provide guidance to those who operate the machines, in an effort to protect the health, safety, and welfare of the consuming public. Therefore, this rule should be continued.

Since no public comments were received, the department does not agree or oppose any comments.

## Agency Authorization Information

<b>Agency head or designee and title:</b>	Craig Butters, Commissioner	<b>Date:</b>	10/17/2023
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## FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

<b>Rule Number:</b>	<b>R307-101</b>	<b>Filing ID:</b>	<b>53312</b>
<b>Effective Date:</b>	<b>11/01/2023</b>		

## Agency Information

<b>1. Department:</b>	Environmental Quality	
<b>Agency:</b>	Air Quality	
<b>Building:</b>	MASOB	
<b>Street address:</b>	195 N 1950 W	
<b>City, state and zip:</b>	Salt Lake City, UT 84116	
<b>Mailing address:</b>	PO Box 144820	
<b>City, state and zip:</b>	Salt Lake City, UT 84114-4820	
<b>Contact persons:</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Erica Pryor	385-499-3416	epryor1@utah.gov
Becky Close	801-536-4013	bclose@utah.gov
<b>Please address questions regarding information on this notice to the persons listed above.</b>		

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

R307-101. General Requirements

**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 19-2-104(1)(a) authorizes the Air Quality Board to make rules "...regarding the control, abatement, and prevention of air pollution from all sources...."

Rule R307-101 includes definitions used throughout all the rules contained in Title R307 that are written under Section 19-2-104. Without these definitions, the remaining rules would be unenforceable.

**4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:**

No written comments have been received on this rule since the previous five-year review in 2018.

**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 R307-101-2 includes all the definitions that apply throughout all the rules contained in Title R307. Without them, the remaining rules would be unenforceable. Therefore, this rule should be continued.

Section R307-101-3 incorporates by reference the most current version of the Code of Federal Regulations cited in many of the Air Quality Rules.

In addition, R307-101 is also a component of Utah's State Implementation Plan, which has been federally approved.

**Agency Authorization Information**

<b>Agency head or designee and title:</b>	Bryce C. Bird, Division Director	<b>Date:</b>	09/27/2023
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**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

<b>Rule Number:</b>	<b>R307-150</b>	<b>Filing ID:</b>	<b>52815</b>
<b>Effective Date:</b>	<b>11/01/2023</b>		

**Agency Information**

<b>1. Department:</b>	Environmental Quality
<b>Agency:</b>	Air Quality
<b>Building:</b>	MASOB
<b>Street address:</b>	195 N 1950 W

<b>City, state and zip:</b>	Salt Lake City, UT 84116	
<b>Mailing address:</b>	PO Box 144820	
<b>City, state and zip:</b>	Salt Lake City, UT 84114-4820	
<b>Contact persons:</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Erica Pryor	385-499-3416	epryor1@utah.gov
Greg Mortensen	385-226-6171	gmortensen@utah.gov
<b>Please address questions regarding information on this notice to the persons listed above.</b>		

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

R307-150. Emission Inventories

**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 19-2-104(1)(c) allows the Air Quality Board to make rules "...requiring persons engaged in operations which result in air pollution to ...file periodic reports containing information relating to the rate, period of emission, and composition of the air contaminant...."

Rule R307-150 implements that statute by specifying the sources that must submit information, the information that must be submitted, and the due date for submissions.

Rule R307-150 meets the requirements of the federal Consolidated Emissions Reporting Rule (CERR), 40 CFR 51.30(e) (67 FR 39602).

**4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:**

No written comments have been received on this rule since its previous five-year review in 2018.

**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 state of Utah is required under the federal CERR, 40 CFR 51.30(e), to submit inventories of emissions from a variety of sources to the federal Environmental Protection Agency on a schedule specified in the federal rule.

Rule R307-150 specifies the kinds of sources that must submit inventory information to the state in order for the state to meet its responsibilities under the CERR.

## FIVE-YEAR NOTICES OF REVIEW AND STATEMENTS OF CONTINUATION

In addition, the inventory information is required in order to determine the fees paid by sources subject to 40 CFR Part 70 and Rule R307-415, the Operating Permit Program, and for determining where emission reductions can be achieved if needed for Utah to remain in attainment of the federal health standards for air quality.

Therefore, this rule should be continued.

**Agency Authorization Information**

<b>Agency head or designee and title:</b>	Bryce C. Bird, Division Director	<b>Date:</b>	09/27/2023
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**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

<b>Rule Number:</b>	<b>R307-405</b>	<b>Filing ID:</b>	<b>52599</b>
<b>Effective Date:</b>	<b>11/01/2023</b>		

**Agency Information**

<b>1. Department:</b>	Environmental Quality	
<b>Agency:</b>	Air Quality	
<b>Building:</b>	MASOB	
<b>Street address:</b>	195 N 1950 W	
<b>City, state and zip:</b>	Salt Lake City, UT 84116	
<b>Mailing address:</b>	PO Box 144820	
<b>City, state and zip:</b>	Salt Lake City, UT 84114-4820	
<b>Contact persons:</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Erica Pryor	385-499-3416	epryor1@utah.gov
Jon Black	801-536-4047	jblack@utah.gov
<b>Please address questions regarding information on this notice to the persons listed above.</b>		

**General Information**

<b>2. Rule catchline:</b>
R307-405. Permits: Major Sources in Attainment or Unclassified Areas (PSD)
<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 19-2-108 states that, "Notice shall be given to the director by any person planning to construct a new installation which will or might reasonably be expected to be a source or indirect source of air pollution or to make

modifications to an existing installation which will or might reasonably be expected to increase the amount of or change the character or effect of air contaminants discharged...."

Rule R307-405 implements the federal Prevention of Significant Deterioration (PSD) permitting program for major sources and major modifications in attainment areas and maintenance areas as required by 40 CFR 51.166.

Subsection 19-2-104(3)(q) states that the Air Quality Board may meet the requirements of federal laws.

Rule R307-405 is also required by Section VIII, Prevention of Significant Deterioration of the State Implementation Plan. This plan is required under Clean Air Act (CAA), 42 U.S.C. 7410 and 40 CFR 51.166.

**4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:**

No written comments have been received on this rule since its previous five-year review in 2018.

**5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:**

Rule R307-405 is required by Section 19-2-108.

Rule R307-405 is also required by Section VIII, Prevention of Significant Deterioration of the State Implementation Plan, which is incorporated by reference under Rule R307-110. This plan is required under the CAA, 42 U.S.C. 7410 and 40 CFR 51.166. Without this plan, the Environmental Protection Agency would be required to impose a federal implementation plan.

Therefore, this rule should be continued.

**Agency Authorization Information**

<b>Agency head or designee and title:</b>	Bryce C. Bird, Division Director	<b>Date:</b>	09/27/2023
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**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

<b>Rule Number:</b>	<b>R307-840</b>	<b>Filing ID:</b>	<b>53562</b>
<b>Effective Date:</b>	<b>11/01/2023</b>		

**Agency Information**

<b>1. Department:</b>	Environmental Quality
<b>Agency:</b>	Air Quality
<b>Building:</b>	MASOB
<b>Street address:</b>	195 N 1950 W

<b>City, state and zip:</b>	Salt Lake City, UT 84116	
<b>Mailing address:</b>	PO Box 144820	
<b>City, state and zip:</b>	Salt Lake City, UT 84114-4820	
<b>Contact persons:</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Erica Pryor	385-499-3416	epryor1@utah.gov
Leonard Wright	801-707-8032	leonardwright@utah.gov
<b>Please address questions regarding information on this notice to the persons listed above.</b>		

**General Information**

<b>2. Rule catchline:</b>
R307-840. Lead-Based Paint Program Purpose, Applicability, and Definitions
<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>
Rule R307-840 is one of three Air Quality rules that implements Subsection 19-2-104(1)(i) which authorizes the Air Quality Board to make rules to "implement the lead-based paint requirements for training, certification, and performance of 15 U.S.C. 2601 et seq., Toxic Substances Control Act, Subchapter IV--Lead Exposure Reduction, Sections 402 and 404."
<b>4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:</b>
No written comments have been received on this rule since its previous five-year review in 2018.
<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>
Without Rule R307-840, Utah would not have authority to implement the federal requirements; implementation would be carried out by the Environmental Protection Agency. Therefore, this rule should be continued.

**Agency Authorization Information**

<b>Agency head or designee and title:</b>	Bryce C. Bird, Division Director	<b>Date:</b>	09/27/2023
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<b>FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION</b>		
<b>Rule Number:</b>	<b>R623-1</b>	<b>Filing ID: 52262</b>
<b>Effective Date:</b>	<b>10/10/2023</b>	

**Agency Information**

<b>1. Department:</b>	Lieutenant Governor	
<b>Agency:</b>	Elections	
<b>Room number:</b>	220	
<b>Building:</b>	Capitol	
<b>Street address:</b>	350 N State Street	
<b>City, state and zip:</b>	Salt Lake City, UT 84114	
<b>Mailing address:</b>	PO Box 142325	
<b>City, state and zip:</b>	Salt Lake City, UT 84114-2325	
<b>Contact persons:</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Ryan Cowley	801-538-1041	elections@utah.gov
Shelly Jackson	801-538-1041	elections@utah.gov
<b>Please address questions regarding information on this notice to the persons listed above.</b>		

**General Information**

<b>2. Rule catchline:</b>
R623-1. Lieutenant Governor's Procedure for Regulation of Lobbyist Activities
<b>3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:</b>
This rule is authorized by Section 36-11-404, which provides the director of elections rulemaking authority in regards to the appointment of an administrative law judge to adjudicate alleged violations and to impose penalties under Title 36, Chapter 11, Lobbyist Disclosure and Regulation Act.
<b>4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:</b>
No comments have been received on this administrative rule since the last five-year review either in support or opposition.
<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>

# FIVE-YEAR NOTICES OF REVIEW AND STATEMENTS OF CONTINUATION

This rule is still necessary as an administrative law judge is required to adjudicate alleged violations under the Lobbyist Disclosure and Regulation Act. The agency has received no comments, so no disagreements were made.

Therefore, this rule should be continued.

## Agency Authorization Information

<b>Agency head or designee and title:</b>	Ryan Cowley, Director of Elections	<b>Date:</b>	10/10/2023
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## FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

<b>Rule Number:</b>	<b>R728-503</b>	<b>Filing ID:</b>	<b>51951</b>
<b>Effective Date:</b>	<b>10/18/2023</b>		

## Agency Information

<b>1. Department:</b>	Public Safety
<b>Agency:</b>	Peace Officer Standards and Training
<b>Street address:</b>	410 W 9800 S
<b>City, state and zip:</b>	Sandy, UT 84070

### Contact persons:

<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Marcus Yockey	801-965-4275	myockey@agutah.gov
Kim Gibb	801-556-8198	kgibb@utah.gov

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

## General Information

<b>2. Rule catchline:</b>
R728-503. Utah Minimum Standards for All Emergency Pursuit Policies to be Adopted by Public Agencies that Operate Authorized Emergency Pursuit Vehicles

### 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 by Section 41-6a-212, which requires the Department of Public Safety to make rules providing minimum standards for all emergency pursuit policies that are adopted by public agencies authorized to operate emergency pursuit vehicles.

### 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 have not been any comments received during or since the last five-year review of this rule.

### 5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:

This rule is necessary in order to provide minimum standards for all emergency pursuit policies that are adopted by public agencies authorized to operate emergency pursuit vehicles. Therefore, this rule should be continued.

## Agency Authorization Information

<b>Agency head or designee and title:</b>	Travis Rees, Director	<b>Date:</b>	10/18/2023
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## FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

<b>Rule Number:</b>	<b>R850-61</b>	<b>Filing ID:</b>	<b>52051</b>
<b>Effective Date:</b>	<b>10/17/2023</b>		

## Agency Information

<b>1. Department:</b>	School and Institutional Trust Lands
<b>Agency:</b>	Administration
<b>Room number:</b>	Suite 600
<b>Building:</b>	Tower 102
<b>Street address:</b>	102 S 200 E
<b>City, state and zip:</b>	Salt Lake City, UT 84111

### Contact persons:

<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Mike Johnson	801-538-5180	mjohnson@utah.gov
Lisa Wells	801-538-5154	lisawells@utah.gov

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

## General Information

<b>2. Rule catchline:</b>
R850-61. Native American Grave Protection and Repatriation



**3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:**

Subsections 53C-1-302(1)(a)(ii) and 53C-2-201(1)(a) authorize the Director of the School and Institutional Trust Lands Administration to prescribe the management of cultural resources on trust lands.

Subsection 53C-1-201(5)(b) directs that the agency provide policies for the ownership and control of Native American remains, as defined in Section 9-9-402, that are discovered or excavated on School and Institutional Trust Lands.

**4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:**

No written comments have been received by the agency concerning this rule since the previous Five-Year Notice of Review and Statement of Continuation.

**5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:**

As the agency continues to develop uses for the lands and resources granted to the various trusts, proper handling of cultural resources located on those trust lands is of great importance. This rule, which outlines the manner by which the agency handles the ownership and control of Native American remains and artifacts discovered on trust lands, continues to be of great importance.

Therefore, this rule should be continued.

**Agency Authorization Information**

<b>Agency head or designee and title:</b>	Michelle McConkie, Director	<b>Date:</b>	10/17/2023
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**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

<b>Rule Number:</b>	<b>R850-110</b>	<b>Filing ID:</b>	<b>52046</b>
<b>Effective Date:</b>	<b>10/17/2023</b>		

**Agency Information**

<b>1. Department:</b>	School and Institutional Trust Lands
<b>Agency:</b>	Administration
<b>Room number:</b>	Suite 600
<b>Building:</b>	Tower 102
<b>Street address:</b>	102 S 200 E
<b>City, state and zip:</b>	Salt Lake City, UT 84111

**Contact persons:**

<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Mike Johnson	801-538-5180	mjohnson@utah.gov
Lisa Wells	801-538-5154	lisawells@utah.gov

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

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

R850-110. Motor Vehicle Travel Designations

**3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:**

Subsections 53C-1-302(1)(a)(ii) and 53C-2-301(1)(g) authorize the Director of the School and Institutional Trust Lands Administration to establish rules consistent with general policies prescribed by the board of trustees, and regulate the unauthorized use or occupation of trust lands.

Subsection 41-22-10.1(2) authorizes the agency to designate trails, streets, or highways as open to off-highway vehicle use.

**4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:**

No written comments have been received concerning this rule since the previous Five-Year Notice of Review and Statement of Continuation.

**5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:**

Off-highway vehicle usage is a rapidly increasing recreational past-time. This rule is crucial to the effective management of this usage on trust lands in order to protect the environment and the value of these lands.

This rule contains guidelines establishing routes, usage, signage, types of vehicles, route widths, and restrictions. Therefore, this rule should be continued.

**Agency Authorization Information**

<b>Agency head or designee and title:</b>	Michelle McConkie, Director	<b>Date:</b>	10/17/2023
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**End of the Five-Year Notices of Review and Statements of Continuation Section**





## NOTICES OF FIVE-YEAR REVIEW EXTENSIONS

Rulewriting agencies are required by law to review each of their administrative rules within five years of the date of the rule's original enactment or the date of last review (Section 63G-3-305). If the agency finds that it will not meet the deadline for review of the rule (the five-year anniversary date), it may file a **NOTICE OF FIVE-YEAR REVIEW EXTENSION (EXTENSION)** with the Office of Administrative Rules. The **EXTENSION** permits the agency to file the review up to 120 days beyond the anniversary date.

Agencies have filed **EXTENSIONS** for the rules listed below. The "Extended Due Date" is 120 days after the anniversary date.

**EXTENSIONS** are governed by Subsection 63G-3-305(6).

### NOTICE OF FIVE-YEAR REVIEW EXTENSION

Rule Number:	R438-13	Filing ID: 51120
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New Deadline Date:	03/06/2024
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#### Agency Information

<b>1. Department:</b>	Health and Human Services	
<b>Agency:</b>	Utah Public Health Laboratory	
<b>Building:</b>	Unified State Lab	
<b>Street address:</b>	4431 South 2700 West	
<b>City, state and zip:</b>	Taylorsville, UT 84129	
<b>Contact persons:</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Kristin Brown	801 538- 4152	kristinbrown@utah.gov
Andreas Rohrwasser	801 631- 7658	arohrwasser@utah.gov

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

#### General Information

##### 2. Rule catchline:

R438-13. Rules for the Certification of Institutions to Obtain Impounded Animals in the State of Utah

##### 3. Reason for requesting the extension:

The Department of Health and Human Services (Department) recently filed a repeal of this rule and is proceeding with an extension to allow the Department time to appropriately repeal the rule filing.

#### Agency Authorization Information

Agency head or designee and title:	Tracy S. Gruber, Executive Director	Date:	10/30/2023
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End of the Notices of Five-Year Review Extensions Section



## NOTICES OF RULE EFFECTIVE DATES

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State law provides for agencies to make their administrative rules effective and enforceable after publication in the *Utah State Bulletin*. In the case of **PROPOSED RULES** or **CHANGES IN PROPOSED RULES** with a designated comment period, the law permits an agency to make a rule effective no fewer than seven calendar days after the close of the public comment period, nor more than 120 days after the publication date. In the case of **CHANGES IN PROPOSED RULES** with no designated comment period, the law permits an agency to make a rule effective on any date including or after the thirtieth day after the rule's publication date, but not more than 120 days after the publication date. If an agency fails to file a **NOTICE OF EFFECTIVE DATE** within 120 days from the publication of a **PROPOSED RULE** or a related **CHANGE IN PROPOSED RULE** the rule lapses.

Agencies have notified the Office of Administrative Rules that the rules listed below have been made effective.

**NOTICES OF EFFECTIVE DATE** are governed by Subsection 63G-3-301(12), Section 63G-3-303, and Sections R15-4-5a and R15-4-5b.

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### Agriculture and Food

#### Plant Industry

No. 55707 (Amendment) R68-9: Utah Noxious Weed Act  
Published: 09/15/2023  
Effective: 10/30/2023

No. 55653 (Amendment) R68-25: Industrial Hemp Program  
- Cannabinoid Product Processors  
Published: 09/01/2023  
Effective: 10/17/2023

No. 55652 (Amendment) R68-26: Cannabinoid Product  
Registration and Labeling  
Published: 09/01/2023  
Effective: 10/17/2023

No. 55669 (Amendment) R68-28: Cannabis Processing  
Published: 09/15/2023  
Effective: 10/30/2023

### Corrections

#### Administration

No. 55547 (Amendment) R251-107: Executions  
Published: 09/01/2023  
Effective: 11/07/2023

No. 55546 (Amendment) R251-108: Adjudicative  
Proceedings  
Published: 09/01/2023  
Effective: 11/07/2023

No. 55544 (Amendment) R251-705: Inmate Mail  
Procedures  
Published: 09/01/2023  
Effective: 11/07/2023

No. 55549 (Amendment) R251-707: Legal Access  
Published: 09/01/2023  
Effective: 11/07/2023

No. 55545 (Amendment) R251-708: Perimeter Patrol

Published: 09/01/2023

Effective: 11/07/2023

No. 55597 (Amendment) R251-711: Admission and Intake

Published: 09/01/2023

Effective: 11/07/2023

### Education

#### Administration

No. 55739 (Amendment) R277-406: Early Learning  
Program and Benchmark Assessments

Published: 10/01/2023

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No. 55743 (Amendment) R277-415: School Nurses  
Matching Funds

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No. 55740 (Amendment) R277-419: Pupil Accounting

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No. 55747 (New Rule) R277-439: Block Grant Funding for  
Prevention Programs in Public Education

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No. 55748 (Amendment) R277-474: School Instruction and  
Sex Education

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No. 55744 (Amendment) R277-484: Data Standards

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## NOTICES OF RULE EFFECTIVE DATES

No. 55741 (Amendment) R277-489: Kindergarten Programs and Assessment  
Published: 10/01/2023  
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No. 55745 (Amendment) R277-552: Charter School Timelines and Approval Processes  
Published: 10/01/2023  
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No. 55749 (Amendment) R277-620: Suicide Prevention Programs  
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No. 55750 (Amendment) R277-629: Paid Professional Hours for Educators  
Published: 10/01/2023  
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No. 55752 (Amendment) R277-701: Early College Programs  
Published: 10/01/2023  
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No. 55753 (Amendment) R277-922: Digital Teaching and Learning Grant Program  
Published: 10/01/2023  
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No. 55742 (Amendment) R277-927: Teacher and Student Success Act (TSSA) Program  
Published: 10/01/2023  
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### Environmental Quality

#### Air Quality

No. 55324 (Amendment) R307-110-17: Section IX, Control Measures for Area and Point Sources, Part H, Emission Limits  
Published: 06/01/2023  
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No. 55324 (Change in Proposed Rule) R307-110-17: Section IX, Control Measures for Area and Point Sources, Part H, Emission Limits  
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### Health and Human Services

#### Child Care Center Licensing

No. 55690 (Amendment) R381-40: Commercial Preschool Programs  
Published: 09/15/2023  
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No. 55615 (Amendment) R381-60: Hourly Child Care Centers  
Published: 09/01/2023  
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No. 55691 (Amendment) R381-70: Out of School Time Child Care Programs  
Published: 09/15/2023  
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No. 55614 (Amendment) R381-100: Child Care Centers  
Published: 09/01/2023  
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#### Center for Medical Cannabis

No. 55700 (Amendment) R383-1: Definitions  
Published: 09/15/2023  
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No. 55717 (Amendment) R383-2: Electronic Verification System and Inventory Control System  
Published: 09/15/2023  
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No. 55714 (Amendment) R383-4: Qualified Medical Providers  
Published: 09/15/2023  
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No. 55694 (Amendment) R383-5: Dosing Guidelines  
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No. 55695 (Amendment) R383-6: Pharmacy Medical Providers  
Published: 09/15/2023  
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No. 55698 (Amendment) R383-7: Medical Cannabis Pharmacy  
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No. 55699 (Amendment) R383-8: Medical Cannabis Pharmacy Agent  
Published: 09/15/2023  
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No. 55697 (Amendment) R383-9: Home Delivery and Courier  
Published: 09/15/2023  
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No. 55701 (Repeal) R383-11: Agreement With a Tribe  
Published: 09/15/2023  
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No. 55710 (Repeal) R383-12: Administrative Hearing Procedures  
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No. 55716 (Repeal and Reenact) R383-13: Compassionate Use Board  
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No. 55711 (Amendment) R383-14: Administrative Penalties  
Published: 09/15/2023  
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No. 55715 (New Rule) R383-15: Compassionate Use  
Board Administrative Hearing Procedure  
Published: 09/15/2023  
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**Integrated Healthcare**

No. 55496 (Amendment) R414-8: Electronic Personal  
Medical Records for the Medicaid Program  
Published: 07/01/2023  
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No. 55497 (Amendment) R414-12: Laboratory Services  
Published: 07/01/2023  
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No. 55498 (Amendment) R414-502: Nursing Facility Levels  
of Care  
Published: 08/01/2023  
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No. 55693 (Amendment) R414-515: Long Term Acute Care  
Published: 09/15/2023  
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No. 55616 (Amendment) R414-522: Electronic Visit  
Verification Requirements for Personal Care and Home  
Health Care Services  
Published: 09/01/2023  
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**Residential Child Care Licensing**

No. 55618 (Amendment) R430-50: Residential Certificate  
Child Care  
Published: 09/01/2023  
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No. 55619 (Amendment) R430-90: Licensed Family Child  
Care  
Published: 09/01/2023  
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**Health Care Facility Licensing**

No. 55686 (Amendment) R432-12: Small health Care  
Facility (Four to Sixteen Beds) Construction Rule  
Published: 09/15/2023  
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No. 55539 (Repeal and Reenact) R432-101: Specialty  
Hospital - Psychiatric  
Published: 08/15/2023  
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No. 55504 (Amendment) R432-201: Mental Retardation  
Facility: Supplement A to the Small Health Care Facility Rule  
Published: 08/01/2023  
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No. 55593 (Amendment) R432-270: Assisted Living Facility  
Published: 09/01/2023  
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**Human Services Program Licensing**

No. 55600 (New Rule) R501-3: Inspection and  
Enforcement  
Published: 09/01/2023  
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**Recovery Services**

No. 55676 (New Rule) R527-57: Kinship Locate  
Published: 09/15/2023  
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No. 55682 (New Rule) R527-221: Children in Care Support  
Services  
Published: 09/15/2023  
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**Higher Education (Utah Board of)**  
**Administration**

No. 55702 (New Rule) R765-606: USHE Employee Partner  
Scholarship  
Published: 09/15/2023  
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No. 55703 (New Rule) R765-607: PRIME Program Grant  
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No. 55704 (New Rule) R765-617: Karen Mayne Public  
Safety Officer Scholarship Program  
Published: 09/15/2023  
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**Lieutenant Governor**  
**Elections**

No. 55535 (New Rule) R623-9: Ballot Printing, Handling,  
and Envelope Standards  
Published: 09/01/2023  
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No. 55536 (New Rule) R623-10: Voter Registration  
Database Security and Voter List Maintenance  
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**Natural Resources**

**Outdoor Recreation**

No. 55589 (New Rule) R650-302: Utah Outdoor Recreation  
Infrastructure Grant  
Published: 09/01/2023  
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No. 55590 (New Rule) R650-303: Restoration Recreation  
Infrastructure Grant Program  
Published: 09/15/2023  
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No. 55673 (New Rule) R650-304: Utah Children's Outdoor Recreation and Education Grant Program  
Published: 09/15/2023  
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### State Parks

No. 55647 (Amendment) R651-700: Administrative Procedures for Real Property Management  
Published: 09/15/2023  
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### Public Service Commission

#### Administration

No. 55689 (New Rule) R746-316: Electrical Power Delivery Quality Plans  
Published: 09/15/2023  
Effective: 10/26/2023

### Tax Commission

#### Property Tax

No. 55713 (Amendment) R884-24P-29: Construction Work in Progress Pursuant to Utah Constitution Art. XIII, Section 2 and Utah Code Ann. Sections 59-2-201 and 59-2-301  
Published: 09/15/2023  
Effective: 10/27/2023

No. 55708 (Amendment) R884-24P-33: 2023 Personal Property Valuation Guides and Schedules Pursuant to Utah Code Ann. Section 59-2-107  
Published: 09/15/2023  
Effective: 10/27/2023

### Transportation Commission

#### Administration

No. 55692 (Amendment) R940-3: State Infrastructure Bank Fund, Prioritization process, Procedures, and Standards for Making Loans or Providing Infrastructure Assistance  
Published: 09/15/2023  
Effective: 10/24/2023

### UTech Board of Trustees

#### Administration

No. 55719 (Repeal) R945-1: UTech Technical College Scholarship  
Published: 10/01/2023  
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### Workforce Services

#### Housing and Community Development

No. 55712 (Amendment) R990- 200: Private Activity Bonds  
Published: 09/15/2023  
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## End of the Notices of Rule Effective Dates Section